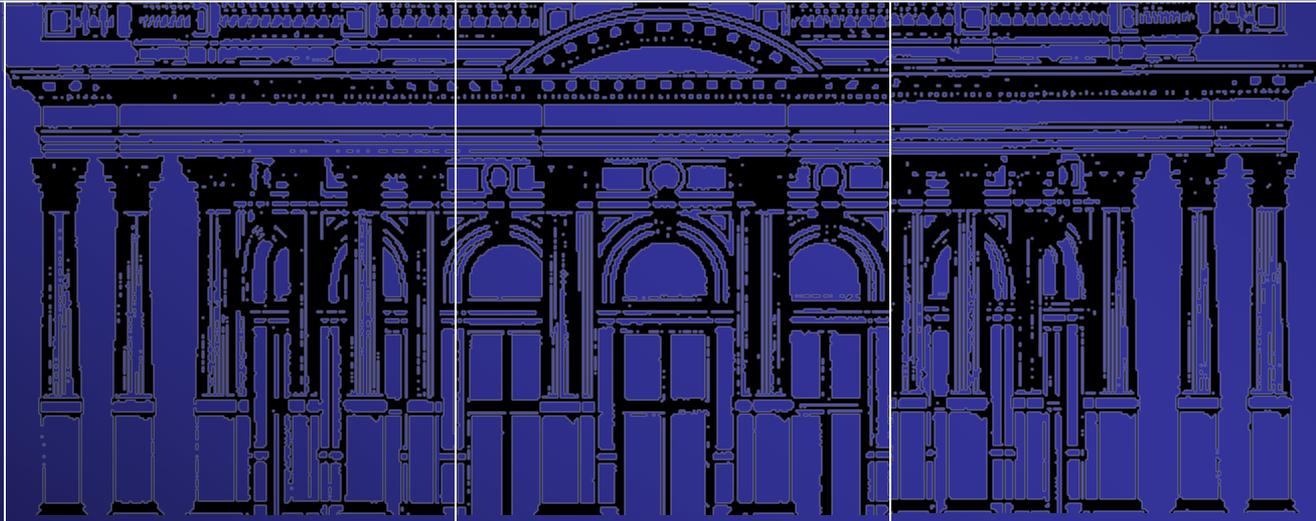




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Evaluating PPPs for Transportation: An Analytical Approach for State Legislators



Jim Reed

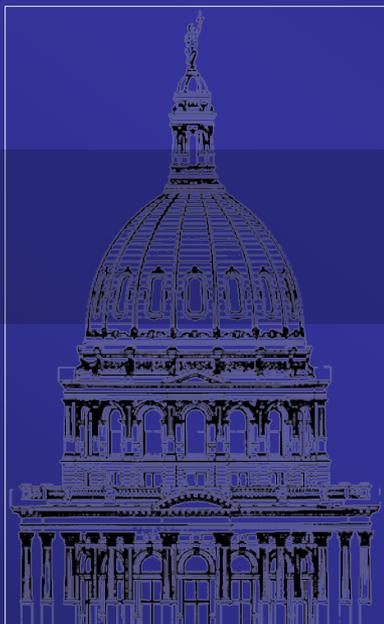
National Conference of State Legislatures

August 2013

NCSL Overview

- Bipartisan organization
- Serves the 7,382 legislators and 30,000+ legislative staff of the nation's 50 states, its commonwealths and territories
- Covers all topics, not just transportation
- Activities:
 - Research and information on topics of interest to the states
 - Technical assistance and training
 - Opportunities for policymakers to exchange ideas
 - Lobbying at the federal level for states' interests





Transportation Funding Crisis

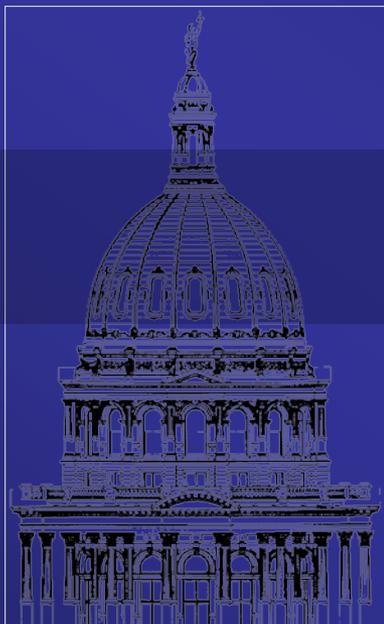
- Great Recession
- State budget shortfalls
- Declining gas tax revenues (less driving, electric and hybrid vehicles)
- Political reluctance to raise gas tax
- Previous underinvestment in infrastructure
- Aging infrastructure
- ARRA stimulus monies all spent
- Uncertainty of federal program going forward, lack of adequate federal funding

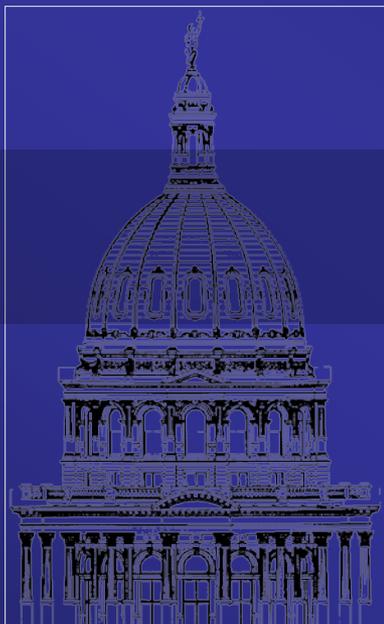
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Average Annual State Sources of Transportation Revenue by Percent

- State motor fuels taxes—28%
- Federal funding—27%
- Motor vehicle/truck fees and taxes—16%
- Bonding, borrowing—12%
- Tolls—5%
- State general fund—4%
- Misc. and other—6%
- Local gov't contribution—2%
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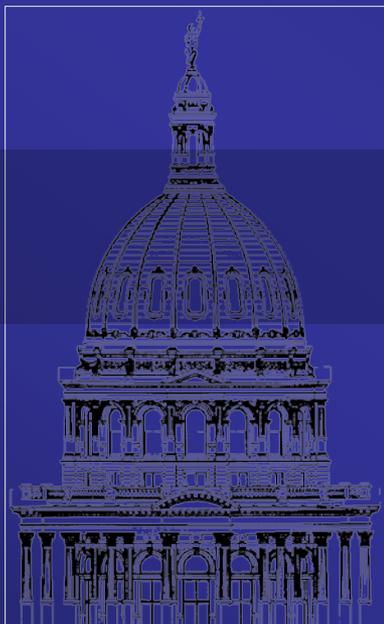


State Transportation Financing Options

- **General obligation or revenue bonds** (44 states + DC + PR)
- **Design-build** (authorized in 38 states + PR)
- **State infrastructure banks (SIBs)** (34 states + PR)
- **GARVEE bonds** (33 states + DC + PR)
- **Public-private partnerships (PPPs or P3s)** (authorized in 33 states + PR)
- **TIFIA federal credit assistance** (12 states + PR)
- **Private Activity Bonds (PABs)** (6 states)

The PPP (P3) Option

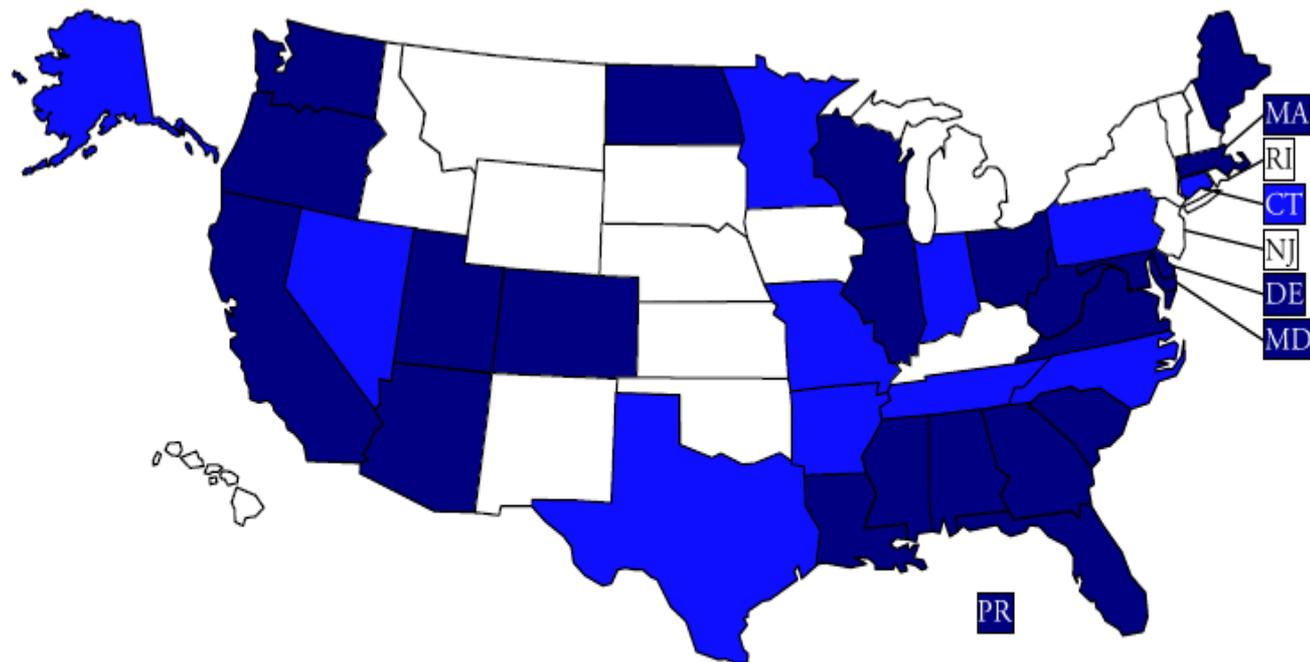
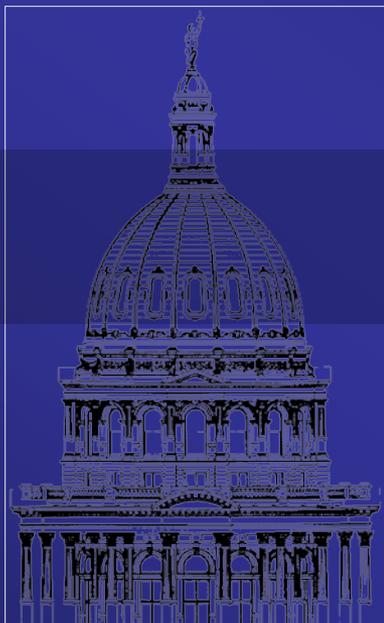
- Public-Private Partnerships:
- Can complete large scale transportation projects that cannot be fully funded through traditional means.
- Expand the pool of available money for transportation projects- private equity.
- Can create cost savings in terms of lower initial project cost to the public, quicker project completion and long-term operation & maintenance
- Private sector takes on a portion of the financing risk and other risks.
- Bring private sector practices and innovations into public projects, which can increase efficiency.



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33 States with PPP Enabling Legislation



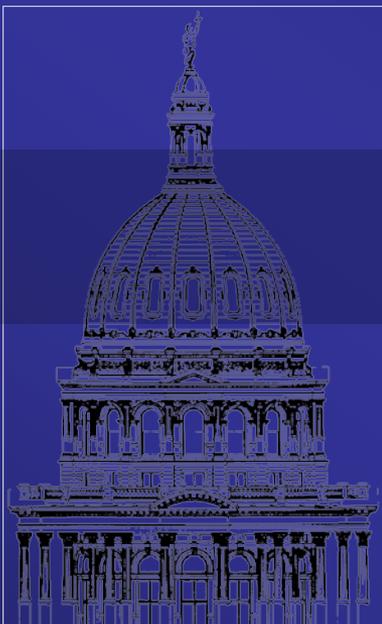
-  Broad enabling legislation
-  Limited or project-specific legislation
-  No legislation

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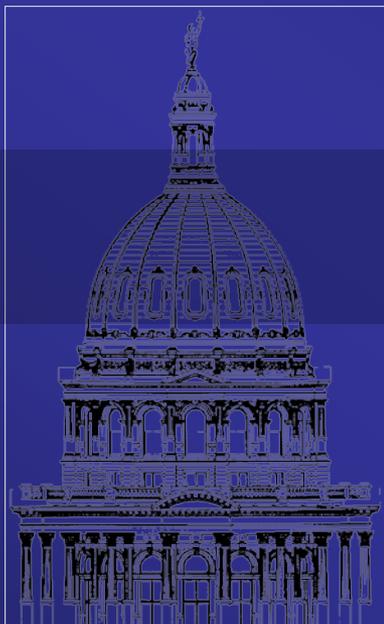
Number of PPP-Related Bills Considered by States in Recent Sessions

- 2009 17 states
 - 2010 8 states
 - 2011 15 states
 - 2012 13 states
 - 2013 22 states
-
- About \$60 billion in U.S. transportation PPPs over 20 years.
 - Currently, 11 major P3 projects in 5 states, with \$30 billion coming to bid in next 18 months.



NCSL Project on PPPs

- Working group created in 2009 due to intense state legislative interest
- Links legislators, legislative staff and private sector entities to analyze legislators' needs and develop nonpartisan, balanced, useful materials to aid legislators' decision-making
- Focused on publicly held surface transportation systems, esp. roadways
- It involved a dozen educational workshops, and development of written guidance using multiple resources.

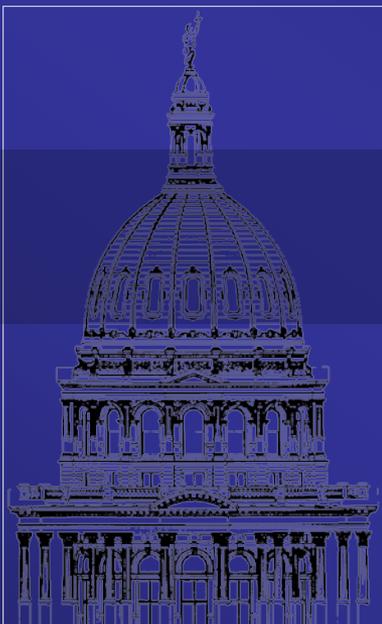


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NCSL Partners Project on PPPs

- NCSL Foundation
- Legislators: Ariz., Ind., Mass., Minn., Nev., Ore., Texas, Wash.
- Legislative Staff: Pa., Texas, Wis., W.V.
- Association and private sector partners: AECOM, AAA, AFSCME, ARTBA, ATA, Cintra US, Design-Build Institute, Dorsey and Whitney, Lane Construction, Macquarie Capital, Reason Fdn, Transurban, U.S. Chamber of Commerce
- Technical Resource: Univ. of Minnesota

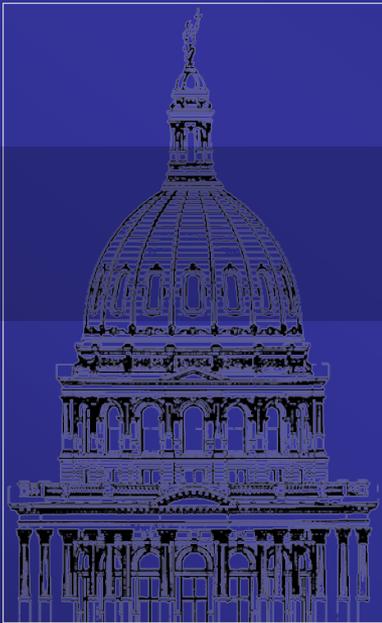


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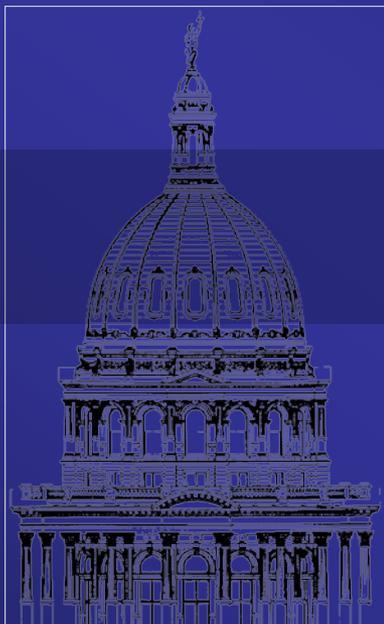
*Public-Private Partnerships for Transportation:
A State Legislators' Toolkit*

- Goal: Provide nonpartisan, balanced, useful materials to aid legislators' PPP decision-making
- Includes:
 - Context for understanding PPPs
 - State gov't roles in the PPP process
 - Principles for good governance as applied to PPP issues
- Focus on roadways
- Extensive Toolkit released December 2010. Regular updates since then.



Key Assumptions

- The states are and should be primarily responsible for PPP policy and implementation decisions .
- Solid, balanced, and comprehensive state enabling legislation is the key to thorough consideration of PPP proposals and the protection of the public interest.
- Though PPPs are not ideal for all transportation projects, they have been shown to reduce upfront public costs through accelerated or more efficient project delivery. **PPPs don't create new money for states.** The public sector will still have to pay back the private investment with revenue that can come from various places, such as existing taxes or tolls.



PPP Definition

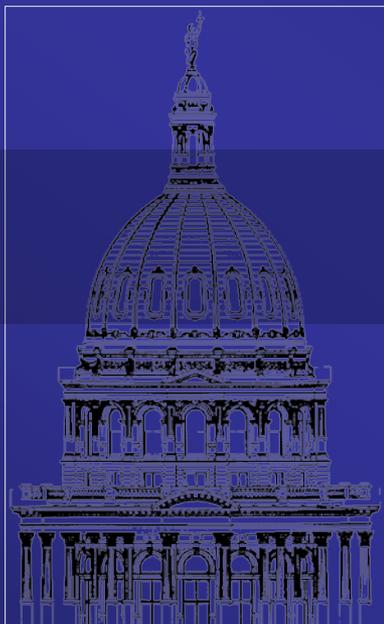
- “A public-private partnership is a contractual agreement formed between public and private sector partners, which allows **more private sector participation than is traditional**. The agreements usually involve a government agency contracting with a private company to renovate, construct, operate, maintain, and/or manage a facility or system.”
- PPPs cover a spectrum of as many as a dozen types of innovative contracting, project delivery and financing arrangements between public and private sector partners. In PPPs, the private sector performs functions and takes on certain risks normally undertaken by the government. Appropriate risk allocation is a key benefit of P3s.



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■ Definition of State Gov't Roles

■ Legislative Roles

- Deciding to engage a state in PPPs
- Creating a policy framework: enabling legislation (31 states and Puerto Rico)
- Legislative approval (9 states)

■ Executive Roles

- Implementation within legislative guidelines
- Programs, projects, procurement, contracting, contract mgmt. and oversight

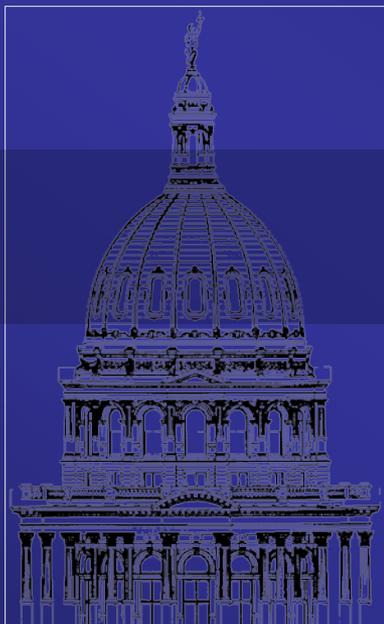
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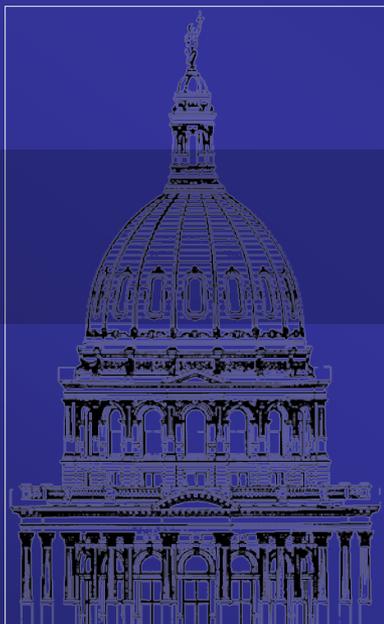
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■ **Shared Roles**

- Building public-sector capacity
- Supporting and funding robust PPP project analyses
- Establishing centers of expertise
- Engaging in public outreach and stakeholder participation
- Selecting/approving projects (in states where legislative approval is required)



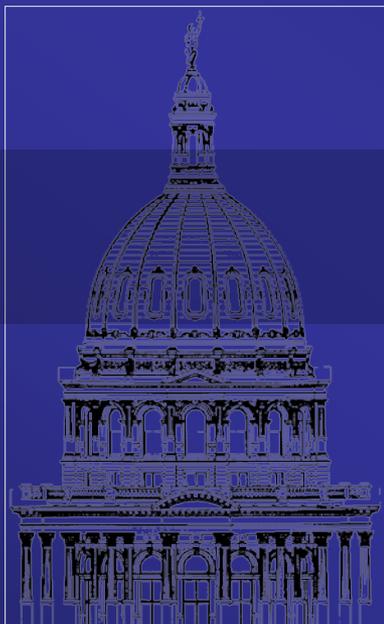
Legislative Approval



- ***Some Form of Legislative Approval for Some or All PPP Projects:*** 9 states
 - Delaware, Florida, Indiana, Maine, Missouri, North Carolina, Tennessee, Washington, West Virginia (In 2011, Indiana repealed leg. approval for most projects.)
- ***Only to Convert Existing Facilities to Privately Operated Toll Roads:*** Utah and Puerto Rico
- ***Legislative Review or Involvement but not Approval:*** 8 states
 - Alabama, Alaska, California, Louisiana, Maryland, Mississippi, South Carolina, Texas

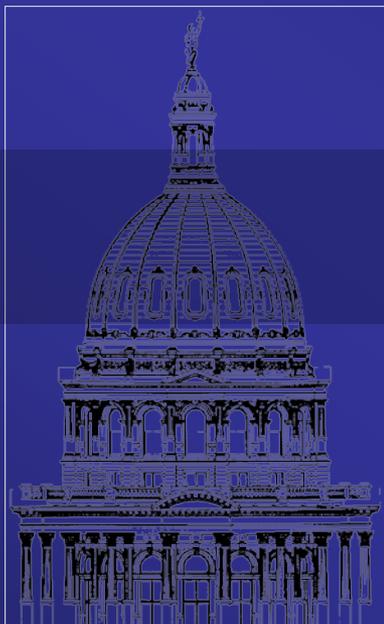
Legislative Approval

- Pro: Protects public interest and promotes accountability through legislative branch review.
- Con: Adds uncertainty, may discourage private investment, particularly if review is late in process.
- Options:
 - Craft comprehensive enabling legislation to carefully address protection of the public interest and key policy issues.
 - Statutorily provide structured legislative involvement other than project approval, like reporting and review and comment opportunities.



Framing the Debate: Benefits

- Private Financing and Project Acceleration
- Monetization of Existing Assets
- Cost and Time Savings (page 10)
- Lifecycle Efficiencies
- Improved Project Quality
- Risk Transfer (Table p. 5)
- Public Control and Accountability



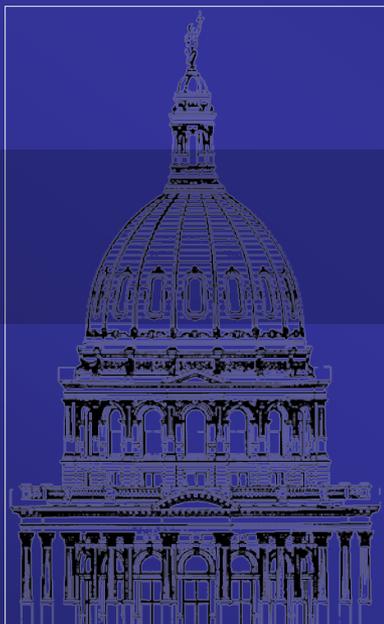


Framing the Debate: Concerns

- Loss of Public Control and Flexibility
- Private Profits at Public Expense
- Loss of Future Public Revenues
- Risk of Bankruptcy or Default
- Accountability and Transparency
- Environmental Issues
- Labor Concerns
- Foreign Companies
- Toll Road Controversies
- Specific Contract Terms

PPP Principles

- The centerpiece of the toolkit is the ***nine principles*** that promote a sound public policy approach to the consideration of PPPs.
- Drawn from the literature and the combined wisdom of the NCSL Project, the principles relate mainly to the stages of the process in which legislatures are most directly involved: deciding whether a state will engage in PPPs and creation of a policy framework.
- Some also relevant to stages where legislative involvement is less direct, like development of a PPP program; project selection; procurement processes such as negotiation and bidding; contracting; and contract management and oversight.



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■ Principle 1: Be informed.

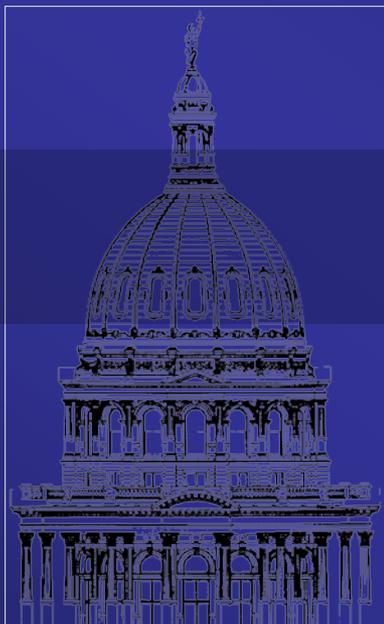
State decision makers need access to fact-based information that supports sound decisions.

- Nationwide knowledge and experience gap about PPPs
- Options: Commissions, separate P3 office, expert advisors, centers of excellence (e.g. Calif., Mich., N.Y., P.R., Va.)

■ Principle 2: Separate the debates.

Debates about the PPP approach should be conceptually distinct from issues such as tolling, taxes or specific deals.

- Legislators and exec. agencies can clarify issues internally and for other stakeholders



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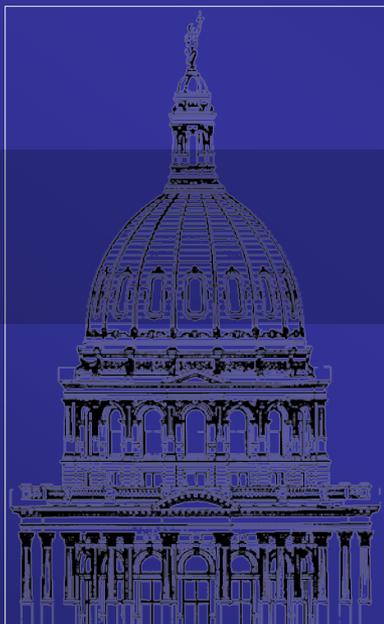
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■ Principle 3: Consider the public interest for all stakeholders.

State legislators should consider how to protect the public interest throughout the PPP process.

- Public interest: the welfare of involved or affected stakeholder groups
- Legislators can work to protect public interest through statutory guidelines for the rest of the PPP process, esp. for contracts.
- Compare to traditional project delivery
- Identify and understand motivations of participants.



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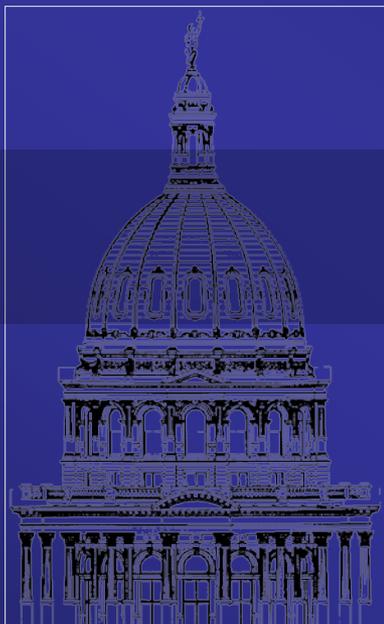
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■ Principle 4: Involve and educate stakeholders.

Stakeholder involvement—early and often—helps protect the public interest, improve buy-in and mitigate political risk.

- Opportunities for debate, explanation and education—and to address misconceptions
- Need to balance transparency, accountability and confidentiality



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- Principle 5: Take a long-term perspective because P3s are long-term.

State legislators should approach PPP decisions with the long-term impacts in mind, looking beyond short-term considerations.

- Potential positive and negative effects on overall transportation program, environment, economy, other elements of public interest

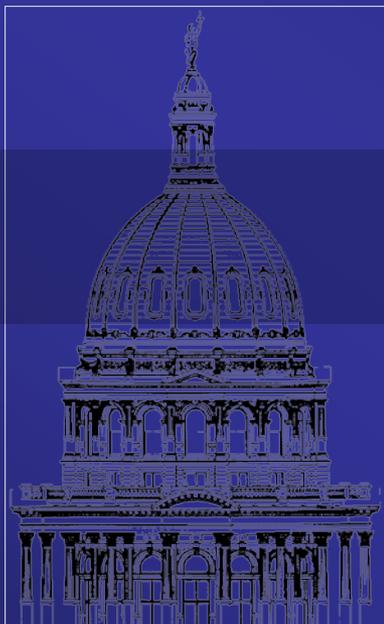


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- Principle 6: Let the transportation program drive PPP projects—not the other way around.

PPPs should be pursued to support a state's transportation strategy, not just to raise short-term revenue.

- Fiscal crisis: States are largely considering PPPs for financial benefits, faster completion
- Legislation can address consistency with transportation plans, how to handle unsolicited bids
- Develop priority projects that are financially feasible under a variety of funding options



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■ Principle 7: Support comprehensive project analyses.

Before pursuing a PPP, it should be shown to be a better option than traditional project delivery.

- International best practice: Value for Money, Public Sector Comparator, qualitative tests
- More limited U.S. use
- Legislation can require project analyses (e.g. Fla., Md., P.R., Wash.)
- Need sufficient funding and support to do these well



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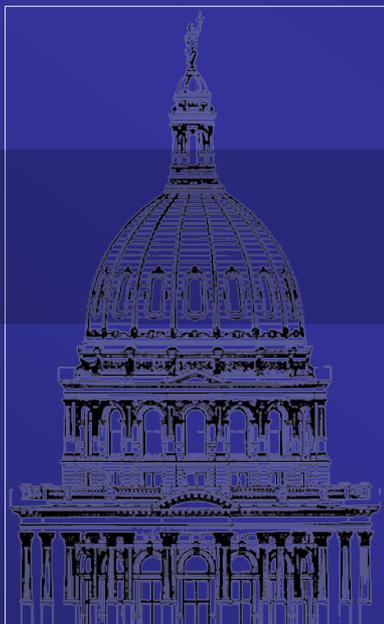
- Principle 8: Be clear and transparent about the financial issues.

States must carefully assess financial goals, an asset's value and how to spend any proceeds.

- Principle 9: Set good ground rules for bidding and negotiations.

Legislation should promote fairness, clarity and transparency in the procurement process.

- Can address procurement approach, evaluation criteria, proposal review process, fees and payments, and transparency and confidentiality

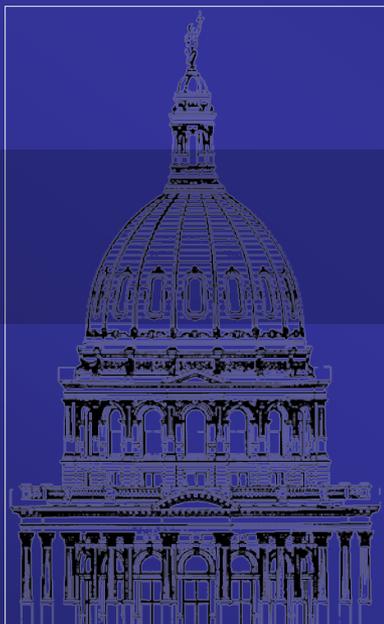


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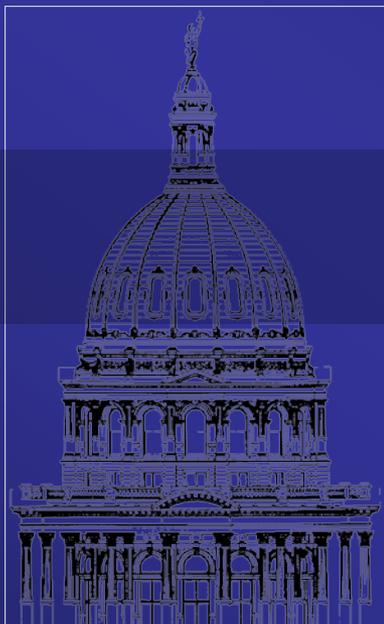
Closing the Expertise Gap: State PPP Offices

- Arizona Office of P3 Initiatives (DOT)
- California Public Infrastructure Advisory Commission (BTH)
- Colorado High Performance Transportation Enterprise (DOT) (Government-owned business)
- Georgia P3 Program (DOT)
- Michigan Office for PPPs (Treasury Dept)
- Ohio Division of Innovative Delivery (DOT)
- Oregon Office of Innovative Partnerships and Alt. Funding (DOT)
- Puerto Rico Public-Private Partnerships Authority
- Washington Transportation Partnerships Office (DOT)
- Virginia Office of Transportation PPPs (DOT)



Toolkit Additional Resources

- Glossary, page 33
- Pew Checklist, page 89
- Bibliography, page 101
- Another Topic-
- Availability payments

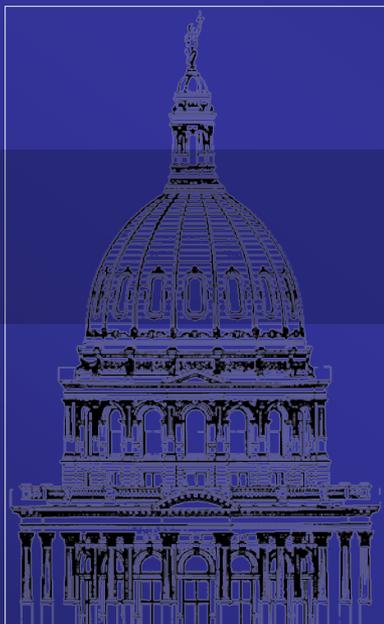


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Ongoing Work

- Continue to Monitor State PPP Legislation.
- Upon Invitation, Work with Individual State Legislative Entities. (MD, MN, PR, NJ, KY)
- Host Educational Sessions on PPPs at NCSL Meetings.



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Conclusion and Q&A

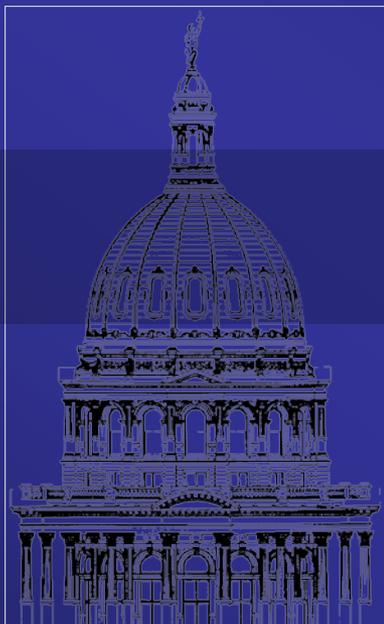
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