

APPENDIX C. 2010 STATE LEGISLATION CONCERNING PPPs FOR TRANSPORTATION PROJECTS²³⁰

As of Oct. 1, 2010, 21 states—Alabama, California, Colorado, Florida, Georgia, Illinois, Indiana, Maine, Maryland, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Virginia, Washington and West Virginia—and the District of Columbia had considered 52 legislative measures concerning transportation PPPs during their 2010 sessions.

Of those, seven states—Alabama, Georgia, Illinois, Indiana, Maine, Maryland and West Virginia—had adopted or enacted 11 measures; 17 bills and one resolution were pending; and the remainder had failed or been vetoed.

Eight states—Illinois, Maine, Michigan, New York, Ohio, Pennsylvania, Rhode Island and South Carolina—and the District of Columbia had considered some form of comprehensive PPP enabling legislation; of those, Maine's had been enacted.

This level of PPP-related legislative activity was greater than in recent years. In 2009, 33 bills were introduced in 18 states; in 2008, 12 states considered legislation, and in 2007, 16 states did so.

State	Legislation	Status	PPP Provisions
Alabama	Senate Joint Resolution 17 (identical to House Joint Resolution 50) ²³¹	SJR 17 enacted on Jan. 22, 2010; 2010 Ala. Acts, Act 19; HJR 50 enacted on April 12, 2010; 2010 Ala. Acts, Act 405	<ul style="list-style-type: none"> • Extends the Lieutenant Governor's Commission on Public-Private Partnership Projects, originally established in 2008, until the fifth legislative day of the 2011 regular legislative session.
California	Senate Bill 474	Enrolled on Aug. 23, 2010; vetoed by governor on Sept. 23, 2010	<ul style="list-style-type: none"> • Would require the lead agency for a project, prior to entering into any agreement involving design-build contracting or a PPP, to pass a resolution that identifies the anticipated benefits from using those methods in comparison to using traditional contracting or financing methods.
Colorado	Senate Bill 145	Failed (adjourned) on May 12, 2010	<ul style="list-style-type: none"> • Would require the state High-Performance Transportation Enterprise to study the feasibility of entering into a PPP to develop, construct and operate a certain rail fixed guideway system in the city of Denver. • Would require \$4 of each road safety surcharge paid by vehicle owners living within one mile of the system to be paid to any special district or improvement district that might be formed to support the system.
Florida	House Bill 497	Failed (died in committee) on April 30, 2010	<ul style="list-style-type: none"> • Would remove state DOT authority to lease existing toll facilities through PPPs. • Would provide that a determination that a PPP project is in the public's best interest be evidenced by a business case prepared by the state DOT under specified provisions and submitted to the Council on Efficient Government.
	Senate Bill 106	Failed (died in committee) on April 30, 2010	<ul style="list-style-type: none"> • Would remove state DOT authority to lease existing toll facilities through PPPs.
Georgia	House Bill 1134	Failed (failed to pass House) on March 22,	<ul style="list-style-type: none"> • Would enact the State and Local Public-Private Partnership Act of 2010. • Would establish within the executive branch of state government

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State	Legislation	Status	PPP Provisions
		2010	<p>an Office of Public-Private Partnerships to identify potential state and local PPP projects, review and comment on proposed PPPs, provide advice and technical assistance, and annually report to the governor and the legislature with respect to PPPs.</p> <ul style="list-style-type: none"> • Would establish an Advisory Council on Public-Private Partnerships to serve the leadership of the Office of Public-Private Partnerships in an advisory capacity. • Would require the Office of Public-Private Partnerships to compile a list of all programs, services and activities carried out and delivered by state agencies and evaluate whether each is a candidate for a PPP. • Would require political subdivisions to provide to the Office of Public-Private Partnerships a compilation of all programs, services and activities they carry out and deliver, together with an evaluation of whether each is a candidate for a PPP, in order to be eligible for certain state funds. • Would require a proposed PPP to include development of a business case that considers certain factors. • Would repeal all conflicting laws. • Does not specifically mention transportation projects, but would apply to all programs, services and activities carried out by state agencies and political subdivisions.
	House Bill 1186	Enacted on June 4, 2010: 2010 Ga. Laws, p. 644	<ul style="list-style-type: none"> • Exempts from ad valorem taxes property that qualifies as a public-private transportation project pursuant to Ga. Code Ann. §32-2-80.
	Senate Bill 372 (identical to House Bill 968) ²³²	Failed (adjourned) on April 29, 2010	<ul style="list-style-type: none"> • Would prohibit the state DOT from entering into PPP contracts for the construction of certain tunnels.
	Senate Bill 526	Failed (adjourned) on April 29, 2010	<ul style="list-style-type: none"> • Would authorize the State Road and Tollway Authority to participate in PPPs for planning, development, acquisition, construction, equipping, financing, operation, management and leasing of transportation projects. • Would authorize the State Road and Tollway Authority to extend credit or make loans to any entity participating in transportation PPPs.
Illinois	House Bill 6895	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> • Would amend the Public Private Agreements for the Illiana Expressway Act. • Would require the state DOT's rules pertaining to PPPs for the Illiana Expressway to establish firm goals, standards, processes, appeals procedures, reporting requirements and penalties to ensure that contractors promote and permit the participation of minority businesses.
	Senate Bill 108	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> • Would create the Public-Private Partnerships for Transportation Act. • Would authorize the state DOT and the Illinois State Toll Highway Authority to enter into PPPs for the development, operation and financing of transportation facilities. • Would provide that PPP projects could not include an airport in a county with a population of more than 500,000. • Would grant similar powers to the Regional Transportation Authority with regard to mass transit projects.

State	Legislation	Status	PPP Provisions
			<ul style="list-style-type: none"> • Would prohibit units of local government and state agencies from taking any action that would have the effect of impairing a PPP under the act. • Would set forth provisions concerning tax exemptions, planning, procuring labor, materials and real estate, and developing and operating PPP projects.
	Senate Bill 2571; see also Senate Resolutions 794 and 806	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> • Would establish the Illinois and Midwest High-Speed Rail Commission. • Would require the commission to prepare and issue recommendations to the governor, the legislature and the public by March 20, 2011, regarding the best PPP structure to design, build, operate, maintain and finance a high-speed rail system for Illinois and the Midwest. The report would have to include specific recommendations for legislation if statutory change is required, or specific administrative regulations if regulatory change is required, and also address certain other issues. • Would require the commission to prepare and issue a follow-up report by Feb. 1, 2012. • Would require the commission to solicit and receive formal expressions of interest and other testimony from global high-speed rail operators including Amtrak. • Would require the commission to develop a process to receive public and stakeholder input and to solicit and receive formal testimony from representatives of other Midwest states including representatives from units of local government. • Would require the commission to work collaboratively with the state DOT on DOT-administered high-speed rail planning projects to comply with federal requirements. • Would repeal the act on Jan. 1, 2014.
	Senate Bill 2621 ²³³	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> • Would create the Public-Private Transportation Act of 2010. • Would authorize the state and political subdivisions to enter into comprehensive agreements with private entities to develop or operate transportation facilities. • Would allow a PPP agreement to include a maximum rate of return for the private entity and provide for permissible methods of compensation for both the public and private parties. • Would amend the Freedom of Information Act to exempt certain proprietary information related to PPPs. • Would set forth provisions concerning the powers and duties of the private entity, as well as rules and procedures for agreements, financing, material default and remedies, public disclosure, procurement and other matters.
	Senate Bill 3482	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> • Would create the Public-Private Partnerships for Transportation Act. • Would authorize the state DOT and the Illinois State Toll Highway Authority to enter into PPPs for development, operation and financing of transportation facilities. • Would allow construction, financing and operation of a project under terms set forth in the PPP agreement, in any form deemed appropriate by the transportation agency, including but not limited to a long-term concession and lease, design-build, design-build-maintain, design-build-operate-maintain and design-build-finance-operate-maintain (see also Appendix F). • Would encourage the practice of congestion pricing. • Would create the Public-Private Partnerships for Transportation

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			<p>Fund and provide that all money in the fund be used to supplement funding, as directed in the appropriation, for transportation projects in the state.</p> <ul style="list-style-type: none"> • As amended, would require all proceeds arising out of a project pursuant to this act to be deposited into the Illinois State Toll Highway Authority Fund to be used only as authorized by the Toll Highway Act. • Would authorize the Illinois State Toll Highway Authority to construct, operate and maintain certain electronic toll collection systems pursuant to an agreement with the transportation agency or project contractor.
	Senate Bill 3659	Enacted on June 9, 2010; 2010 Ill. Laws, P.A. 96-913	<ul style="list-style-type: none"> • Creates the Public Private Agreements for the Illiana Expressway Act. • Authorizes the state DOT to enter into a PPP to develop, construct, manage or operate the Illiana Expressway, pursuant to a competitive request for qualifications. • Limits the contract term to 99 years, including extensions. Requires legislative approval for all extensions. • Provides that contractors may receive certain revenues, including user fees, in consideration of payment to the state for that right. • Requires the PPP agreement to include the authority of the contractor to impose user fees (with specified fee amounts) and to use congestion pricing. • Sets forth provisions concerning procurement, tolls, prevailing wages, user fees, the public private agreement and other matters.
	Senate Resolution 794 (similar to Senate Resolution 806); ²³⁴ see also Senate Bill 2571	SR 794 pending as of Oct. 1, 2010; SR 806 adopted on May 6, 2010	<ul style="list-style-type: none"> • Creates the Illinois and Midwest High-Speed Rail Commission. • Requires the commission to prepare and issue recommendations to the governor, the legislature and the public by Dec. 31, 2010, regarding the best PPP structure to design, build, operate, maintain and finance a high-speed rail system for Illinois and the Midwest. The report must include specific recommendations for legislation if statutory change is required, or specific administrative regulations if regulatory change is required, and also must address certain other issues. • Requires the commission to solicit and receive formal expressions of interest and other testimony from global high-speed rail operators including Amtrak. • Requires the commission to develop a process to receive public and stakeholder input on opinions and PPP proposals, and to solicit and receive formal testimony from representatives of other Midwest states including representatives from units of local government. • Requires the commission to work collaboratively with the state DOT on DOT-administered high-speed rail planning projects to comply with federal requirements.
Indiana	Senate Bill 382	Enacted on March 18, 2010; 2010 Ind. Acts, P.L. 85	<ul style="list-style-type: none"> • Amends Ind. Code Ann. §§8-15, 8-15.5 and 8-15.7 and other provisions relating to PPPs for highway projects. • Allows designation of the Illiana Expressway or a project within a metropolitan planning area that connects Indiana with Kentucky as a tollway and authorizes a PPP for its construction, without further legislative approval. Applies the common construction wage statute to a project for the Illiana Expressway. • Requires a preliminary feasibility study and economic impact study for any proposed toll road project, to be completed, posted online, and provided to the governor and Legislative Council before a

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			<p>request for proposals is issued.</p> <ul style="list-style-type: none"> • Requires the Indiana Finance Authority or DOT to hold public hearings in the county in which a proposed project would be located pertaining to 1) proposed feasibility and economic impact studies, 2) the results of an economic impact study, and/or 3) the preliminary selection of an operator and the terms of the PPP agreement for a project. • Requires PPP agreements to address environmental analyses and dispute resolution.
Maine	House Bill 1167	Enacted on April 13, 2010: 2010 Me. Laws, Chap. 648	<ul style="list-style-type: none"> • Authorizes the state DOT—with legislative approval—to enter into PPPs for transportation projects with an estimated cost of more than \$25 million or when a project proposal includes tolling existing transportation facilities that were not previously subject to tolls. • Allows for solicited and unsolicited proposals. • Sets standards and requirements for PPP proposals, including completion of certain studies. Requires PPP proposals to limit the use of state capital funding to less than 50 percent of the initial capital cost of the facility and, to the extent practicable, minimize the use of public transportation funding sources. • Allows a PPP agreement to authorize a private entity to impose tolls or fares, subject to certain requirements. • Limits term length to 50 years unless the legislature, upon recommendation of the commissioner of transportation, approves a longer term. • Sets forth provisions concerning eminent domain, law enforcement, confidentiality and other matters.
Maryland	House Bill 271	Failed (adjourned) on April 12, 2010	<ul style="list-style-type: none"> • Would require the state DOT to provide information about proposed PPP projects to certain legislative committees for review and comment and to the Department of Legal Services 1) not less than 45 days before issuing a public notice of solicitation, and 2) not less than 10 days before entering into a PPP.
	Senate Bill 979 (crossfiled with House Bill 1370) ²⁹⁵	Enacted on May 20, 2010: 2010 Md. Laws, Chap. 640 and 641	<ul style="list-style-type: none"> • Requires the Maryland Transportation Authority to submit several reports to certain legislative committees for review and comment and to the Department of Legal Services pertaining to proposed or existing PPPs. • Sets forth other PPP reporting and analysis requirements for state agencies; these provisions do not apply to the state DOT or to the Maryland Transportation Authority.
Michigan	House Bill 4961	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> • Would allow the state DOT to enter into PPPs to design, construct, operate or maintain transportation facilities, subject to the approval of the state Transportation Commission. • Would limit a public-private agreement to an initial operating term of no more than 50 years, unless a longer term is required for economic feasibility, as determined by the DOT and approved by the Transportation Commission. • Would prohibit certain noncompete provisions, inasmuch as an agreement could not prohibit the state DOT from constructing, operating and maintaining any transportation project in its long-range plan in effect when proposals are submitted, nor prohibit any local agency from constructing, operating and maintaining any transportation project. • Would allow a public-private agreement to provide for user fees, including congestion pricing, and limit fee increases. Would prohibit the conversion of existing lanes into tolled or user-fee

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			<p>lanes.</p> <ul style="list-style-type: none"> • Would require the DOT to perform a cost-benefit analysis—including a risk assessment—to determine whether a proposed PPP was the most economically beneficial way to deliver a proposed project. • Would require any proceeds from a PPP to be used for transportation purposes. • Would mandate a public-private agreement with an operations phase to require the facility to revert to the state DOT at the end of the contract term in a condition specified by the DOT. • Would require a public-private agreement for an international bridge crossing to contain risk allocation provisions that meet certain requirements, and require the DOT to report to the governor how this mandate was fulfilled. • Would allow for solicited and unsolicited proposals. • Would set forth provisions concerning procurement procedures, bonding and other financing, tax exemptions, liability, law enforcement, proprietary information, agreement termination, refinancing gains, condemnation powers, data protection and other matters.
	House Bill 6230	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> • Would prohibit the state DOT from entering into any agreement, including but not limited to a PPP agreement, that would require or permit tolling or similar fees or charges on any road or highway in the state if no tolling mechanism was in place as of June 1, 2009.
	House Joint Resolution 58	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> • Would amend the state constitution to require that any proceeds from PPPs be used exclusively for transportation purposes, and in a manner related to the similar transportation purpose of the PPP projects that were the source of the revenue. • Would submit the amendment to the people of the state at the next general election as provided by law.
	House Joint Resolution 64	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> • Would amend the state constitution to prohibit any government authority, instrumentality of government or quasi-public entity created or empowered as part of a transportation PPP from having the power to toll or levy user fees unless express statutory authority is granted, and only as sufficient to cover maintenance, repair and operation of the specific transportation project, and where the board or governance of the entity consists of voting members entirely of Michigan. • Would amend the state constitution to prohibit any of the above kinds of entities from having the power of eminent domain, condemnation or its determination within the state unless the board or governance of the entity consists of voting members entirely of Michigan. • Would submit the amendment to the people of the state at the next general election as provided by law.
Minnesota	House Bill 3224 (companion bill: Senate Bill 2544) ²³⁶	Failed (adjourned) on May 16, 2010	<ul style="list-style-type: none"> • Would authorize the commissioner of transportation to enter into agreements with governmental or nongovernmental entities, including private and nonprofit entities, to finance or invest in transportation projects, with the approval of the commissioner of Minnesota Management and Budget, subject to existing laws. • Would allow the commissioner of transportation to apply for and receive federal assistance under the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA).

State	Legislation	Status	PPP Provisions
Missouri	House Bill 2424	Failed (adjourned) on May 25, 2010	<ul style="list-style-type: none"> • Would establish the Missouri and Midwest High-Speed Rail Commission. • Would require the commission to prepare and issue recommendations to the governor, the legislature and the public by March 20, 2011, regarding the best PPP structure to design, build, operate, maintain and finance a high-speed rail system for Missouri and the Midwest. The report would have to include specific recommendations for legislation if statutory change is required, or specific administrative regulations if regulatory change is required, and also address certain other issues. • Would require the commission to prepare and issue a follow-up report by Feb. 1, 2012. • Would require the commission to solicit and receive formal expressions of interest and other testimony from global high-speed rail operators including Amtrak. • Would require the commission to develop a process to receive public and stakeholder input and to solicit and receive formal testimony from representatives of other Midwest states including representatives from units of local government. • Would require the commission to work collaboratively with the state DOT on DOT-administered high-speed rail planning projects to comply with federal requirements.
New Jersey	Senate Bill 1009 (identical to Assembly Bill 2317) ²³⁷	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> • Would prohibit the state DOT from charging and collecting any tolls for the use of Interstate Highways 78 or 80, or any portion or any lane thereof, and from selling, leasing or otherwise transferring jurisdiction for these highways to any public entity or private firm.
New York	Senate Bill 8268	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> • Would create a state high-speed rail planning board, to be responsible for planning and advising the state DOT on needed future improvements to implement high-speed rail service in the state. • Among other powers and duties, would require the board to make recommendations for the best governmental structure to design, build, operate, maintain and finance a high-speed rail system, including consideration of a PPP.
	Senate Bill 8331	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> • Would authorize certain state agencies, including the state DOT, to engage in an "alternative project delivery" method, including design-build (see also Appendix F), construction manager at-risk, integrated project delivery and PPPs, for any project costing \$25 million or more, provided that an agency determined such method would provide best value to the state. • Would authorize the state DOT specifically to construct or improve state highways using alternative project delivery methods. • Would allow solicited proposals only. • Would make a state DOT project that uses an alternative project delivery method subject to Article 8 of the labor law and the enforcement of prevailing wage requirements. • Would require each alternative project delivery contract entered into by the state DOT to comply with the objectives and goals of minority- and women-owned business enterprises, pursuant to Article 15a of the executive law. • Would set forth other provisions concerning procurement.
Ohio	House Bill 166 (similar to Senate Bill 121) ²³⁸	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> • Would authorize any governmental entity to enter into an agreement with one or more other governmental agencies to create a "transportation innovation authority," by formal action of the appropriate legislative authority and subject to approval by the

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	Senate Resolution 223	Adopted May 26, 2010	<p>director of transportation.</p> <ul style="list-style-type: none"> • Would authorize the state director of transportation to establish a transportation innovation authority pilot project and approve no more than two authorities per state DOT district. • Would authorize transportation innovation authorities to enter into agreements with private entities for construction, improvement, operation or management of transportation projects; such agreements could include fair share payments to be made by the private entities to fund the projects. • Would authorize transportation innovation authorities to charge tolls or fees for use of transportation facilities, subject to approval of the director of transportation and the Transportation Review Advisory Council. • Would prohibit the use of state funds for the operating budget of a transportation innovation authority. • Would set forth provisions concerning powers and duties, governance structures, funding and finance, taxes and other matters pertaining to transportation innovation authorities. <p>• Expresses to the Michigan legislature, the governor of Michigan, and the consul general of Canada in Detroit, Michigan, the support of the Ohio Senate for the construction of a new Detroit River International Crossing and any legislation that will allow for its construction and creation of a PPP to finance and deliver the project.</p>
Pennsylvania	House Bill 8a	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> • Among other unrelated provisions, would enact a new chapter relating to transportation PPPs. • Would authorize the state DOT or a proprietary public entity, upon approval by the Public-Private Transportation Partnership Board, to enter into PPPs for transportation projects. • Would prohibit the Pennsylvania Turnpike Commission from entering into a PPP that grants substantial oversight and control over the turnpike mainline to another entity unless specific authority is granted by statute. • Would allow for solicited and unsolicited proposals, and would allow the DOT or public entity to charge an administrative fee for the evaluation of a proposal. • Would require the DOT and proprietary public entities to enhance the representation of diverse groups in the development and operation of transportation PPPs. • Would subject PPPs to the state Prevailing Wage Act and other specified procurement provisions. • Would establish within the Motor License Fund a separate Public-Private Transportation Account that could only be used for certain transportation-related purposes. • Would establish a Public-Private Transportation Partnership Board to evaluate proposals, establish guidelines for project approval, approve or deny requests by the DOT and proprietary public entities to undertake transportation PPPs, and submit an annual report to the legislature. • Would set forth provisions concerning modification of proposals and termination rights, selection criteria, evaluation and award, use of intellectual property, records, the contents of PPP agreements, police powers and violations of law, environmental and other authorizations, taxation, eminent domain, sovereign immunity, conflicts of interest and other matters.

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	House Bill 9a ²³⁹	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> • Would authorize the state DOT and/or affected public entities to enter into PPPs for transportation projects. • Would allow for solicited and unsolicited proposals, and allow the DOT to charge a reasonable fee for its costs of processing, reviewing and evaluating unsolicited proposals, including fees for attorneys and consultants and reimbursement for costs incurred by the affected public entity for its review of a proposal. • Would require the DOT to provide certain information about proposed PPPs to the state Transportation Commission and to affected public entities and jurisdictions for review and comment. • Would subject PPPs to any existing collective bargaining agreement related to the qualifying transportation facility for the term of the agreement and to the state Prevailing Wage Act. • Would allow a private entity to impose user fees, subject to necessary federal, state or local approvals and as provided in the interim or comprehensive agreement. • Would create the Public-Private Transportation Partnership Fund, money from which can only be used for transportation-related purposes unless a transfer or other use is by statute approved by a two-thirds vote of the legislature. • Would set forth provisions concerning private entity adverse interests, criteria for review of proposals, promulgation of regulations, confidential and proprietary information, taxes, service contracts, transfer and dedication of public property, interim agreements, comprehensive agreements, financing, material default, eminent domain and other matters.
	Senate Bill 693	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> • Would authorize a public entity that owns a transportation facility to enter into a transportation development agreement with a private entity to plan, design, develop, construct, reconstruct, improve, extend or expand, operate, repair, maintain, manage, collect revenue for or finance such a facility. • Would subject PPP agreements to the approval of the proprietary public entity's governing body and, for certain agreements, the state Transportation Commission. • Would require the Transportation Commission to develop a process by which affected local jurisdictions receive notice of a proposed PPP and have an opportunity to provide input before execution of the agreement. • Would limit the original term of a transportation development agreement to no more than 50 years. • Would allow an authorized private entity to implement, set and adjust user fees, subject to the agreement, and would allow a public entity to continue to collect such fees after the original term of the agreement expires. • Would allow for solicited and unsolicited proposals. • Would subject transportation development agreements to the Pennsylvania Prevailing Wage Act. • Would establish the Pennsylvania Transportation Development Trust Fund, to be used solely for the operation and development of transportation facilities upon majority vote of the Transportation Commission. Only the Transportation Commission would be able to authorize a transfer or removal of funds. • Would prohibit the lease, sale or other transfer of oversight responsibilities for the Pennsylvania Turnpike unless specific authority was granted by the General Assembly.

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			<ul style="list-style-type: none"> • Would set forth provisions concerning procurement, conflicts of interest, asset valuation, proprietary information, interim agreements, termination, liability, material default, bonding and other financing, eminent domain, law enforcement, taxation and other matters.
Rhode Island	Senate Bill 2132	Failed (adjourned) on June 11, 2010	<ul style="list-style-type: none"> • Would authorize the state DOT to enter into public-private agreements with private entities for the planning, acquisition, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, management, repair, leasing or operation of transportation facilities. • Would permit an affected jurisdiction to be a party to a PPP entered into by the DOT and one or more private entities. • Would allow for unsolicited and solicited proposals. • Would set forth provisions concerning procurement, proprietary information, public-private agreements, reversion of the transportation facility to the state DOT, material default and remedies, bonds and other financing, taxes, eminent domain, law enforcement and other matters.
South Carolina	House Bill 4033 (similar to Senate Bill 521) ²⁴⁰	Failed (adjourned) on June 3, 2010	<ul style="list-style-type: none"> • Would create the Transportation Infrastructure Funding Flexibility Act. • Would authorize the state DOT to enter into public-private initiatives only if, upon thorough analysis, the DOT was to determine in writing that, for a given transportation facility, a public-private initiative was in the public interest. Would require the DOT to post the public interest analysis online. • Would allow PPPs for new capacity only, not for existing facilities. • Would prohibit unsolicited proposals. • Would require requests for proposals to be approved by the State Budget and Control Board. • Would require contract terms longer than 30 years to be approved by the State Budget and Control Board. • Would provide that the state DOT establish the initial user fee for a public-private initiative, if any, and would require the partnership agreement to contain a cap on fees, expressed as the increase or decrease in an objective index. Would allow congestion pricing. • Would set forth provisions for procurement, public comment, agreements, default, financing, eminent domain, tolling and other matters.
Virginia	House Bill 480	Failed (died in committee) on Feb. 16, 2010	<ul style="list-style-type: none"> • Would require the Commonwealth Transportation Board to establish a procedure for third-party audits of agreements executed under the Public-Private Transportation Act of 1995, and would specify the content of such audits. • Would limit the terms of interim and comprehensive agreements to no more than two years beyond the original agreed-upon completion date, or seven years beyond the completion date for agreements that were executed as of July 1, 2010. • Would require all interim and comprehensive agreements to include standard small, women-owned and minority-owned participation components of 30 percent, effective July 1, 2010. • Would enact other provisions relating to the posting and publishing of requests for approval to operate a transportation facility and subcontracting bids.
Washington	House Bill 1873	Failed (adjourned)	<ul style="list-style-type: none"> • Would establish a joint select committee on high-speed rail.

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		on April 12, 2010	<ul style="list-style-type: none"> • Would charge the committee to examine, among other issues, public-private financing opportunities—including design-build-operate—for a high-speed rail network (see also Appendix F).
	House Bill 2838 (companion bill: Senate Bill 6381) ²⁴¹	Failed (adjourned) on April 12, 2010	<ul style="list-style-type: none"> • Within a supplemental transportation appropriations bill, would require the state Transportation Commission and state DOT to conduct a best practices review of nontoll PPPs, in order to identify policies and procedures that would be appropriate for application in Washington, and to report the findings to the House and Senate transportation committees by January 2011.
West Virginia	House Bill 4441	Failed (adjourned) on March 20, 2010	<ul style="list-style-type: none"> • Would amend the Public-Private Transportation Facilities Act to require legislative approval of PPPs only by the President of the Senate and the Speaker of the House of Delegates (rather than by adoption of a concurrent resolution, as in current law; see Appendix B).
	Senate Bill 352 (similar to House Bill 4200) ²⁴²	SB 352 enacted on April 22, 2010; 2010 W. Va. Acts, Chap. 199; HB 4200 failed (adjourned) on March 20, 2010	<ul style="list-style-type: none"> • Enacts the West Virginia Community Empowerment Transportation Act. • Allows a governmental entity seeking state funds for a transportation project to submit a transportation project plan to the Commissioner of Highways, who shall review and evaluate the plan and encourage project sponsors to pursue alternative funding sources including PPPs to finance, plan, design, construct, expand, improve, maintain or control a transportation facility. • Allows the commissioner, after a detailed review, to recommend projects to the governor that are a prudent and resourceful expenditure of public funds and consistent with existing transportation plans. • Requires the commissioner to submit annual reports to the governor and the legislature, including one outlining alternative road funding models and incentive packages. • Authorizes counties to impose user fees and, following voter approval, to issue revenue and general obligation bonds for transportation projects. • Relates to other matters to do with governmental entities and transportation projects.
District of Columbia	Bill 635	Pending as of Oct. 1, 2010	<ul style="list-style-type: none"> • Would enact many provisions relating to procurement of goods, services and construction in the District of Columbia. • Would authorize several project delivery methods—including construction management at risk, design-build, design-build-finance-operate-maintain, design-build-operate-maintain, and operations and maintenance—for procurements relating to infrastructure facilities and services in the district. Infrastructure facilities are defined to include public roads and streets; highways; public transportation systems, terminals and rolling stock; and rail, air and water port structures, terminals and equipment, among others. (See also Appendix F.) • Would apply this section to all branches, departments, agencies, instrumentalities and employees of the District government. • Would give the director of the DOT procurement authority, including contracting and contract oversight, consistent with this act, for bridges and roads or for any other goods and services determined to be procured independently of the newly established Office of Contracting and Procurement.

APPENDIX G. TRANSPORTATION PPP PROJECTS IN THE UNITED STATES AS OF OCTOBER 2010

Current Projects

This chart lists current highway, bridge and transit PPP projects in the United States. The main source for this information is a compilation in the May 2010 issue of *Public Works Financing*,²⁵² the original also includes design-build and Canadian projects.²⁵³ More information about many of these projects is available in the case studies section of the Federal Highway Administration (FHWA) Office of Innovative Program Delivery Web site.²⁵⁴ *Note: Shaded rows are projects for which bankruptcy has been filed.*

Contract Amount in Nominal \$ (\$ millions)	Project Name	State	Project Sponsor and/or Owner	Project Delivery Model	Notice to Proceed	Sponsors (DB Component)
\$3,850	Indiana Toll Road	IN	Indiana Finance Authority	75-year lease	6/06	Cintra Concessions/Macquarie
\$3,200	I-635 (LBJ Freeway) Managed Lanes ²⁵⁵	TX	Texas DOT	DBFOM	5/04	LBJ Infrastructure Group
\$2,300	Eagle P3 Commuter Rail Project ²⁵⁶	CO	Denver RTD	DBFOM with availability payments	8/10	Fluor/Macquarie
\$2,047	North Tarrant Express	TX	Texas DOT	DBFOM	5/99	Cintra/Meridiam (\$1.46b Ferrovial)
\$1,998	I-495 Capital Beltway HOT Lanes	VA	Virginia DOT	DBFO	7/08	Transurban/Fluor (\$1.4b Fluor/Lane)
\$1,830	Chicago Skyway	IL	City of Chicago	99-year lease	1/05	Cintra Concessions/Macquarie
\$1,814	I-595 Managed Lanes	FL	Florida DOT	DBFO with availability payments ²⁵⁷	2/09	ACS Infrastructure (\$1.2b Dragados/Earthtech)
\$1,674	Hudson-Bergen Light Rail	NJ	NJ Transit	DBOM ²⁵⁸	10/96	Wash. Group/Itochu (\$1.15b Perini/Slattery)
\$1,358	SH 130, Segments 5-6	TX	Texas DOT	DBFO with revenue sharing ²⁵⁹	3/08	Cintra/Zachry
\$980	Jamaica-JFK Airtrain	NY	Port Auth. NY/NJ	DB/Equip + O&M	9/99	Skanska/Bombardier (\$980m Slattery/Perini)
\$914	Port of Miami Tunnel	FL	Florida DOT	DBFO with availability payments ²⁶⁰	10/09	Meridiam (\$607m Bouygues/Jacobs)
\$773	South Bay Expressway (SBX) (previously SR 125 South) + Connectors ²⁶¹	CA	San Diego Expressway	DBFO	5/03	Macquarie (\$653m Washington/Fluor)
\$611	Pocahontas Parkway Lease	VA	Virginia DOT	99-year lease with revenue sharing ²⁶²	6/06	Transurban (\$45m Fluor/WGI)
\$603	Northwest Parkway Lease	CO	Northwest Parkway Authority	99-year lease with revenue sharing ²⁶³	5/07	BRISA/CCR
\$508	Trenton River Light Rail	NJ	NJ Transit	DB/Equip + O&M	6/99	Bechtel/Conti/Foster/Bombardier
\$431	IROX I-75	FL	Florida DOT	DBF	6/07	Anderson Columbia/Ajax Paving

Contract Amount in Nominal \$ (\$ millions)	Project Name	State	Project Sponsor and/or Owner	Project Delivery Model	Notice to Proceed	Sponsors (DB Component)
\$385	Route 3 North	MA	Mass. Highways	DBF/Maintenance	8/00	Modern Continental/Roy Jorgenson
\$350	Dulles Greenway Toll Road	VA	TRIP II	DBFO	9/93	TRIP II (\$150m Brown & Root)
\$343	Las Vegas Monorail ²⁶⁴	NV	L.V. Monorail LLC	Modified BOT/DBOM ²⁶⁵	10/00	Bombardier/Granite
\$211	I-95 Widening	FL	Florida DOT	DBF	12/07	Community Asphalt
\$191	Southern Connector ²⁶⁶	SC	Connector 2000 Association	DB/F	2/98	Interwest (\$na Thrift Bros.)
\$191	Atlantic City-Brigantine Tunnel	NJ	NJ DOT	DB/F	10/97	Mirage Resorts (\$191m Yonkers/Granite)
\$177	Palmetto Expressway Widening	FL	Florida DOT	DBF	8/08	Condotte-De Moya j.v.
\$130	CPTC 91 Express Lanes	CA	CalTrans	DBFO	7/93	Level 3/Cofiroute/Granite (sold 1/03)
\$121	95 Express Lanes	FL	Florida DOT	DBF	1/08	FCC/MCM
\$111	US 1 Improvements	FL	Florida DOT	DBF	11/07	Community Asphalt
\$110	King Coal Highway, Red Jacket Section ²⁶⁷	WV	WV Division of Highways	Special negotiated agreement	Not known ²⁶⁸	The Alpha Corporation
\$85	Camino Colombia Bypass	TX	Texas DOT	DBFO	6/99	Granite + Carter & Burgess
\$70	DC Streets ²⁶⁹	DC	District of Columbia DOT	5-year O&M concession	Contract started 5/00	O&M provider: VMS, Inc.
\$44 (total project cost)	Foley Beach Express ²⁷⁰	AL	City of Foley	DBFO	6/99	Baldwin Co. Bridge Company

Projects in Active Procurement

This chart lists PPP projects in the United States that are in various stages of active procurement.

Estimated Total Project Cost in Nominal \$ (\$ millions)	Project Name	State	Project Sponsor and/or Owner	Proposed Project Delivery Model	Key Procurement Dates
\$2,177	Detroit River International Crossing ²⁷¹	MI	Michigan DOT / Transport Canada	DBFOM with either real tolls or availability payments	<ul style="list-style-type: none"> RFPOI issued: January 2010 Report submitted to Legislature: May 2010
\$1,930	First Coast Outer Beltway ²⁷²	FL	Florida DOT	Not known	<ul style="list-style-type: none"> Original RFQ issued: December 2007 Original procurement terminated: April 2008 New RFQ (planned): To be determined RFP (planned): To be determined
\$1,680	Midtown Tunnel/ Downtown Tunnel/ MLK Extension ²⁷³	VA	Virginia DOT	DBFOM	<ul style="list-style-type: none"> Interim agreement signed: January 2010

Estimated Total Project Cost in Nominal \$ (\$ millions)	Project Name	State	Project Sponsor and/or Owner	Proposed Project Delivery Model	Key Procurement Dates
\$1,500 to \$2,000	U.S. 460 Improvements ²⁷⁴	VA	Virginia DOT	DBFOM	<ul style="list-style-type: none"> Original procurement initiated: 2006 Original procurement terminated: May 2010 New SFP issued: May 2010
\$1,100	West by Northwest Managed Lanes Project, Northwest Corridor Segment ²⁷⁵	GA	Georgia DOT	DBFOM	<ul style="list-style-type: none"> RFQ: February 2010 RFQ finalists chosen: June 2010
\$1,000	Goethals Bridge Replacement ²⁷⁶	NY, NJ	Port Auth. NY/NJ	DBM/F	<ul style="list-style-type: none"> RFI issued: May 2010 RFQ (planned): August 2010 RFP (planned): Q1 2011
\$1,000	I-95/395 HOT Lanes ²⁷⁷	VA	Virginia DOT	DBFOM	<ul style="list-style-type: none"> Interim agreement signed: October 2006 Commercial close: Postponed indefinitely as of September 2009
\$1,000	Presidio Parkway (Doyle Drive Reconstruction) ²⁷⁸	CA	California DOT (Caltrans), SF County Transportation Authority	DBFOM with availability payments	<ul style="list-style-type: none"> Draft RFP issued: May 2010
Not known	Ronald Reagan Parkway Extension ²⁷⁹	GA	Gwinnett County	DBFOM	<ul style="list-style-type: none"> Pre-development/feasibility phase: Until 4Q 2010
Not known	Multi-Modal Passenger Terminal (MMPT) ²⁸⁰	GA	Georgia DOT	DBOM	<ul style="list-style-type: none"> NOI to issue RFQ released: July 2010 RFQ (planned): September 2010
Not known	Puerto Rico Toll Roads PR-22 and PR-5 ²⁸¹	PR	PR PPP Auth. / PR Hwys. and Trans. Auth.	50-year concession	<ul style="list-style-type: none"> RFQ issued: June 2010

Planned Projects

Each of the following projects has been publicly announced as PPPs, but no requests for proposals (RFP) or requests for information (RFI) have yet been issued.²⁸²

California

Bay Area Express Lane Network
 Gerald Desmond Bridge
 High Desert Corridor
 I-710 North
 I-710 Freight Corridor North Coast I-5 HOV/Managed Lanes
 Otay Mesa East Port of Entry / Attendant SR-11
 Schuyler Heim Bridge and SR-47 Expressway

Georgia

"Gwinnett Connector" Toll Road
 I-285 "Top End"
 I-285W/I-20W
 SR-400 HOT Lanes

Illinois/Indiana

Illiana Expressway

New Jersey/Pennsylvania

Scudder Bridge

Unrealized Projects

Some recent projects have been announced but not successfully realized as PPPs, due to a lack of bids (Alligator Alley, Florida), an inability to secure the necessary financing (Chicago Midway Airport, Illinois; Jackson Airport Parkway, Mississippi), a change in market conditions (Safe and Sound Bridge Improvement Program, Missouri) or a winning bid from the public sector (SH 121 Toll Project, Texas).^{28,3}