

OLR RESEARCH REPORT

Location:

CONSTRUCTION CONTRACTS; GOVERNMENT PURCHASING; PUBLIC - PRIVATE PARTNERSHIPS;

Scope: Connecticut laws/regulations; Other States laws/regulations;

January 19, 2012. Public Private Partnership Oversight by Terrance Adams, (CT) Legislative Analyst II

You asked for a description of other states' public private partnership (P3) laws that give oversight authority to an independent commission or the state legislature but that do not require legislative approval of final P3 agreements.

SUMMARY

P3s are contractual agreements between a government agency and a private entity that typically involve the renovation, construction, operation, maintenance, or management of a facility or system. The agency generally retains ownership in the facility or system, but the private entity has additional decision rights in determining how the project or task is completed.

State P3 laws provide for varying levels of oversight by an independent commission or the legislature, with some requiring legislative approval of a final P3 agreement. This report focuses on laws that require at least some oversight, but do not have such an approval provision.

The first section highlights three state laws that require an independent commission to review proposed P3 projects before a request for proposal (RFP) is issued. The second section highlights 13 state laws that give some degree of oversight authority to the legislature, but do not require it to approve a final agreement. Such oversight typically consists of (1) required reports, (2) public hearings, and (3) the ability to make recommendations before an RFP is issued or a final agreement is executed. The final section describes two states, Maryland and North Carolina, that already have P3 projects but have convened study committees to develop recommendations for comprehensive P3 legislation and the appropriate amount of oversight.

OVERSIGHT REQUIREMENTS

Independent Commissions

Table 1 shows three states with independent commissions that review proposed P3 projects before an agency seeking to enter into an agreement may issue an RFP. In Massachusetts, the law requires the commission's written approval, while Texas and Virginia allow their commissions to make recommendations on the proposed project, but do not require their final approval. Texas and Virginia also require proposed final agreements to be submitted to the commissions, along with a report describing the extent to which their recommendations were addressed (e.g., describing how they were followed or why they were not followed). None of the states require commission approval of a final agreement.

Table 1: States with Independent Commissions to Review P3 Projects

State	Commission	Composition	Oversight Requirements
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<p>Massachusetts (Mass. Gen. Laws Ann. ch. 6C, §73)</p>	<p>Public Private Partnership Infrastructure Oversight Commission</p>	<p>Seven members: four members appointed by the governor, and one member each appointed by the House speaker, Senate president, and state treasurer. Appointees must have specific expertise and be free from conflicts of interest (the statute enumerates several criteria they must meet).</p>	<p>Department of Transportation cannot issue an RFP for a P3 project without the commission's written approval.</p> <p>The commission must report on issues surrounding the RFP including:</p> <ol style="list-style-type: none"> 1. the status of current employees; 2. the policy and regulatory structure for overseeing a privately-operated transportation facility and on-going legislative oversight; 3. issues of taxation, profit-sharing, and resolution of new revenue-producing ideas; 4. advertising and marketing; 5. use of new technologies; 6. lease terms and termination clauses; 7. additional responsibilities by both the private infrastructure operator and the state during the lease period; 8. the financial valuation of the transportation facility; and 9. the anticipated advantages of the P3 agreement. <p>The report must be submitted to, among others, the chairpersons of the House and Senate Ways and Means committees and the Joint Committee on Transportation.</p>
<p>Texas (Tex. Government Code §§ 2268.001 <i>et seq</i>)</p>	<p>Partnership Advisory Commission (Applies to non-transportation P3s)</p>	<p>Eleven members:</p> <ol style="list-style-type: none"> 1. three House members appointed by the speaker, 2. three Senate members appointed by the lieutenant governor, 3. the chairpersons of the House Appropriations and Senate Finance committees or their designees, and 4. three representatives of the executive branch appointed by the governor. 	<p>With certain exceptions, agencies must provide the commission (and certain legislative committees) with copies of detailed proposals for P3 projects before entering into an interim or comprehensive agreement.</p> <p>Within 10 days of receipt, the commission must decide whether or not to review the proposal and make recommendations. If it declines to do so, the agency may proceed with negotiations. If it decides to make recommendations, it must do so within 45 days (after which the agency may proceed).</p> <p>The findings and recommendations must include</p>

			<p>1. whether terms and conditions create state tax-supported debt,</p> <p>2. an analysis of the potential financial impact,</p> <p>3. a review of the policy aspects, and</p> <p>4. proposed general business terms and conditions.</p> <p>Commission review is not construed to constitute approval of appropriations necessary to implement any subsequent agreement.</p> <p>The proposed final agreement must be submitted to same entities as above at least 30 days before its execution, along with a report describing the extent to which the commission's recommendations were addressed.</p>
<p>Virginia (Va. Code §§ 30-278 <i>et seq</i>)</p>	<p>Public Private Partnership Advisory Commission (Applies to non-transportation P3s)</p>	<p>Eleven members:</p> <p>1. four House members appointed by the speaker;</p> <p>2. two Senate members appointed by the Senate Committee on Rules;</p> <p>3. the chairpersons of the House Appropriations and Senate Finance committees or their designees; and</p> <p>4. the secretaries of administration, finance, and technology, or their designees.</p>	<p>Same as Texas (see above: the Virginia law was the model for the Texas law)</p>

Legislature

Table 2 shows examples of state laws providing for legislative P3 oversight, which commonly require one-time or regular reports to the legislature. Some of these reports are not specifically about P3s, but cover an entity's (e.g., a toll authority) activities and finances, of which P3s are a part. Some laws also include a public hearing requirement.

In addition to reports and hearings, some states, such as California and Maryland, allow the legislature to make recommendations on a P3 project and prohibit the executive branch from advancing the project until those recommendations are made (generally 30-60 days are allowed for this purpose).

Table 2 also includes Connecticut's recently-passed P3 law (PA 11-1, §§ 80-88, October Special Session (OSS)), which has public hearing and reporting requirements.

Table 2: Legislative P3 Oversight

State	Public Entities	Oversight Requirement
Alabama (Ala. Code § 23-2-158)	Alabama Toll Road, Bridge, and Tunnel Authority	Annual report to the legislature
Alaska (Alaska Stat. § 19.75.111(b)(1))	Knik Arm Bridge and Toll Authority	Annual report to the legislature
California (Cal. Streets & Highways Code § 143(c)(5))	Department of Transportation or a regional transportation agency, as appropriate	Must submit a proposed final agreement to the legislature at least 60 days before executing it, along with any comments received during a required public hearing (held by the department or agency). Certain committee chairs may provide comments to the department or agency during this 60 day period, which the department or agency must take into consideration before executing the agreement.
Colorado (Colo. Rev. Stat. § 43-4-806(10))	High Performance Transportation Enterprise	Annual report to House and Senate Transportation committees
Connecticut (PA 11-1, § 81, OSS)	Agency Proposing a P3 Project Governor	An agency proposing a P3 project must transmit a copy of the proposal to the Appropriations and Finance committees. The committees must hold a public hearing on the submission. The governor must report annually to the legislature on the status of any P3 projects.
Georgia (Ga. Code Ann. § 12-5-484)	Georgia Environmental Finance Authority, Water Supply Division	No specific reporting requirements, but the water supply division is overseen by a joint legislative oversight committee that can review, evaluate, investigate, or audit the division's operations as necessary.
Louisiana (La. Rev. Stat. Ann. § 48:2084)	Louisiana Transportation Authority	Proposal must be submitted to House and Senate Transportation, Highways, and Public Works committees, which must hold a public hearing within 30 days.
Maryland (Md.Laws, Chap. 640 and Chap. 641)	Agency proposing a P3 project Agency administering or considering a P3 project	Must report to the legislature's budget committees 45 days before issuing a notice of solicitation for a P3 project. Committees may review and comment on the report. A proposed final agreement must be submitted to the treasurer, who has 30 days to analyze its impact on the state's debt affordability. The proposed agreement and the treasurer's analysis are then sent to the legislature's budget committees, which have 30 days to review and comment. Each agency must submit an annual report to the legislature's budget committees concerning existing P3 projects and P3 projects under consideration that the legislature has not yet reviewed.

Mississippi (Miss. Code Ann. § 65-43-4)	Transportation Commission	Annual report to the House Transportation and Senate Highways and Transportation committee chairpersons.
North Carolina (N.C. Gen. Stat. § 136-28.6A(d)).	Department of Transportation	Annual report to joint Legislative Commission on Governmental Operations and Joint Legislative Transportation Oversight Committee.
South Carolina (S.C. Code Ann. § 57-5-1335)	Department of Transportation	Must complete a feasibility study and forward copies of it to various legislative committee chairpersons.
Utah (Utah Code Ann. § 72-6-206) (Utah Code Ann. §§ 63M-1-2605, 2610)	Department of Transportation Governor's Office of Economic Development (IT projects)	Department must report to the Executive Appropriations and Transportation Interim committees concerning the status and progress of a tollway constructed under a P3 agreement. For IT projects, the governor's office must provide the Executive Appropriations Committee with a copy of (1) an initial proposal, along with comments and recommendations, and (2) a signed project agreement.
Virginia (Va. Code § 56-575.3:1) (SB 1153, 2009 session)	Agency administering a P3 project under the Public-Private Education Facilities Infrastructure Act of 2002 (PPEA)	Agencies administering projects under the PPEA must adopt guidelines that provide a mechanism for the appropriating body (e.g., the legislature) to review a proposed agreement prior to execution. Guidelines must also include criteria for triggering the establishment of an advisory committee consisting of representatives of the public entity and the appropriating body to review the terms of the proposed interim or comprehensive agreement. Suggested criteria include the scope, costs, and duration of the qualifying project, as well as whether the project involves or impacts multiple public entities. Chairpersons of the House General Laws Committee and Senate General Laws and Technology Committee must convene a working group to at least annually consider best practices and review model guidelines used for consideration of proposals under the PPEA.

STUDY COMMITTEES

Maryland

Maryland established the Joint Legislative and Executive Commission on Public Private Partnerships in 2010 to develop comprehensive guidelines for P3 projects. The commission recently published its [final report](#), which found that the state's existing two-stage oversight process (see Table 2 above) was adequate but suggested some changes.

For example, Maryland currently requires an agency proposing a P3 project to submit a report to the legislature's budget committees 45 days before issuing an RFP. The commission recommended requiring that the report contain certain information, including

(1) the specific policy, operational, and financial reasons for pursuing a P3; (2) the anticipated benefits and risks to the state; (3) any potential workforce, economic development, or environmental implications; and, (4) if applicable, an analysis of debt affordability. Currently, the report's requirements are unspecified.

At the second stage, the commission suggested that the proposed final agreement be accompanied by an update to the information in the first report. It also recommended that the both the comptroller and treasurer (not just the treasurer) review the project's impact on debt affordability, and that this review and the legislature's final review be concurrent, rather than consecutive.

The commission recommended putting these reports online. It also recommended that the agency proposing the project facilitate the review process by providing informal updates to the legislature on an ongoing basis outside of the two required reports.

North Carolina

North Carolina's law authorizing Department of Transportation-administered P3 projects expired on December 31, 2011. In September 2011, the House speaker created an 11-member Select Committee on Public Private Partnerships. The committee must study P3-related issues, including the appropriate oversight authority and regulatory framework, and submit a final report before the start of North Carolina's 2013 legislative session.

ADDITIONAL RESOURCES

Maryland Joint Legislative and Executive Commission on Oversight of Public Private Partnerships: *Final Report to the Governor and General Assembly*

<http://mlis.state.md.us/other/public-privatepartnerships/FinalReport.pdf>

National Conference of State Legislatures: *Public Private Partnerships for Transportation: A Toolkit for Legislators*

<http://www.ncsl.org/documents/transportation/PPPTOOLKIT.pdf>

Virginia Public-Private Education Facilities and Infrastructure Act of 2002: *Model Guidelines*

<http://dls.state.va.us/groups/ppea/2009Guidelines.pdf>