



## NATIONAL CONFERENCE *of* STATE LEGISLATURES

*The Forum for America's Ideas*

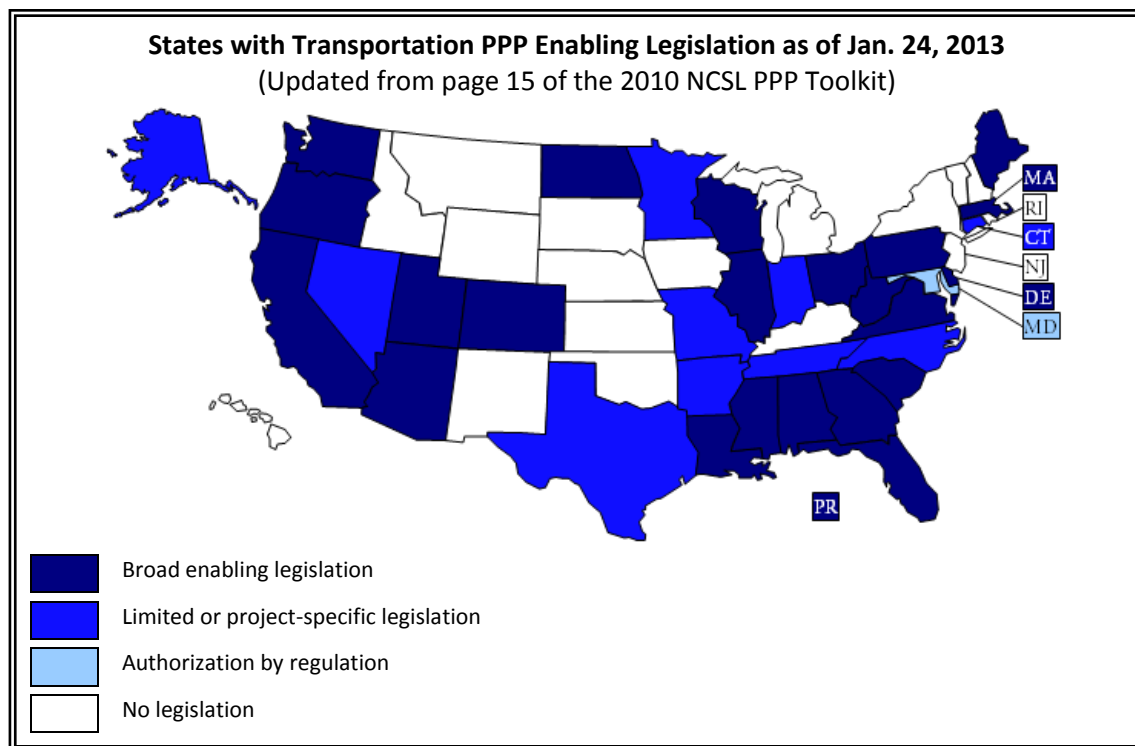
### Public-Private Partnerships for Transportation: A Toolkit for Legislators January 2013 Updates and Corrections

*By Jaime Rall, NCSL Transportation Program*

This document is an update to the December 2010 NCSL report *Public-Private Partnerships for Transportation: A Toolkit for Legislators*. The original report is available online at <http://www.ncsl.org/default.aspx?tabid=20321>.

#### **33 States and Puerto Rico Now Have Transportation PPP Enabling Legislation**

As of January 2013, 33 states and Puerto Rico had enacted laws authorizing public-private partnerships (PPPs) for highway and bridge projects. The NCSL toolkit publication released in 2010 identified 29 states and Puerto Rico; the four additional states are Connecticut, North Dakota, Ohio and Pennsylvania.



**Connecticut** enacted new PPP enabling legislation in October 2011 (HB 6801b / 2011 Conn. Acts, P.A. 11-01). The law authorizes PPPs for the design, development, operation or maintenance of revenue-generating facilities across diverse sectors, including transportation systems such as ports, transit-oriented development and related infrastructure. It limits this PPP authority, however, to up to five projects before Jan. 1, 2015; requires state support of a PPP to be 25 percent or less of the project's cost; limits agreement terms to no more than 50 years; and requires the legislature to approve tolls on highways in the state.

**North Dakota's** law (N.D. Cent. Code §§48-02.1-01 et seq.), enacted in 1993, allows private operators to construct, improve, rehabilitate, own, lease, manage and operate fee-based facilities. It also allows public authorities to solicit or accept proposals from—and enter into development agreements with—private operators. A “fee-based facility” is defined as “a facility that provides a service in which the charge is based on the level of service by users or a rental fee paid by a public authority.” Transportation projects are not identified explicitly in the law, but information received since 2010 indicates that this statute was also meant to apply to fee-based transportation facilities and has been used for at least one transportation project, a toll bridge.<sup>1</sup>

**Ohio's** new enabling legislation (2011 Ohio Laws, House Bill 114), enacted in March 2011, broadly authorizes the state department of transportation (DOT) to enter into PPPs based on solicited or unsolicited proposals from private entities; it also makes permanent the DOT's authority to enter into design-build agreements. The bill does not include requirements for legislative approval, but it limits agreements to the two-year period for which the legislature has made appropriations to the DOT; any agreement may be renewed for succeeding two-year periods when the legislature enacts sufficient appropriations to the DOT for each successive biennium.

**Pennsylvania** is the most recent state to pass a PPP enabling statute for roads and bridges, with legislation (House Bill 3 / Act No. 2012-88) that was signed into law in July 2012. The law broadly allows state or local public entities to enter into PPPs for the design, construction, operation, maintenance, financing or lease of transportation facilities; term lengths are limited to 99 years. All partnerships must be approved by a Public-Private Transportation Partnerships Board. In addition, the bill gives the legislature the power to block PPPs for state-owned facilities and requires legislative approval for PPPs on the Pennsylvania Turnpike.

#### **Transportation PPP Bills Considered in State Legislatures Since 2010**

At least 18 states considered 36 PPP-related bills in 2011 legislative sessions, and at least 22 states considered 41 relevant bills in 2012 sessions (including 13 bills in 8 states that carried over from 2011). As of Jan. 24, 2013, two bills were still pending in New Jersey. Significant enabling statutes were enacted in Connecticut, Illinois (HB 1091 / 2011 Ill. Laws, P.A. 97-0502) and Ohio in 2011, and in Pennsylvania in 2012 (see above). See NCSL's transportation funding legislation database at <http://www.ncsl.org/default.aspx?tabid=13597> for more details.

#### **Correction to Page 17 (Printed Version Only)**

The map on page 17 of the printed report incorrectly shows New Mexico as having PPP legislation with no formal legislative requirements. Arizona should be shown as having PPP enabling legislation with no formal legislative requirements; New Mexico has no PPP legislation. (This has been corrected in the online PDF; link below.)

#### **Additional NCSL Resources**

For more information about state policy for transportation PPPs, please see these online NCSL resources:

- NCSL Online Transportation Funding Legislation Database (regularly updated):  
<http://www.ncsl.org/default.aspx?tabid=13597>
- *Transportation Governance and Finance: A 50-State Review of State Legislatures and Departments of Transportation* (2011): <http://www.ncsl.org/default.aspx?tabid=19117>
- *Public-Private Partnerships for Transportation: A Toolkit for Legislators* online:  
<http://www.ncsl.org/default.aspx?tabid=20321>
- NCSL Foundation Partners Project on PPPs for Transportation (2008 to 2011):  
<http://www.ncsl.org/default.aspx?tabid=17528>

---

<sup>1</sup> Jay Lindgren, Dorsey & Whitney LLP, e-mail to author, April 12, 2011.