

## STATE LEGISLATION AUTHORIZING PUBLIC PRIVATE PARTNERSHIPS (“PPP”) FOR TRANSIT PROJECTS

(As of February 2009)<sup>1/</sup> <sup>2/</sup>

<p><b>1. AL</b></p>	<p>ALA. CODE §§ 23-1-80 to 23-1-95 <a href="http://www.legislature.state.al.us/CodeofAlabama/1975/132328.htm">http://www.legislature.state.al.us/CodeofAlabama/1975/132328.htm</a></p>	<p>Authorizes the Alabama DOT and county commissions to purchase or establish ferry systems, and allows for their operation by private parties.</p>
<p><b>2. CA</b></p>	<p>CAL STS &amp; HY CODE § 143 <a href="http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sbx2_4&amp;sess=CUR&amp;house=B&amp;author=cogdill">http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sbx2_4&amp;sess=CUR&amp;house=B&amp;author=cogdill</a></p> <p>CAL. GOV. CODE §§ 5956 to 5956.10 <a href="http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&amp;group=05001-06000&amp;file=5956-5956.10">http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&amp;group=05001-06000&amp;file=5956-5956.10</a></p> <p>CAL. PUB. UTIL. CODE § 130242 <a href="http://www.leginfo.ca.gov/cgi-bin/displaycode?section=puc&amp;group=130001-131000&amp;file=130220-130243">http://www.leginfo.ca.gov/cgi-bin/displaycode?section=puc&amp;group=130001-131000&amp;file=130220-130243</a></p> <p>CAL. PUB. CONT. CODE §§ 20360 to 20369 <a href="http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pcc&amp;group=20001-21000&amp;file=20360-20369">http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pcc&amp;group=20001-21000&amp;file=20360-20369</a></p> <p>CAL. PUB. UTIL. CODE § 40075 <a href="http://www.leginfo.ca.gov/cgi-bin/displaycode?section=puc&amp;group=40001-41000&amp;file=40070-40081">http://www.leginfo.ca.gov/cgi-bin/displaycode?section=puc&amp;group=40001-41000&amp;file=40070-40081</a></p> <p>CAL. PUB UTIL. CODE § 40183 <a href="http://www.leginfo.ca.gov/cgi-bin/displaycode?section=puc&amp;group=40001-41000&amp;file=40180-40187">http://www.leginfo.ca.gov/cgi-bin/displaycode?section=puc&amp;group=40001-41000&amp;file=40180-40187</a></p>	<p>S&amp;H 143: Allows regional transportation agencies and Caltrans to enter into comprehensive development lease agreements for transportation projects (including rail). Authority extends until January 1, 2017.</p> <p>GC 5956: Authorizes a government agency to solicit proposals from and enter into agreements with private parties for the design, construction, reconstruction, or lease of fee-producing infrastructure, including commuter and light rail systems. Precludes use of state funding; lease term limited to 35 years.</p> <p>PUC 130242: Authorizes the Los Angeles Metropolitan Transportation Authority (Metro) to procure a combination of professional services, such as design, construction, operations, and maintenance, under one contract. Requires low bid selection.</p> <p>PUC 20360: Authorizes Metro to enter into contracts with private entities for various services, including planning, design and construction of rail transit projects. Projects may not be funded from local tax revenues or statements, although such funds may be used for credit enhancement; must include system linking LAX and Palmdale airport.</p> <p>PUC 40075: Authorizes the Orange County Transportation Authority (OCTA) to contract with any private corporation to operate or make “improvements” to transit services, facilities, equipment, or operations.</p> <p>PUC 40183: Authorizes OCTA to lease or contract use of its transit facilities to any operator, including any private corporation.</p>

<sup>1/</sup> Note that certain transit agencies may have the ability to bundle design, construction, finance, operations and maintenance into a single contract without special legislation. As an example, the New Jersey Transit DBOM contracts were procured based on the agency’s existing authority. The Portland MAX Airport Extension contract and the JFK Airtrain projects also proceeded without special legislation.

<sup>2/</sup> This survey should not be construed as legal advice regarding design-build authorization in any state. Please contact [nsmith@nossaman.com](mailto:nsmith@nossaman.com) with any additions or corrections.

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<p><b>3. CO</b></p>	<p>COLO. REV. STAT. §§32-9-107, 32-9-114, 32-9-119, 32-9-119.5  <a href="http://www.michie.com/colorado/lpExt.dll?f=templates&amp;eMail=Y&amp;fn=main-h.htm&amp;cp=cocode/2/53a84/547bd/548c4/54ade">http://www.michie.com/colorado/lpExt.dll?f=templates&amp;eMail=Y&amp;fn=main-h.htm&amp;cp=cocode/2/53a84/547bd/548c4/54ade</a>            COLO. REV. STAT. § 32-9-128.5  <a href="http://www.leg.state.co.us/CLICS/CLICS2008A/csl.nsf/fsbillcont3/5EA1856BEB382D9A872573FC0067B4D2?Open&amp;file=1354_enr.pdf">http://www.leg.state.co.us/CLICS/CLICS2008A/csl.nsf/fsbillcont3/5EA1856BEB382D9A872573FC0067B4D2?Open&amp;file=1354_enr.pdf</a></p>	<p>Authorizes the Regional Transportation District (RTD) to engage private parties to provide mass transit projects under certain circumstances.</p> <p>Authorizes RTD to issue Private Activity Bonds (PABs) and loan proceeds from such PABs to private businesses so that private businesses can finance mass transit projects.</p>
<p><b>4. DE</b></p>	<p>DEL. CODE ANN. tit. 2, §§ 2001 to 2012  <a href="http://delcode.delaware.gov/title2/c020/index.shtml">http://delcode.delaware.gov/title2/c020/index.shtml</a></p>	<p>Authorizes solicited and unsolicited proposals for PPP projects, including rail and other transit systems.</p>
<p><b>5. FL</b></p>	<p>FLA. STAT. ANN. § 334.30, §334.03 (31)  <a href="http://law.onecle.com/florida/public-transportation/334.30.html">http://law.onecle.com/florida/public-transportation/334.30.html</a></p>	<p>Authorizes FDOT to enter into agreements with private entities, or consortia thereof, for the building, operation, ownership, or financing of “transportation facilities” (broadly defined to include any means for the transportation of people or property from place to place which is constructed, operated, or maintained in whole or in part from public funds).</p>
<p><b>6. GA</b></p>	<p>GA. CODE. ANN. §§ 32-2-78 to 32-2-80  <a href="http://www.lexis-nexis.com/hottopics/gacode/">http://www.lexis-nexis.com/hottopics/gacode/</a></p>	<p>Authorizes Georgia DOT to both receive and solicit proposals for PPPs for “transportation systems”, including ferry and other transit systems. Potential competitors have 135 days to respond to an unsolicited proposal.</p>
<p><b>7. HI</b></p>	<p>HAW. REV. STAT. § 103D-303</p>	<p>Public agencies may use competitive proposal process when it is either not practicable or not advantageous to use competitive bids. (Statute based on Model Procurement Code)</p>
<p><b>8. IN</b></p>	<p>IND. CODE § 8-15.7  <a href="http://www.in.gov/legislative/">http://www.in.gov/legislative/</a></p>	<p>Authorizes the Indiana DOT to conduct feasibility studies and issue requests for qualifications and proposals for PPPs for transportation facilities, including passenger or freight railroad systems. PPPs for passenger or freight railroad systems are subject to review and appropriation by the general assembly.</p>
<p><b>9. LA</b></p>	<p>LA. REV. STAT. §§ 48:2072 (C), (D); 48:2084 to 48:2084.15  <a href="http://www.legis.state.la.us/lss/lss.asp?folder=122">http://www.legis.state.la.us/lss/lss.asp?folder=122</a></p>	<p>Authorizes the Louisiana Transportation Authority to pursue PPPs for transportation facilities, including ferry, mass transit, rail or similar systems.</p>
<p><b>10. MD</b></p>	<p>MD. CODE REGS. §§ 11.07.06; 11.07.06.03  <a href="http://www.dsd.state.md.us/comar/subtitle_chapters/11_Chapters.htm">http://www.dsd.state.md.us/comar/subtitle_chapters/11_Chapters.htm</a></p>	<p>Establishes the Transportation Public-Private Partnership Program which authorizes the Maryland Transportation Authority (MdTA), on behalf of Maryland DOT, to enter into PPPs for new, expanded, or rehabilitated transportation facilities, including railroads and transit systems.</p>

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<p><b>11. MI</b></p>	<p>2009 LEGISLATION <a href="http://www.legislature.mi.gov/documents/2007-2008/billanalysis/House/htm/2007-HLA-6542-6.htm">http://www.legislature.mi.gov/documents/2007-2008/billanalysis/House/htm/2007-HLA-6542-6.htm</a></p> <p>MICHIGAN COMPILED LAWS §§ 124.401 to 124.426 <a href="http://www.legislature.mi.gov/(S(t0pftg55c hnxmwiz3ukejog2))/mileg.aspx?page=getObject&amp;objectName=mcl-124-406">http://www.legislature.mi.gov/(S(t0pftg55c hnxmwiz3ukejog2))/mileg.aspx?page=getObject&amp;objectName=mcl-124-406</a></p>	<p>In December 2008 the Legislature passed several related bills intended to establish a legal structure and authority for light rail systems. The bills also provided methods of funding. The bills were approved by the Governor on January 9, 2009.</p> <p>Authorizes metropolitan transportation authorities to enter service contracts and agreements with private parties for construction or operation of transportation facilities.</p>
<p><b>12. MO</b></p>	<p>MO. REV. STAT. §§ 238.300 to 238.367 <a href="http://www.moga.state.mo.us/STATUTES/C238.HTM">http://www.moga.state.mo.us/STATUTES/C238.HTM</a></p> <p>MO. REV. STAT. §§ 238.400 to 238.412 <a href="http://www.moga.state.mo.us/STATUTES/C238.HTM">http://www.moga.state.mo.us/STATUTES/C238.HTM</a></p>	<p>Establishes the Missouri Transportation Corporation Act, which authorizes the creation by private parties of special purpose non-profit corporations, or transportation corporations, to obtain rights-of-way for and assist in the planning and design of transportation facilities, including mass transit facilities. No express provision authorizes solicited and unsolicited proposals.</p> <p>Authorizes any transit authority established under § 238.400 to plan, construct, operate, maintain, or lease to or contract with others for operation and maintenance of infrastructure facilities including passenger transportation systems. This statute does not mention either design-build or PPPs.</p>
<p><b>13. NC</b></p>	<p>N.C. GEN. STAT. §136-18 (39) <a href="http://www.ncga.state.nc.us/enactedlegislation/statutes/html/bysection/chapter_136/gs_136-18.html">http://www.ncga.state.nc.us/enactedlegislation/statutes/html/bysection/chapter_136/gs_136-18.html</a></p>	<p>Authorizes the North Carolina Department of Transportation to enter into partnership agreements with private entities to finance transportation infrastructure and to plan, design, develop, acquire, construct, equip, maintain, and operate existing rail as well as properties adjoining existing rail lines.</p>
<p><b>14. NV</b></p>	<p>NEV. REV. STAT. §§ 338.161 to 338.168 <a href="http://www.leg.state.nv.us/NRS/NRS-338.html#NRS338Sec161">http://www.leg.state.nv.us/NRS/NRS-338.html#NRS338Sec161</a></p>	<p>Authorizes public bodies to accept unsolicited proposals to develop, construct, improve, maintain or operate transportation facilities, including mass transit facilities.</p>
<p><b>15. NJ</b></p>	<p>New Jersey Public Transportation Act of 1979 (N.J.S.A. § 27:25-1 et seq.)</p>	<p>Statute allows New Jersey Transit (NJT) to award contracts based on competitive proposals, to the proposer that submitted the proposal determined to “be the most advantageous to the State, price and other factors considered.” Used by NJT for Hudson-Bergen LRT and River LINE DBOM projects.</p>
<p><b>16. OH</b></p>	<p>AM. SUB. H.B. No. 2 <a href="http://www.legislature.state.oh.us/BillText/128/128_HB_2_PH_N.html">http://www.legislature.state.oh.us/BillText/128/128_HB_2_PH_N.html</a></p>	<p>Statute has passed the House but not Senate. It would authorize the establishment of not more than four “transportation innovation authorities.” Projects may include transit and rail.</p>
<p><b>17. OR</b></p>	<p>OR. REV. STAT. §§ 367.800 to 367.826. <a href="http://www.leg.state.or.us/ors/367.html">http://www.leg.state.or.us/ors/367.html</a></p>	<p>Establishes the Oregon Innovative Partnerships Program which authorizes Oregon DOT to solicit and accept unsolicited proposals for PPPs for transportation projects, including transit.</p>

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<b>18. TX</b>	<p>TEX. TRANSP. CODE ANN. §§ 451.801 to 451.812  <a href="http://tlo2.tlc.state.tx.us/statutes/tn.toc.htm">http://tlo2.tlc.state.tx.us/statutes/tn.toc.htm</a></p> <p>TEXAS LOC. GOV. CODE ANN. §§ 271.181 to 271.199  <a href="http://tlo2.tlc.state.tx.us/statutes/lg.toc.htm">http://tlo2.tlc.state.tx.us/statutes/lg.toc.htm</a></p>	<p>Authorizes Metropolitan Transit Authorities to use a “hybrid delivery system” to procure transit facilities.</p> <p>Authorizes local governmental entities to use best-value criteria to select design-builders for construction, rehabilitation, alteration, or repair of civil works projects, including transit projects.</p>
<b>19. VA</b>	<p>VA. CODE ANN. §§ 56-556 to 56-575  <a href="http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC560000000220000000000000">http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC560000000220000000000000</a></p>	<p>Establishes Public-Private Transportation Act of 1995 which authorizes PPPs for transportation facilities, including mass transit facilities. This statute authorizes solicited and unsolicited proposals, and contains detailed guidelines to assist VDOT and other public entities in implementing PPPs.</p>
<b>20. WA</b>	<p>WASH. REV. CODE §§ 47.29.010 to 47.29.900  <a href="http://apps.leg.wa.gov/RCW/default.aspx?cite=47.29">http://apps.leg.wa.gov/RCW/default.aspx?cite=47.29</a></p>	<p>Authorizes PPPs for transportation projects, which include capital or operating transit projects. Revenue-negative transit projects can be pursued under this statute, but if they are to be operated as public facilities, any indebtedness must be issued by the state treasurer.</p>