

Public-Private Partnerships for Transportation

What are public-private partnerships?

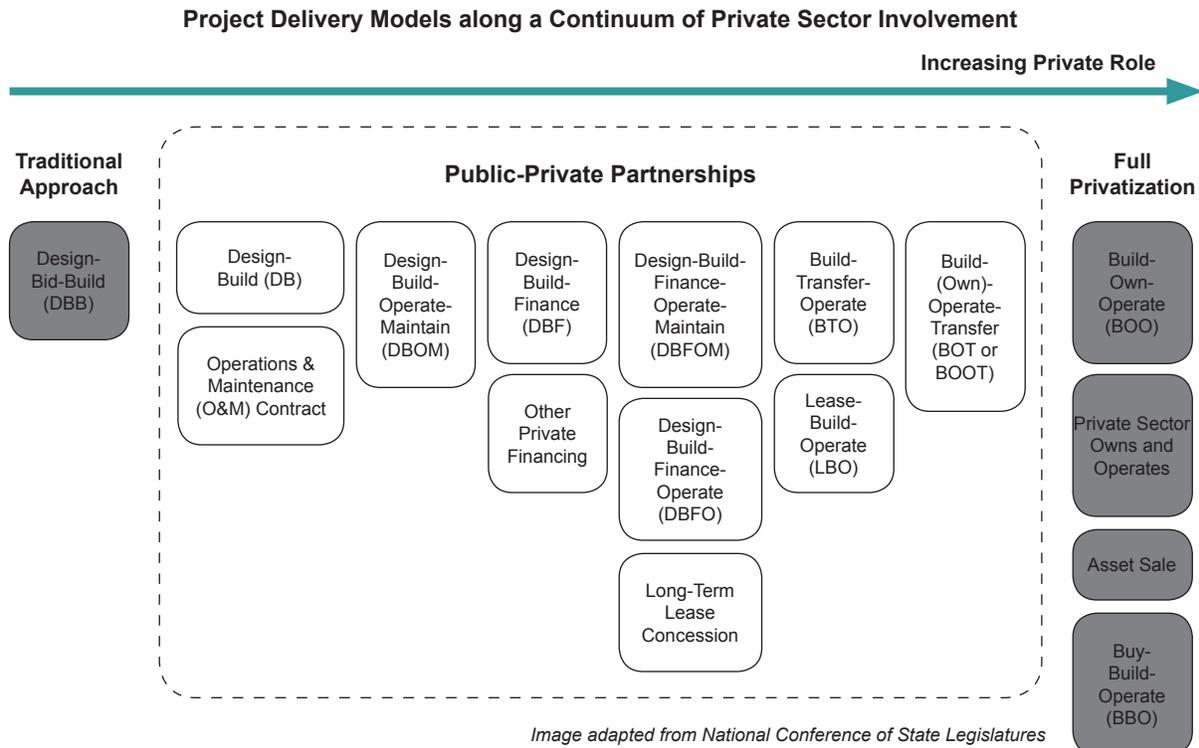
Public-Private Partnerships (PPP or P3) are arrangements between the public and private sectors where some of the services that fall under the responsibility of the public sector are provided by the private sector. This can occur in any public sector and usually involves a contract between the public and private parties.

What are public-private partnerships for transportation?

P3s for transportation occur when public agencies contract with private partners to allow the private partners to perform functions normally done by the public agencies for the design, renovation, construction, operation, maintenance, and/or management of transportation infrastructure. Each P3 has at least three elements:

1. A goal,
2. A compensation structure, and
3. A term of contract completion.

P3 arrangements are sometimes called concessions because a government agency is granting a private party the right to use land or property for a specified purpose. The following chart shows the spectrum of project delivery models, ranging from public projects to private projects with different types of P3 models in the middle:



Are they common? Where and when are they happening?

According to the Federal Highway Administration’s Office of Innovative Program Delivery there are four P3s of [existing infrastructure](#), seven P3s of [newly built infrastructure](#) currently operational, and thirteen P3s currently being built or financed in the continental United States. Compared to other developed economies, the [United States has less of a history with P3s for transportation](#). Although 33 states have P3 enabling legislation, 75% of all P3 investment in the United States has been concentrated in eight states: California, Colorado, Florida, Indiana, New Jersey, Texas, Utah, and Virginia.

Between 2007 and 2013, only 2% of capital investments in US highways were through P3 investments. However, the \$22.7 billion committed to P3 projects in that time is over 90% of all funding committed to P3 projects for transportation since 1989.

Colorado: US 36	New Jersey & New York: Goethals Bridge
<p>Key features: Highway expansion that includes multimodal features with 18 mile 12-foot wide multi-purpose bikeway, two express/ managed lanes, bus rapid transit features to utilize express lanes, and other roadway improvements including overpasses.</p>	<p>Key features: Replacement Bridge with a 10-foot wide multi-use path on north side of bridge, a central corridor for future transit service, and one new travel lane in each direction.</p>
<p>Key to multimodalism: Long-term community outreach in planning stages led to an Environmental Impact Statement and Request for Proposal that included robust multimodal features, including the bikeway. P3 procurement occurred after the planning stages and in response to multimodal request for proposal.</p>	<p>Key to multimodalism: In 2010 the Port Authority of New York and New Jersey adopted a policy to support cycling “wherever operationally and financially feasible.” This policy was operationalized in a bicycle master plan that identified the new Goethals Bridges as a long-term opportunity to provide bicycle connections and access.</p>
<p>Key controversy: Transparency in the creation and execution of the P3 contract has created controversy, including a lawsuit from the Drive SunShine Institute.</p>	<p>Key controversy: There has been relatively little controversy. The most prominent issue is that the P3 project delivery process will result in higher finance costs compared to traditional public bond issues, but finance costs must be weighed against ongoing maintenance costs that will occur if the replacement is delayed.</p>

What's the federal government’s role in P3 projects?

The current federal transportation bill, Moving Ahead for Progress in the 21st Century (MAP-21), included [provisions](#) that require U.S. Department of Transportation (USDOT) to assist states and providers of public transportation that choose to pursue P3 projects. This assistance is in the form of the development of best practices, technical assistance, and model P3 contracts. Federal funding can be a part of P3 projects, including several financing (debt) programs such as [Grant Anticipation Revenue Vehicles \(GARVEE\)](#), [Federal State Infrastructure Banks](#), tax-exempt [Private Activity Bonds](#), and [Transportation Infrastructure Finance and Innovation Act \(TIFIA\)](#). USDOT may also work with project sponsors to obtain tolling authority for a project on Federal-aid routes.

Evolution of Private Sector Involvement with Highway Projects

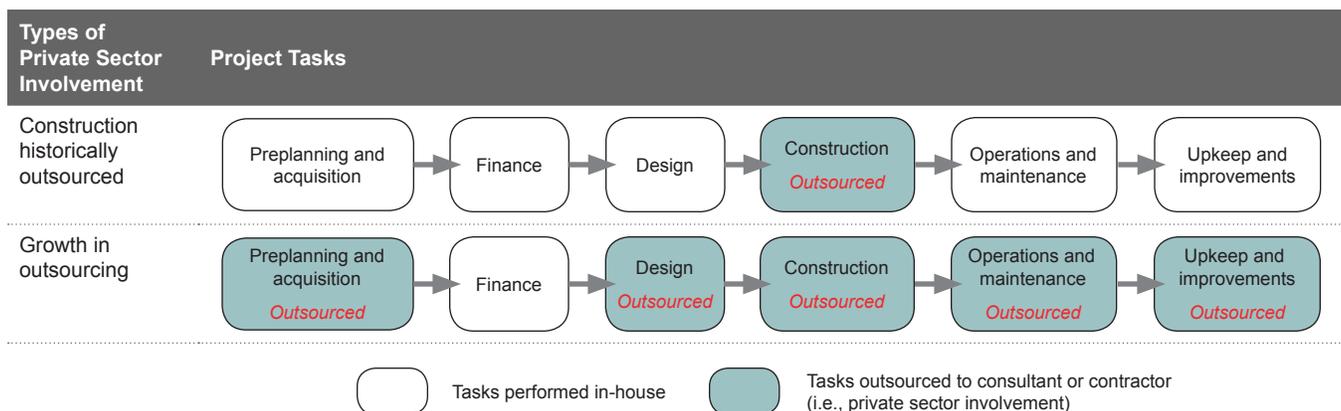


Image adapted from Government Accountability Office

What are the potential benefits?

- » **Access to private financing and project acceleration:** The [Government Accountability Office](#) has said that “there is no ‘free’ money in highway public-private partnerships.” Taxpayers ultimately pay for transportation projects through tolls or taxes and P3 projects are a tool that allows different financing options. Financing can allow agencies to pursue projects that they cannot currently afford with public funds.
- » **Monetization of existing assets:** In some cases, agencies receive payments for existing assets, based on estimates of future toll revenue generated by a facility, which are often then used for other purposes.
- » **Cost and time savings:** There are some indications that P3 projects can result in cost and time savings because of different incentive structures in the private sector, transfer of risk to the private sector for costs and time over-runs, and other differences between how the public and private sector operate.
- » **Lifecycle efficiencies:** Lifecycle efficiencies can occur when a single contractor is responsible for the lifecycle of a project, giving that contractor an incentive to create a facility that will be cheaper to improve and maintain in the future.
- » **Improved project quality:** Improved project quality can occur because private parties have more design flexibility, access to newer technologies, and competitive bid processes that reward innovation and quality.
- » **Risk transfer:** Contracting can allow both the public and private sector to allocate risk in the way that they believe is best.
- » **Public control and accountability:** Some argue that public contract provisions and bid processes can result in a more accountable process.

What are the potential problems?

- » **Loss of Public Control and Flexibility:** Critics argue that long-term contracts limit public control and flexibility as it is impossible to craft a contract that anticipates public needs 30+ years in the future. Non-compete, compensation, and other clauses that limit the ability of the public to develop facilities that draw traffic from a P3 facility may further limit public control and flexibility.
- » **Private Profits at the Public’s Expense:** Critics argue that private companies may boost profits through high tolls and fees or through poor maintenance, if contracts do not limit the ability of private companies to do so. In states where unsolicited projects are allowed, there is some concern that projects will be built due to their profitability rather than community priority.
- » **Loss of Future Public Revenues:** It can be tremendously difficult to anticipate future public revenues from a transportation facility and contract for a fair price for those future revenues.
- » **Bankruptcy and Default:** Numerous examples exist of P3 projects filing for bankruptcy. In some cases the public sector has remained responsible for debts associated with bankrupt P3 projects.
- » **Accountability and Transparency:** Complex contracts may be difficult for the public and elected officials to understand and engage with. During the contract process confidentiality may be required to preserve proprietary information and negotiating strategies. This may also undermine public accountability.
- » **Environmental Issues:** Critics argue that private financing of P3 projects may be used to avoid National Environmental Policy Act requirements for federally funded projects.
- » **Labor Concerns:** The public and private sectors often have different labor practices.
- » **Foreign Companies:** The P3 market is larger outside of the United States and that makes foreign companies major participants in P3 projects. This has raised concerns about national security and the possibility of federal involvement in state projects.
- » **Toll Road Controversies:** Tolls can be controversial. P3 contracts often address tolling rates, conditions for tolling, and the development of untolled alternative routes.
- » **Specific Contract Terms:** Contract terms regarding maintenance, commercial development, data privacy, and other issues have proved controversial in some P3 projects.

Considerations for Biking and Walking Advocates

- » Ensure any P3 project is multimodal and does not prevent the construction of infrastructure that will provide options other than driving on the P3 corridor.
 - You may only have one shot to have biking and walking facilities included into the project if the contract gets in the way of later development along the corridor.
- » P3 projects can happen more quickly and with less public input than other projects. This makes having policies that promote biking and walking in place more important so that including biking and walking is the default.
- » Public resistance to tolling, a common feature of P3 projects, may create space for a broader discussion of road building and development patterns that prioritize automobile travel.
 - Be prepared for a discussion of user fees and how biking and walking pays for itself. For helpful research, please visit www.advocacyadvance.org/resources#research.

Additional Resources

- » Eno Center, "Partnership Financing: Improving Transportation Infrastructure Through Public Private Partnerships," www.enotrans.org/store/research-papers/p3
- » Government Accountability Office (GAO), "Highway Public-Private Partnerships: More Rigorous Up-Front Analysis Could Better Secure Potential Benefits and Protect the Public Interest," www.gao.gov/products/GAO-08-1149R
- » In the Public Interest, "Infrastructure Justice: Building Equity into Infrastructure Financing," www.inthepublicinterest.org/article/infrastructure-justice-building-equity-infrastructure-financing
- » National Conference of State Legislatures (NCSL), "Public-Private Partnerships for Transportation: A Toolkit for Legislators," www.ncsl.org/research/transportation/public-private-partnerships-for-transportation.aspx
- » National Council for Public-Private Partnerships (NCPPP), www.ncppp.org
- » State Smart Transportation Initiative (SSTI), Resources, www.ssti.us/resources/
- » Transportation Research Board (TRB) - National Cooperative Highway Research Program (NCHRP), "Legal Research Digest 51: Major Legal Issues for Highway Public-Private Partnerships," www.pwfinance.net/document/research_reports/Research_Legal_NCHRP.pdf
- » Transportation Research Board (TRB) - National Cooperative Highway Research Program (NCHRP), "Public Sector Decision Making for Public-Private Partnerships," www.trb.org/Main/Blurbs/156870.aspx
- » U.S. Department of Transportation (USDOT) - Federal Highway Administration (FHWA), Office of Innovative Program Delivery, www.fhwa.dot.gov/ipd/
- » U.S. PIRG Education Fund, "Private Roads, Public Costs," www.uspirg.org/sites/pirg/files/reports/Private-Roads-Public-Costs-Updated_1.pdf

Questions?

Contact the author:

Ken McLeod
Legal Specialist
League of American Bicyclists & Advocacy Advance
Ken@BikeLeague.org
(202) 621-5447

Please visit www.advocacyadvance.org for more helpful resources and trainings on how to increase funding for biking and walking infrastructure and programs.