The Global Voice of Infrastructure Investors

Driving State Infrastructure Investment Through Public–Private Partnerships

Creating conditions for partnerships that deliver

Introduction

The United States (U.S.) faces a significant and growing infrastructure funding gap. Federal and state budgets are under sustained pressure, making it ever more challenging for public financing to meet the scale of investment required across multiple sectors, including energy, transportation, communications and data centre development. Private capital – already deployed at scale in infrastructure markets across Australia, Canada and the United Kingdom – represents an underutilized and underleveraged resource that could help close this gap, but only where the legislative conditions exist to attract it.

Public-private partnerships (P3s) are risk-adjusted, performance-based long-term contractual arrangements between a public authority and a private sector partner for the delivery, financing and maintenance of public infrastructure. Instead of replacing public funding entirely, P3s leverage private capital and expertise to deliver infrastructure more efficiently, transfer risk away from the public sector and unlock projects that would otherwise be delayed or undeliverable. Where P3 markets are mature, governments have used them to accelerate infrastructure delivery, improve value for money and build a sustained pipeline of private investment.

The U.S. has been slower than many comparable economies to develop the legislative and institutional frameworks that make P3 delivery viable at scale. **The recommendations in this briefing are designed to address that gap – setting out the practical steps that state governments can take to attract private capital, reduce transaction costs and build the market confidence needed to unlock investment in U.S. infrastructure.**

> This briefing sets out overarching legislative recommendations applicable across states. Not all recommendations will be applicable in every state context – the appropriate starting point will depend on the existing legislative framework and institutional capacity of each jurisdiction. Please see GIIA's P3 Report Card for our analysis of how individual states have developed their frameworks to date, and how they are graded from A to D according to their P3 preparedness.

Institutional Asks

The recommendations below are primarily relevant to states with little to no existing P3 legislation – and are the necessary preconditions for the enabling and financing recommendations that follow.

1. Establish a dedicated P3 Unit

In most states, the authority to develop P3 agreements currently sits either with the State Department of Transportation, quasi-governmental public asset owners (transit, aviation, ports) or with departments that hold debt-issuance powers, such as the Administration and Finance or Treasury Departments. While functional, this fragmented approach means that P3 expertise is often dispersed, inconsistently applied and dependent on the capacity of agencies whose primary mandate lies elsewhere.

A growing number of states – alongside other countries with mature P3 markets – have addressed this by establishing dedicated P3 units: centralised offices specifically set up to support the development, implementation and evaluation of P3 projects.

A well-functioning P3 unit should be staffed with technical, legal and financial specialists with the mandate to support the following functions:

- Transaction Management – project structuring, procurement strategy and contract management.
- Technical Assistance and Advisory – to support with assessing project feasibility, conducting value-for-Money assessments.

Centralizing these functions sends a clear signal to the market that a state is a credible and committed P3 partner.

2. Extend P3 procurement authority to sub-state entities

Once state-level P3 capacity is established, the next step is to ensure that authority and expertise flow downward to the entities that need it most. Sub-state entities – municipalities, counties, school districts and other local authorities – often face the most acute infrastructure gaps and the tightest fiscal constraints, making private capital particularly valuable at the local level. Yet in many states, P3 procurement authority is either explicitly reserved for state agencies or exists in a legal grey area that makes local officials reluctant to proceed. The result is that the communities with the greatest need are systematically excluded from one of the most effective tools available to close current infrastructure gaps.

For private investors and developers, sub-state P3s present a challenge of scale – individual municipal projects are frequently too small to justify the transaction costs associated with a full P3 procurement. Without mechanisms to aggregate demand or provide local entities with the expertise to structure deals effectively, extending authority alone will not be sufficient to unlock capital at the local level.

Legislation should therefore:

- Extend P3 procurement authority to all public entities with infrastructure responsibilities – with clear enabling language that removes ambiguity about their rights to enter long-term P3 agreements.
- Allow voluntary aggregation of smaller projects by multiple jurisdictions to achieve bankable scale – enabling a group of municipalities to bring a bundled project to market that would be unviable individually.

Enabling Legislation

Institutional capacity alone is not enough. States must also ensure that their legislative frameworks explicitly permit the structures, terms and processes that private investors and lenders require to commit capital. The recommendations below are most relevant to states that have established foundational P3 capacity and are looking to broaden and deepen their legislative frameworks.

3. Enable the full range of P3 structures

No single P3 model suits every project type. The optimal structure for any given transaction depends on the asset type, risk profile and revenue characteristics of that project. Legislation that doesn't explicitly permit the full range of structures will render otherwise bankable projects as undeliverable – deterring investors who require structural flexibility to price and allocate risk appropriately.

State legislation should therefore be structure-neutral, providing flexibility to utilise the full range of contractual models used in mature P3 markets. These include:

- Design-Build-Finance-Operate-Maintain (DBFOM) – the private sector takes on lifecycle responsibility for the asset over a long-term concession period, typically 20–30 years. Under availability payment structures, the public authority makes predetermined periodic payments to the private partner conditional on the asset being delivered to specification and maintained to agreed service levels – meaning no public funding is required to begin construction. Crucially, the public authority retains ownership and control of the asset throughout.

- Asset recycling and monetization – allowing state and local governments to monetize existing brownfield infrastructure – like roads and airports – and recycle the proceeds into new capital investment

This model has been used extensively in countries like Australia and is becoming increasingly relevant in a constrained federal funding environment.

- Revenue risk concessions – the private partner assumes demand risk and recovers investment through tolls or user charges, reducing the call on public budgets.

Restricting legislation to a narrow set of structures does not protect the public interest – it simply reduces the range of projects that can be delivered and the pool of private capital available to deliver them.

4. Enable long-term concession agreements

Infrastructure assets tend to a lifespan of 30-99 years and concession terms need to be longer to reflect this. Where enabling legislation caps concession terms short, or fails to authorize long-term agreements explicitly, private investors cannot recover their capital investment over a realistic horizon, and lenders cannot structure debt to match asset life – rendering otherwise viable projects unbankable. Shorter terms also increase financing costs, as investors and lenders price the risk of early reversion into their required returns, making the project more expensive for the state.

At minimum, state legislation should explicitly authorise concession terms of up to 99 years, with term length determined by asset life and financing requirements rather than arbitrary legislative caps. States with more developed P3 frameworks should go further, incorporating value-sharing mechanisms – such as revenue sharing above agreed thresholds and refinancing gain share provisions – and renegotiation triggers for material changes in circumstance. These provisions are standard in mature P3 markets and ensure that the public interest is protected over the full concession period without undermining the commercial viability of the transaction.

5. Authorize unsolicited proposals

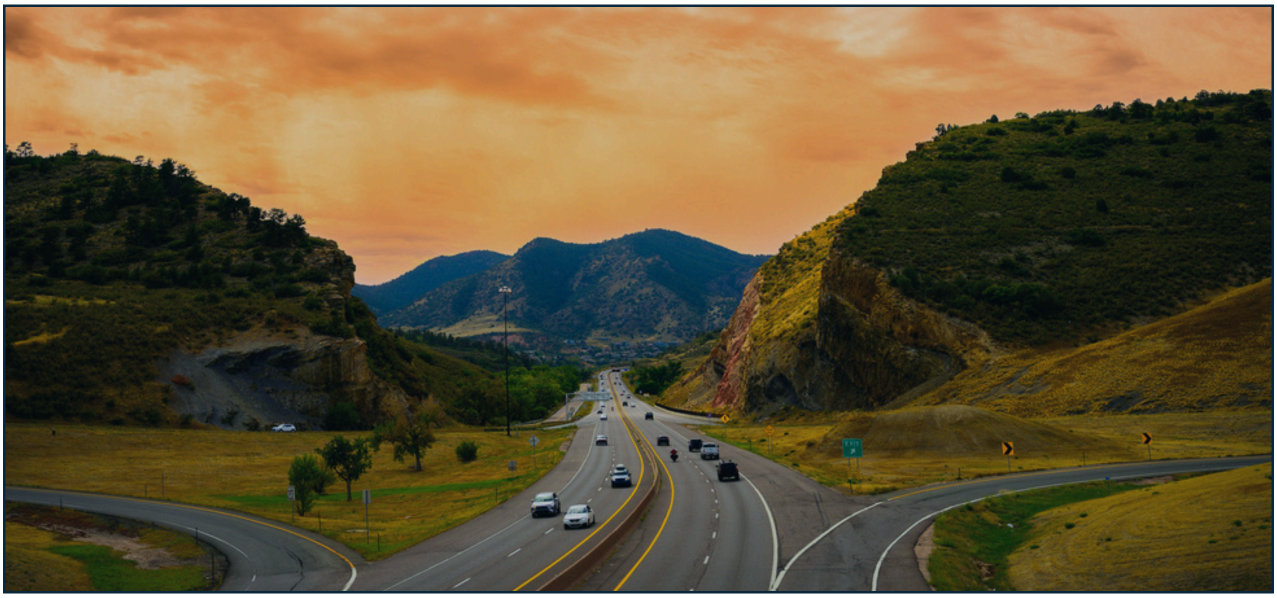
One of the most effective ways to expand a state's P3 pipeline is to allow the private sector to bring project ideas to government, rather than waiting for government to identify and procure every opportunity itself. Unsolicited proposals – submissions by private parties proposing a project concept, funding plan and delivery approach – enable states to access the innovation, technical expertise and market intelligence of the private sector at no cost to the public purse. In infrastructure markets with well-designed unsolicited proposal frameworks, governments have received proposals for projects they would not have identified themselves, on timelines that would not have been achievable through conventional procurement.

This process has been underutilized by private parties to date, due to the risk of a private party expending significant resources to shape a proposal only to lose the opportunity if a competitor's proposal for the same project is selected during a public bidding process. Without the legislation in place to address this imbalance, the private sector will rationally decline to invest in proposal development.

Several states have begun to address this, including Florida, which has amended its laws to enable public entities to proceed with unsolicited proposals – without engaging in a public bidding process – where the entity determines it is doing so in the public's interests. This approach reduces the deterrent for private parties, whilst preserving public sector discretion over its projects.

To unlock the full potential of this, state legislation should:

- Explicitly authorize unsolicited proposals across all public entities with P3 procurement authority, with clear criteria for how proposals will be assessed and the process that will follow.
- Set clear timelines for a government response to unsolicited proposals, giving the private sector confidence that submissions will be assessed within a reasonable timeframe.
- Provide opportunity for public engagement to combat insider deal making perceptions.



Financial Frameworks

The recommendations below address the financing conditions that determine whether P3 transactions can be structured on terms that are attractive to both investors and the state. Some of these asks are within the direct control of state legislators; others require coordinated advocacy at the federal level. Both are essential to maximising the availability and competitiveness of private capital in U.S. infrastructure.

6. Recognize lender step-in rights

Long-term P3 projects are financed against the projected cash flows of the project itself rather than the developer's balance sheet. This is what allows large-scale infrastructure to be delivered without full upfront public capital commitment – but it requires lenders to have confidence that their position is protected if a project encounters difficulty. Where that confidence is absent, lenders will price the uncertainty into their terms or decline to participate entirely, increasing the cost of the project to the state.

State legislation should explicitly recognise step-in rights, including the right of lenders to appoint a substitute operator and a defined cure period during which lenders may remedy a concessionaire default before termination proceedings are initiated.

7. Structure state legislation to ensure compatibility with federal credit programs

Federal financing tools – including TIFIA, RRIF loans and Private Activity Bonds (PABs) – can materially reduce the cost of P3 transactions, but only where state legislative frameworks are structured to enable eligibility. Legislators need to be conscious of ensuring that state enabling legislation isn't written in a manner which conflicts with federal programme requirements, through inconsistent project definitions and procurement processes which don't align with federal approval timelines, or contractual arrangements that disqualify a project from federal credit support.

State legislation should define P3 structures and procurement processes in ways that explicitly preserve eligibility for TIFIA, RRIF and PABs, and require the state to assess federal financing compatibility at project inception. Legislation should also mandate coordination with the U.S. DOT, EPA and other relevant federal agencies on hybrid P3/grant structures, ensuring that the combination of private financing and federal grant funding is clearly permitted and documented in project agreements.

8. Coordinate federal advocacy on financing barriers

Some of the most significant barriers to P3 financing cannot be resolved through state action alone and will require federal reform. This includes the PAB volume cap, which restricts the availability of tax-exempt bond financing, and regulations requiring existing tax-exempt debt to be retired when an asset is brought to market as a P3 – both of which increase transaction costs and reduce the attractiveness of P3 delivery. States should consider coordinating advocacy on both through organisations like the NGA.

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'USA P3 Report Card' grades all states and territories on readiness to use public-private partnerships to build a stronger America

U.S. policy recommendations: how America can unlock its investment potential

How the federal government can use P3s to strengthen the backbone of America

How private investment can fill the growing U.S. infrastructure funding gap

The Global Voice of
Infrastructure Investors

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Global Infrastructure Investor Association
37 Lombard Street
London EC3V 9BQ
https://giia.net/

Sabrina Ahmed
Policy & Public Affairs Manager
SAhmed@giia.net