

Public-Private Partnership Laws in the States, Including Surety Bond Requirements

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DISCLAIMER. This publication does not contain legal advice. State laws and individual circumstances vary widely; thus, readers should consult their attorneys and/or their surety bond producers before acting on the information herein.

Because the legislative and regulatory authority for public-private partnerships for construction is in a state of flux in the United States, this document remains a work in progress. If you are aware of any programs not included in this manual or of new laws and regulations, please call them to the attention of ASA Chief Advocacy Officer E. Colette Nelson (CNelson@ASA-HQ.com), NASBP Assistant Director, Government Relations,, Shannon V. Crawford (SCrawford@NASBP.org), or SFAA Manager - Regulatory and Government Affairs, Daniel Wanke (DWanke@Surety.org).



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The American Subcontractors Association, Inc. (ASA) is a national trade association representing subcontractors, specialty trade contractors and suppliers in the construction industry. ASA members work in virtually all of the construction trades and on virtually every type of horizontal and vertical construction on both public and private construction. They rely on the protection that surety bonds provide should a general contractor become financially incapable of paying its subcontractors.

The National Association of Surety Bond Producers (NASBP) is a national trade association whose membership includes firms employing licensed surety bond producers placing bid, performance and payment bonds throughout the United States and its territories.

The Surety & Fidelity Association of America (SFAA) is a trade association of more than 450 insurance companies that write the vast majority of surety and fidelity bonds in the United States, is a licensed rating or advisory organization in all states, and is designated by state insurance departments as a statistical agent for the reporting of surety and fidelity insurance.

| State | Citation | Summary of Law | Surety Bonding Requirements | State Little Miller Act |
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| Alabama (1996) | Ala. Code § 23-1-81; § 23-1-92 | The law authorizes county commissions and the state DOT to license private entities to establish or operate toll roads, toll bridges, free bridges, ferries, free ferries, or causeways. | <p>County projects require performance bonds in an amount equal to double the amount of the contractor's bid.</p> <p>Excerpt: "Section 23-1-92. Advertisement for contract bids - Requirement. No contract where the estimated cost of the work will exceed \$250.00 shall be made ... only to the lowest reasonable and responsible bidder for such work, who shall enter into bond in double the amount of such bid, conditioned for the proper performance of such contract according to the plans and specifications and within the time prescribed by the order of the county commission of such work, which bond shall be approved by the judge of probate of said county."</p> | Ala. Code § 39-1-1 |
| Alabama (2009) | Ala. Code §§ 23-2-140 to 163 | The law authorizes the Alabama Toll Road, Bridge and Tunnel Authority to enter into agreements for design-build, design-build-operate, design-build-own-operate or design-build-own-operate-maintain contracts, or other similar arrangements or agreements. The law also allows for leases, licenses, franchises, concessions or other agreements for the development, operation, management or undertaking of all or any part of a project. | No surety bond language. | Ala. Code § 39-1-1 |
| Alabama (2017) | Ala. Code § 23-1-40 (Effective | The law authorizes the Department of Transportation to enter into P3s for | No surety bond language. | Ala. Code § 39-1-1 |

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| | Nov.ember 22, 2018) | constructing public improvements and repairing its buildings, offices and other facilities. | | |
| Alaska (2006) | Alaska Stat. §§ 19.75.011 to 990 | The law authorizes the Knik Arm Bridge and Toll Authority to enter into P3s in any form to finance, design, construct, maintain, improve or operate the Knik Arm Bridge. | No surety bond language. | Alaska Stat. §§ 36.25.010 to 025 |
| Arizona (2009) | Ariz. Rev. Stat. §§ 28- 7701 to 7710 | The law permits P3s for the construction of transportation facilities. | <p>The DOT requires, among other things, a private partner to provide performance and payment bonds, parent company guarantees, letters of credit or other acceptable forms of security or a combination of any of these. The penal sum or amount of the security provided may be less than 100 percent of the value of the contract based on DOT's determination on a facility-by-facility basis of what is required to adequately protect the State.</p> <p>Excerpt: "28-7705. Public-private partnership agreements A. In any public-private partnership or other agreement for any eligible facility under this chapter, the department may include provisions that: 14. Require a private partner to provide performance and payment bonds, parent company guarantees, letters of credit or other acceptable forms of security or a combination of these, the penal sum or amount of which may be less than one hundred percent of the value of the contract involved based on the department's determination, made on a facility-by-facility basis, of what is required to adequately protect this state." </p> | Ariz. Rev. Stat. § 28-6713 |

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| Arkansas (1927) | Ark. Code § 27-86-201 to 211 | The law authorizes counties to grant franchises to private entities to build toll bridges, turnpikes or causeways over or along swamps, watercourses, lakes or bays. The law requires consent from the federal government for construction of the bridge. The law also prohibits a regional mobility authority from selling a toll facility project to a private entity or entering into a lease or concession agreement for a toll facility. | No surety bond language. | Ark Code §§ 18-44-401 to 18-44-505 Ark. Code Ann. § 27-65-131 |
| Arkansas (2007) | Ark. Code § 6-20-402; § 6-20-414 | The law authorizes public and charter schools to enter into P3s involving lease-purchase agreements for the acquisition or construction of school buildings or related facilities. | No surety bond language. | Ark. Code §§ 18-44-401 to 18-44-505 |
| Arkansas (2007) | Ark. Code § 27.76.402 | The law authorizes a regional mobility authority to use toll facility projects for the construction of new highways only. The law also prohibits these authorities from selling a toll facility project to a private entity or entering into a lease or concession agreement for a toll facility. | No surety bond language. | Ark. Code §§ 18-44-401 to 18-44-505 |
| Arkansas (2015) | Ark. Code § 14-305-102 | The law authorizes the use by counties of P3s for the development of unpaved roads. | No surety bond language. | Ark. Code §§ 18-44-401 to 18-44-505 |
| Arkansas (2017) | Ark. Code § 22-10-101 to 22-10-505; | The law authorizes the state and its agencies to enter into P3s for public building and | For the components of a P3 agreement that involve construction, the regulations must include considerations and guidelines for the | Ark. Code §§ 18-44-401 to 18-44-505 |

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| | Ark. Code R. § 168.00.17-010 | public facility projects. The law requires the Arkansas Economic Development Commission and the Arkansas Development Finance Authority to promulgate regulations to establish guidelines for P3s, including the comprehensive P3 agreement. The regulations for the comprehensive P3 agreement set forth the considerations and guidelines for the preliminary, mandatory, and optional terms and conditions for the P3 agreement as directed under the statute. | delivery of maintenance, payment and performance bonds in the amounts that the public entity may specify and provisions for the posting and delivery of bonds or other security for the delivery of the P3 project. For the components of a P3 project that involve construction, the law requires the regulations to include considerations and guidelines for the delivery of maintenance, payment, and performance bonds in the amounts that the public entity may specify and provisions for the posting and delivery of bonds or other security for the development of the P3 project. The regulations provide that the comprehensive agreement for the P3 must include requirements for the delivery of payment, performance, surety, and other bonds in the forms and amounts required by law for the qualifying project. | <p>Excerpt:</p> <p>Law:</p> <p>“(12) Considerations and guidelines with respect to the preliminary, mandatory, and optional terms and conditions of a comprehensive agreement, including without limitation: ...</p> <p>(J) For the components of the qualifying project that involve construction, provisions for the:</p> <ul style="list-style-type: none"> (i) Delivery of maintenance, payment, and performance bonds in the amounts that may be specified by the responsible public entity in the comprehensive agreement; and (ii) Posting and delivery of all other bonds, letters of credit, or other forms of security acceptable to the responsible public entity in connection with the development of the qualifying project;” |

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| | | | <p>Regulations:</p> <p>“The comprehensive agreement shall include without limitation the following items:</p> <p>...</p> <p>f. Delivery of all required payment, performance, surety, and other bonds in the forms and amounts required by law for the qualifying project;”</p> | |
| California (1996) | Cal. SHC Code § 143 | The law authorizes Caltrans and regional transportation agencies to enter into P3s for transportation projects. The law requires the California Transportation Commission to approve the agreement. No contracts or leases could be issued under the law after Jan. 1, 2017. | <p>The private partner must demonstrate that it has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.</p> <p>Excerpt:</p> <p>“143(7) The contracting entity or lessee shall have the following qualifications:</p> <p>(3) Evidence that establishes that members of the contracting entity or lessee have the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.”</p> | Cal. Civ. Code §§ 9550-9566 |
| California (1997) | Cal. EDC Code §§ 81004 | The law authorizes community colleges to enter into P3s for building education buildings and centers. | No surety bond language. | Cal. Civ. Code §§ 9550-9566 |
| California (2015) | Cal. Gov. Code § 5975 to 5979 | The law authorizes the City of Long Beach to enter into a P3 for the construction of a civic center. | No surety bond language. | CA Civ. Code §§ 9550-9566 |
| Colorado (1991) | Colo. Rev. Stat. § 43-2-219 | The law authorizes a board of county commissioners to enter into public-private initiatives as defined in section CO Rev. Stat. 43-1-1201 (3), for county highways and bridges, to privatize any county highway or bridge, or to charge tolls for | No surety bond language. | Colo. Rev Stat § 38-26-101 and §§ 38-26-105 to 38-26-110 Colo. Rev. Stat. § 24-105-202 |

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| Colorado (1991) | Colo. Rev. Stat. §§ 43-3-401 to 403, 43-3-413 to 414 | such facilities. The law authorizes the Transportation Commission to enter into a contract with a private individual, firm or corporation for construction, maintenance and operation of one or more toll tunnels between the east and west slopes of the State in connection with highway projects. | No surety bond language. | Colo. Rev. Stat § 38-26-101 and §§ 38-26-105 to 38-26-110 |
| Colorado (1995) | Colo. Rev. Stat §§ 43-1-1201 to 1209 | The law authorizes the DOT to enter into agreements for public-private initiatives, including for the design, financing, construction, operation, maintenance and/or improvement of toll roads, turnpikes and high-occupancy toll lanes. | No surety bond language. | Colo. Rev. Stat. § 38-26-101; §§ 38-26-105 to 38-26-110 |
| Colorado (1995) | Colo. Rev. Stat. §§ 43-4-801 to 812 | The law authorizes a Statewide Bridge Enterprise to enter into P3s to design, develop, construct, reconstruct, repair, operate or maintain bridge projects. The law also provides for the High-Performance Transportation Enterprise to seek out and enter into P3s and other innovative means of completing surface transportation infrastructure projects. | No surety bond language. | Colo. Rev. Stat. § 38-26-101 and §§ 38-26-105 to 38-26-110 |
| Colorado (1996) | Colo. Rev. Stat. §§ 43-3-202 to 202.5 | The law authorizes the state DOT to make or enter into contracts or agreements with | The law requires a sufficient bond approved by the DOT in an amount that it sets, which shall be not less than 25 percent of the total amount | Colo. Rev. Stat. § 38-26-101 and §§ 38-26-105 to 38-26-110 |

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| | | one or more public or private entities to design, finance, construct, operate, maintain, reconstruct or improve a turnpike project by means of a public-private initiative. | <p>payable by the terms of said contract.</p> <p>Excerpt: "§ 43-2-202 In addition to the powers now possessed by it, the department of transportation has power: (j) To require that each contractor to whom is awarded any contract for the construction, erection, repair, maintenance, or improvement of any turnpike, as defined in paragraph (a) of this subsection (1), shall, before entering upon the performance of any work included in said contract, execute, deliver to, and file with the department of transportation a good and sufficient bond to be approved by the department of transportation in an amount to be fixed by the department of transportation, which amount shall be not less than twenty-five percent of the total amount payable by the terms of said contract. Such bond shall be duly executed by a qualified corporate surety, conditioned for the faithful performance of the contract according to the terms thereof, and, in addition, shall provide that, if the contractor or his subcontractors fail to duly pay for any labor, materials, motor vehicle or team hire, sustenance, provisions, provender, or other supplies used or consumed by such contractor or his subcontractor or contractors in performance of the work contracted to be done, the surety will pay the same in an amount not exceeding the sum specified in the bond, together with interest at the rate of eight percent per annum."</p> | |
| Colorado (2006) | Colo. Rev. Stat. §§ 43-3-301 to 304 | The law sets forth the requirements for private toll road or toll highway companies. | No surety bond language. | Colo. Rev. Stat. § 38-26-101 and §§ 38-26-105 to 38-26-110 |

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| Colorado (2008) | Colo. Rev. Stat. § 32-9-128.5 | The law authorizes special districts to use P3s. | No surety bond language. | Colo. Rev. Stat. § 38-26-101; §§ 38-26-105 to 38-26-110 |
| Connecticut (2011) | Conn. Gen. Stat. §§ 4-255 to 263 | The law authorizes the use of a P3 for public works projects, including transportation projects. Until Jan. 1, 2020, the Governor may approve up to five P3s. | <p>The law provides that the P3 agreement must include provisions for performance and payment bonds or other security deemed suitable by the agency.</p> <p>Excerpt: “Any partnership agreement executed in accordance with the provisions of sections 4-255 to 4-263, inclusive, shall include, but not be limited to, the following terms and conditions: (8) Performance and payment bonds or other security deemed suitable by the agency;”</p> | Conn. Gen. Stat. §§ 49-41 to 43 |
| Delaware (1995) | Del. Code Ann. §§ 2-2001 to 2012 | The law authorizes P3s for transportation projects. The Secretary of Transportation is authorized to enter into agreements with private entities to study, plan, design, construct, lease, finance, operate, maintain, repair and/or expand transportation systems. | No surety bond requirement. | Del. Code Ann. § 29-6962 |
| District of Columbia (2015) | D.C. Code § 2-2a | The law authorizes P3s for education, transportation, and cultural or recreational facilities, buildings or other facilities that are beneficial to the public interest and are developed or operated by or for a public entity, utility facilities, improvements necessary or desirable to any unimproved District-owned real | <p>The law requires the Office of Public-Private Partnerships to include in the P3 agreement a requirement for performance and payment bonds or other security that the Office considers to be appropriate.</p> <p>Excerpt: “(b) A public-private partnership agreement approved and entered into by the Office or designated entity pursuant to this act shall include the following:</p> | DC Code §§ 2-201-01 to 2.201.03; 2-201.11 |

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| | | estate, and any other facility that the District approves. | (10) Performance and payment bonds or other security and risk-mitigation tools deemed suitable by the Office or designated public entity." | |
| Florida (1990) | Fla. Stat. § 337.251 | The law authorizes the DOT to lease to public or private entities, for a term not to exceed 99 years, the use of DOT property, including rights-of-way. The law also authorizes the DOT to lease the use of areas above or below state highways or other transportation facilities for commercial purposes. | No surety bond language. | Fla. Stat .§ 255.05 Fla. Stat. § 337.18 (DOT) |
| Florida (1991) | Fla. Stat. § 334.30 | The law authorizes public-private partnerships for transportation projects. | <p>The law requires that the DOT shall ensure that the procurement documents include provisions for the performance of the private entity, including among other things, surety bonds. The DOT shall ensure that procurement documents include provisions for performance of the private entity and payment of subcontractors, including, but not limited to, surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees. The DOT must balance the structure of the security package for the public-private partnership that ensures performance and payment of subcontractors with the cost of the security to ensure the most efficient pricing.</p> <p>Excerpt: "(c) The department shall ensure that procurement documents include provisions for performance of the private entity and payment of subcontractors, including, but not limited to, surety bonds, letters of credit, parent company guarantees, and lender and equity partner" </p> | Fla. Stat. § 255.05 |

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| | | | guarantees. The department shall balance the structure of the security package for the public-private partnership that ensures performance and payment of subcontractors with the cost of the security to ensure the most efficient pricing." | |
| Florida (1996) | Fla. Stat. § 153.90 et seq. | The law authorizes political subdivisions of the state to enter into wastewater facility privatization contracts. The contract can be for the operation, maintenance, repair, management and administration of a wastewater facility. The contract also may provide for the planning, design, construction, improvement, acquisition, financing, ownership, sale and leasing of the facility. | No surety bond language. | Fla. Stat. § 255.05 |
| Florida (2002) | Fla. Stat. §§ 338.22 to 241 | The Florida Turnpike Enterprise operates like private-sector businesses within the state DOT in order to plan, develop, own, purchase, lease or otherwise acquire, demolish, construct, improve, relocate, equip, repair, maintain, operate and manage the Florida Turnpike System. The law permits the enterprise to cooperate, coordinate, partner and contract with other entities, public and private, to accomplish its purposes. | No surety bond language. | Fla. Stat. § 255.05 |
| Florida (2003) | Fla. Stat. § 343.875 | The law authorizes the Northwest Florida | No surety bond language. | Fla. Stat. § 255.05 |

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| | | Transportation Corridor Authority to enter into agreements with private entities to build, operate, own or finance transportation facilities within its jurisdiction. | | |
| Florida (2004) | Fla. Stat. § 348.0004 | The law authorizes any expressway authority, transportation authority, bridge authority or toll authority to enter into agreements with private entities to build, operate, own or finance transportation facilities within the jurisdiction of the authority. The law requires all P3 facilities to be consistent with state, regional and local comprehensive plans. | No surety bond language. | Fla. Stat. § 255.05 |
| Florida (2010) | Fla. Stat. § 373.085 | Water management districts and other governmental agencies shall encourage P3s by collaborating with those partnerships when procuring materials for infrastructure and restoration work projects for water resources. | No surety bond language. | Fla. Stat. § 255.05 |
| Florida (2013) | Fla. Stat. § 255.065 | The law authorizes counties, municipalities, school boards, or other local governmental entities to enter into P3s for qualifying projects. For purposes of the law, a “qualifying project” that can be let as a P3 is a facility or project that serves a public purpose, including, but not limited to, any ferry or mass | The law requires that a comprehensive agreement establishing a P3 must provide for the delivery of performance and payment bonds, letters of credit, parent company guarantees, or other security acceptable to the public contracting entity in the form and amount satisfactory to the public contracting entity. The law further provides that the components of the qualifying project involving construction, the form and amount of the bonds must comply with the Little Miller Act. Another | Fla. Stat. § 255.05 |

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| | | <p>transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity.</p> <p>A qualifying project also includes an improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector; a water, wastewater, or surface water management facility or other related infrastructure; or projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility that the governing board designates as qualifying projects.</p> | <p>provision in the law requires the public contracting entity to ensure that the performance and payment bonds required for the construction component of the P3 are subject to recordation, notice, suit limitation and other requirements of the State's Little Miller Act. Another provision in the law requires the public entity to ensure the most efficient pricing of the security package that provides for the performance and payment of subcontractors.</p> <p>Excerpt:</p> <p>“(b) The responsible public entity must:</p> <ol style="list-style-type: none"> 1. Ensure that provision is made for the private entity’s performance and payment of subcontractors, including, but not limited to, surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees. For the components of the qualifying project which involve construction performance and payment, bonds are required and are subject to the recordation, notice, suit limitation, and other requirements of s. 255.05.” | |

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| Georgia (2009) | Ga. Code Ann. §§ 32-2-78 to 81 | The law authorizes the DOT to solicit and accept proposals for projects that are funded or financed in part or in whole by private sources in a P3. | No surety bond language. | Ga. Code Ann. § 32-2-70 (DOT) |
| Georgia (2015) | Ga. Code Ann. §§ 36-91-110 to 119; §§ 50-5C-1 to 10 | The law authorizes the use of P3s for the state and local governments for any project, except for generation of electric energy for sale, communications services, cable and video services, or water reservoir contracts. | <p>The comprehensive agreement must provide for performance and payment bonds in the amounts required under the Little Miller Act for the construction portion of the P3. Surety bonds or other security acceptable to the public entity are required for the other phases and components of the project.</p> <p>Excerpt: 36-91-115 “(a) The comprehensive agreement entered into between the local government and the private entity selected in accordance with this article shall include: (7) Delivery of performance and payment bonds in the amounts required in code Sections 36-91-70 and 36-91-90 and in a form acceptable to the local government for those components of the qualifying project that involve construction, and surety bonds, letters of credit, or other forms of security acceptable to the local government and reasonably sufficient to ensure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project.”</p> | Ga. Code Ann. §§ 36-91-70 to 93 |
| Hawaii | No P3 program identified. | | | Haw. Rev. Stat. §§ 103D-323 to 103D-325 |
| Idaho | No P3 program identified. | | | Idaho Code Ann. §§ 54.1925 to 54.1930 |
| Illinois (1992) | 20 ILCS 2705/450 | The law authorizes the DOT to enter into agreements with any | No surety bond language. | 30 ILCS 550/1 |

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| | | public or private entity for the purpose of promoting and developing high-speed rail and magnetic levitation transportation within the state. | | |
| Illinois (2011) | 605 ILCS 5/10-802; 605 ILCS 5/10-602 | The law authorizes municipalities to make contracts “of every kind and nature” to acquire, construct, reconstruct, improve, enlarge, better, operate, maintain and/or repair any bridge within five miles of the corporate limits of the municipality, and to fix and apply tolls and fees for use of such a bridge. | No surety bond language. | 30 ILCS 550/1 |
| Illinois (2011) | 630 ILCS 5/1 to 5/90 | The law authorizes the DOT and the Illinois State Toll Highway Authority to enter into P3s. | The law provides that the bonding requirements of the State's little Miller Act apply to any P3 entered into under this law. The law provides in the requirements for all other P3 procurements, that the P3 agreement must provide for the delivery of performance and payment bonds or other security deemed suitable by the transportation agency, including letters of credit, United States bonds and notes, parent guaranties and cash collateral in connection with the development, financing and operation of the transportation project, in the forms and amounts set forth in the P3 agreement that are satisfactory to the transportation agency to protect the agency and payment bond beneficiaries who have a direct contractual relationship with the contractor or a subcontractor of the contractor. A payment or performance bond, or alternative to it, is not required for the portion of a PPP that includes only design, planning or financing services. | 30 ILCS 550/1 |

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| | | | <p>Excerpt:</p> <p>“Sec. 35 (b) The public-private agreement may, as determined by the transportation agency for the particular transportation project, provide for some or all of the following:</p> <p>(2) Delivery of performance and payment bonds or other performance security determined suitable by the transportation agency, including letters of credit, United States bonds and notes, parent guaranties, and cash collateral, in connection with the development, financing, or operation of the transportation project, in the forms and amounts set forth in the public-private agreement or otherwise determined as satisfactory by the transportation agency to protect the transportation agency and payment bond beneficiaries who have a direct contractual relationship with the contractor or a subcontractor of the contractor to supply labor or material. “</p> | |
| Illinois (2013) | 605 ILCS 130/1 to 130/999 | The law authorizes the DOT to enter into a P3 agreement for the construction of the Illiana Expressway between Interstate Highway 55 in Illinois and Interstate Highway 65 in Indiana. The project is a collaborative effort between the two states. | <p>The state's little Miller Act applies to Illiana Expressway.</p> <p>Excerpt:</p> <p>30 ILCS 550/1.5</p> <p>“Sec. 1.5. Public private agreements. This Act applies to any public private agreement entered into under the Public Private Agreements for the Illiana Expressway Act or the Public-Private Agreements for the South Suburban Airport Act.”</p> | 30 ILCS 550/1 |
| Illinois (2013) | 620 ILCS 75/2-35 | The law provides for the development of the South Suburban Airport. | The law provides that the P3 agreement must provide for the delivery of performance and payment bonds or other performance security in a form and amount that is satisfactory to the Department of Transportation. In addition, the | 30 ILCS 550/1 |

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| | | | <p>law provides that the State's Little Miller Act applies.</p> <p>Excerpt: 30 ILCS 550/1.5 “Sec. 1.5. Public private agreements. This Act applies to any public private agreement entered into under the Public Private Agreements for the Illiana Expressway Act or the Public-Private Agreements for the South Suburban Airport Act.”</p> | |
| Indiana (1984) | Ind. Code §§ 8-15-1-1 to 8-15-3-35 | The law authorizes toll roll bonds and provides for certain powers and duties of private operators that have entered into a P3 for a toll road under IN Code § 8-15-15 or § 8-15.7. | <p>The law requires a good and sufficient bond from all contractors in an amount equal to at least 50 percent of the contract price, conditioned upon the faithful performance of the contract. The authority should require a bid, performance and payment bond from a contractor for a project if the estimated cost of the project is more than \$200,000. The authority may require a bid, performance or payment bond from a contractor for a project if the estimated cost of the project is not more than \$200,000.</p> <p>Excerpt: § 8-15-2-5 (7)(D) “The authority shall require a bid, performance, and payment bond from a contractor for a project if the estimated cost of the project is more than two hundred thousand dollars (\$200,000). The authority may require a bid, performance, or payment bond from a contractor for a project if the estimated cost of the project is not more than two hundred thousand dollars (\$200,000).”</p> | Ind. Code § 8-23-9-1 to - 59 |
| Indiana (1990) | Ind. Code §§ 8-23-7-22 to 25 | The law requires the DOT to convert a state highway to a tollway, subject to the approval | No surety bond language. | Ind. Code § 8-23-9-1 to - 59 |

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| Indiana (1997) | Ind. Code §§ 5-23-1-1 to 5-23-7-2 | <p>of the governor and the General Assembly. After the order becomes effective, DOT must maintain and operate the tollway or enter into a P3.</p> <p>The law authorizes governmental bodies to enter into P3 agreements with private entities for the acquisition, planning, design, development, reconstruction, repair, maintenance or financing of public facilities.</p> | <p>The P3 agreement may require a performance bond and provide for the payment of contractors and subcontractors under Ind. Code § 4-13.6-7, § 5-16-5, or § 36-1-12, whichever is applicable.</p> <p>Excerpt: Ind. Code § 5-16-5-2 “Payment provisions in contracts; payment bonds; statements of amounts due; suits on bond; application of statute to bonds and claims on state highway projects Sec. 2. (a) A contract awarded for a public work must provide for the payment of subcontractors, labor, suppliers of materials, and those performing service in connection with the public work... The contractor shall execute a bond to the state, approved by the public body in an amount equal to the total contract price.”</p> | Ind. Code § 5-16-5-5 |
| Indiana (2006) | Ind. Code §§ 8-15.5-1-1 to 8- 15.5-13-8 | <p>The law allows public-private agreements to develop transportation facilities for toll road projects.</p> | <p>The law makes application of the state Little Miller Act discretionary.</p> <p>Excerpt: Ind. Code § 8-15.5-6-2 “Compliance with certain laws Sec. 2. Unless otherwise provided by federal law or this section, the operator or any contractor or subcontractor of the operator engaged in the construction of a toll road project is not required to comply with IC-4-13.6 or IC 5-16 concerning state public works, IC 5-17 concerning purchases of materials and</p> | Ind. Code § 5-16-5-5 |

| State | Citation | Summary of Law | Surety Bonding Requirements | State Little Miller Act |
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| Indiana (2006) | Ind. Code §§ 8-15.7-1-1 to 8-15.7-16-8 | The law authorizes toll road bonds and provides for certain powers and duties of private operators that have entered into a P3 for a toll road under IN Code § 8-15.5 or § 8-15.7. | <p>suppliers, or other statutes concerning procedures for procurement of public works or personal property as a condition of being awarded and performing work on the project."</p> <p>The law requires a bond with good and sufficient surety from all contractors in an amount equal to at least 50 percent of the contract price, conditioned upon the faithful performance of the contract. The authority shall require a bid, performance, and payment bond from a contractor for a project if the estimated cost of the project is more than \$200,000. The authority may require a bid, performance, or payment bond from a contractor for a project if the estimated cost of the project is not more than \$200,000.</p> <p>Ind. Code § 8-15.7-5-1 Excerpt: "(b) The public-private agreement may, as determined appropriate by the department for the particular qualifying project, provide for all or part of the following: (1) Delivery of performance and payment bonds or other performance security determined suitable by the department, including letters of credit, United States bonds and notes, parent guaranties, and cash collateral, in connection with the development, financing, or operation of the qualifying project, in the forms and amounts set forth in the public-private agreement, or otherwise determined as satisfactory by the department to protect the department and payment bond beneficiaries who have a direct contractual relationship with the operator or a subcontractor of the operator to supply labor or material. A payment or performance bond or</p> | Ind. Code § 5-16-5-5 |

| State | Citation | Summary of Law | Surety Bonding Requirements | State Little Miller Act |
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| | | | alternative form of performance security required under a public-private agreement shall not be required for the part of a public-private agreement that includes only design, planning, or financing services, the performance or preliminary studies, or the acquisition of real property.” | |
| Iowa | No P3 program identified. | | | Iowa Code §§ 573.1 – 573.27 |
| Kansas (2017) | No P3 program identified. | | <p>In 2017, Kansas enacted a stand-alone law that requires contractors on a P3 project exceeding \$100,000 to provide both a performance bond and a payment bond, each equal to the full contract amount. The bonds must allow for the recovery of attorney fees and related expenses.</p> <p>Excerpt:</p> <p>“Section 1. (a) Prior to entering into a contract in any sum exceeding \$100,000 with an owner that involves a public-private agreement, the contractor shall furnish to the owner or owner’s agent the following bonds, which shall be placed with good and sufficient sureties as determined by the public owner and shall become binding upon the award of the contract by the owner or owner’s agent to the contractor:</p> <p>(1) If a performance bond is not otherwise required pursuant to state law, a performance bond in an amount equal to the full contract amount conditioned upon the faithful performance of the contract in accordance with plans, specifications and conditions thereof, made solely for the protection of the owner awarding the contract; and</p> <p>(2) a payment bond in an amount equal to the</p> | Kan. Stat. Ann. § 60-1111 |

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| Kentucky (2016) | KRS § 45A.030 KRS § 45A.077; KRS § 65.028 | The law authorizes the state and local governments to enter into P3s for capital projects or for the procurement of services. The law also authorizes the state to enter into P3s and to adopt regulations to set forth the requirements for the project, which must include the parameters for the P3 agreement. State capital projects that exceed \$25 million using the P3 method must be approved by the legislature. | <p>full contract amount solely for the protection of claimants supplying labor or materials to the contractor or subcontractors in the performance of the work.</p> <p>(b) Each bond shall include a provision allowing the prevailing party in any action on the bond to recover as a part of the judgment reasonable attorney fees and expenses as determined by the court."</p> <p>No bonding language for state contracts. However, for local governments, must require the private partner to deliver or cause to be delivered performance and payments bonds for the design and construction portion of the project in compliance with the Little Miller Act. Maintenance bonds or other security are required for other portions of the project in the form and amounts necessary to provide adequate protection for the government.</p> <p>Excerpt: KRS § 65.028(5) "All public-private partnership agreements executed by a local government or any of its agencies under this section shall be approved by the legislative body of the local government at a public meeting, and shall include at a minimum the following provisions: ... (b) Require the private partner to provide or cause to be provided performance and payment bonds on the design and construction portion of the agreement as required under KRS 45A.435 and maintenance bonds, warranties, guarantees, and letters of credit in connection with the private partner's other activities under the agreement, in the forms and amounts satisfactory to the local government and in amounts necessary to</p> | KRS § 45A.190 |

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| Kentucky (2017) | KRS §§ 154.15-010 to 154.15-030. | The law establishes the Kentucky Communications Network Authority to oversee and maintain Kentucky Wired, an open-access broadband network. The Authority is charged with managing a master agreement that establishes a P3 for designing, engineering, building, operating, maintaining, and upgrading the network. | provide adequate protection to the local government;" No surety bond language. | KRS § 45A.190 |
| Louisiana (1954; 1977, amended) | La. Stat. Ann. §§ 48:1251 - 1281 | The law empowers the Louisiana Expressway Authority to contract with any person, partnership, association or corporation desiring the use of any part thereof in order to provide expressway facilities when, in the opinion of the authority, such facilities are necessary or desirable. | The law requires a bond with good and sufficient surety as shall be approved by the authority, from all contractors in an amount equal to 100 percent of the contract price, conditioned upon the faithful performance of the contract. Excerpt: LA Rev. Stat. Ann. § 48:1255(13) “A bond with good and sufficient surety as shall be approved by the authority shall be required of all contractors in an amount equal to one hundred percent of the contract price, conditioned upon the faithful performance of the contract;” | La. Stat. Ann. § 48:255 |
| Louisiana (1997) | La. Stat. Ann. §§ 48:2020 to 2037 | The law encourages parishes and municipalities to use P3s to help the state finance improvements to the state highway system and meet local transportation needs. Parishes and municipalities are authorized to create transportation authorities, | No surety bond language. | La. Stat. Ann. § 48:255 |

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| Louisiana (2006) | La. Stat. Ann. §§ 48:2084.1 to 48:2084.15 | which may enter into agreements with public or private entities to construct, maintain, repair and/or operate transportation projects. The law authorizes the state transportation authority to use P3s for transportation projects. | The law requires delivery of performance and payment bonds or other forms of completion guarantee in connection with the construction of or improvements to the qualifying transportation facility, in the forms and in amounts satisfactory to the authority. | La. Stat. Ann. § 48:255 |
| Louisiana (2016) | La. Stat. Ann. § 48:250.4 | The law authorizes the DOT to enter into P3s for transportation projects. | The law, by incorporation of § 2084.6, requires the P3 comprehensive agreement to include require the performance and payment bonds or other forms of guarantee in a form and in an amount satisfactory to the authority. Excerpt: § 48:2084.6 “A. Prior to developing or operating the qualifying transportation facility, the private entity shall enter into a comprehensive agreement with the authority and responsible entity. The comprehensive agreement shall provide for: (1) Delivery of performance and payment bonds or other forms of completion guarantee | La. Stat. Ann. § 48:255 |

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| Louisiana (2017) | La. Stat. Ann. § 48.1660.1 | The law authorizes the Regional Transit Authority to enter into contracts for P3 projects. | <p>in connection with the construction or improvements in the qualifying transportation facility, in the forms and in amounts satisfactory to the authority.”</p> <p>The law, by incorporation of § 2084.6, requires the P3 comprehensive agreement to include require the performance and payment bonds or other forms of guarantee in a form and in an amount satisfactory to the authority.</p> <p>Excerpt: § 48:2084.6 “A. Prior to developing or operating the qualifying transportation facility, the private entity shall enter into a comprehensive agreement with the authority and responsible entity. The comprehensive agreement shall provide for: (1) Delivery of performance and payment bonds or other forms of completion guarantee in connection with the construction or improvements in the qualifying transportation facility, in the forms and in amounts satisfactory to the authority.”</p> | La. Stat. Ann. § 48:255 |
| Maine (2010) | Me. Rev. Stat. Ann. tit. 23 § 4251 | The law authorizes the Maine Department of Transportation (DOT) to enter into an agreement with a private entity for the building, operation, ownership, leasing or financing of a transportation facility. | <p>The law requires that a proposal must include a provision that any contractor performing construction work required by the agreement must furnish performance and payment bonds or irrevocable letters of credit in an amount equal to the cost of the construction work. Any action on such a payment bond or irrevocable letter of credit is subject to the requirements of the Little Miller Act.</p> <p>Excerpt: “H. The proposal must include a provision that any contractor performing construction work required by the agreement must furnish</p> | Me. Rev. Stat. Ann. tit. 14 § 871 |

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| Maryland (2013) | Md. Code State Fin. & Proc. § 10A-101 to 401 | The law authorizes state agencies to enter into a P3 for public infrastructure projects. | <p>performance and payment bonds or irrevocable letters of credit in an amount equal to the cost of the construction work. Any action on such a payment bond or irrevocable letter of credit is subject to the requirements of Title 14, section 871, subsection 4."</p> <p>The law provides that the comprehensive agreement must contain requirements for the private entity to provide performance and payment security in a form and in an amount determined by the responsible public entity. The requirements for the payment security and the performance security for construction contracts shall be in accordance with title 17, subtitle 1 of the State Finance and Procurement Code, including the requirement that payment security and performance security shall be established on the value of the construction elements of the public-private partnership agreement and not on the total value of the P3 agreement.</p> <p>Md. Code Ann., State Fin. & Proc. § 10A-401 Excerpt: "(a) Whenever applicable, a public-private partnership agreement shall include the following provisions: (12) requirements for the private entity to provide performance and payment security in a form and in an amount determined by the responsible public entity, except that: (i) requirements for the payment security for construction contracts shall be in accordance with Title 17, Subtitle 1 of this article; and (ii) requirements for the amount of the payment security and for any performance security in the form of a performance bond for a construction contract shall be based on the</p> | Md. Code Ann., State Fin. & Proc. § 17-103 |

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| Massachusetts (2009) | Mass. Gen. Laws ch. 6C, §§ 1 to 75 | <p>The law allows the board of directors of MassDOT to solicit proposals and enter into contracts for design-build-finance-operate-maintain or design-build-operate-maintain services with the responsible and responsive offeror submitting the proposal that is most advantageous to the department through the sale, lease, operation and maintenance of a transportation facility. The law provides for a P3 oversight commission to approve proposals for such projects.</p> | <p>value of the respective construction elements of the public-private partnership agreement and not on the total value of the public-private partnership agreement."</p> <p>The law requires the P3 agreement to include a plan for the operator to obtain a labor and material bond, as described in the Little Miller Act, for the construction, reconstruction or maintenance work on a P3 project.</p> | Mass. Gen. Laws Title XXI, Chapter 149 § 29 |
| Michigan (1967) | Mich. Comp. Laws §§ 124.401 to .426 | <p>The law authorizes metropolitan transportation authorities to use P3s.</p> <p>Note: This law pre-dates other state P3 authorizing statutes; however, the language appears to authorize the use of P3s.</p> | <p>No surety bond language.</p> | Mich. Comp. Laws §§ 129.201 to .212 |
| Michigan (2010) | Mich. Comp. Laws §§ 125.1871 to .1883 | <p>The law authorizes municipalities to solicit private investors for financing for public facility projects through</p> | <p>No surety bond language.</p> | Mich. Comp. Laws §§ 129.201 to .212 |

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| | | negotiated partnership agreements. The private financing would be in addition to public sources and user fees that the municipality may seek to fund the project. The construction and operation of a public facility under this law must be in conformity with all laws relating to the use of state and federal funds. | | |
| Minnesota (1993) | Minn. Stat. §§ 160.84 to 98 | <p>The law generally authorizes state and local road authorities to enter into agreements with private entities to develop, finance, design, construct, improve, rehabilitate, own or operate toll facilities, as well as high occupancy toll lanes.</p> <p>The law provides that the extent to which a private entity can operate and maintain a road is significantly limited. The law prohibits a road authority or a private operator from converting, transferring or utilizing any portion of a highway to impose tolls or for use as a toll facility and it prohibits a road authority from selling, leasing, executing a development agreement for a build-operate-transfer or build-transfer-operate facility that transfers an existing highway lane, or otherwise relinquishing management of a highway.</p> | No surety bond language. | Minn. Stat. §§ 574.26 to 32 |

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| Mississippi (2007) | Miss. Code §§ 65-43-1 to 85 | The law authorizes the Mississippi Transportation Commission, county boards of supervisors and/or the governing authorities of municipalities to contract with other governmental agencies or private entities for the purpose of designing, financing, constructing, operating and maintaining one or more new toll roads or toll bridges in the state. | Every contract entered into by a governmental entity under this section shall require a company to enter into a bond and provide such security as the governmental entity determines may be necessary or advisable to ensure timely completion and proper execution and performance of the contract. | Miss. Code Ann. §§ 31-5-51 to 57 |
| Missouri (1990) | Mo. Rev. Stat. §§ 238.300 to 367 | The law authorizes creation of special purpose, nonprofit "transportation corporations" by private parties, which may enter into agreements with the Highways and Transportation Commission to fund, promote, plan, design, construct, maintain and operate one or more transportation projects. | Miss. Code Ann. § 65-43-3 Excerpt: "(3) Every contract entered into by a governmental entity under this section shall require a company to enter into a bond and provide such security as the governmental entity determines may be necessary or advisable to ensure timely completion and proper execution and performance of the contract." | Mo. Rev. Stat. § 107.170 |
| Missouri (2016) | Mo. Rev. Stat. §§ 227.600 to 669 | The law authorizes the use of a P3 for the financing, development, and/or operation of any pipeline, ferry, river port, airport, railroad, light rail or other mass transit facility. In 2016, the law was amended to allow the use of P3s for public buildings, water supply facilities or pipelines, | No surety bond language. Bid bonds would not be required on the project, but the Missouri Highways and Transportation Commission may require a private partner to provide bonds for its protection, in any amount that it determines. The law provides that the Commission to require a payment bond for the total amount of the agreement unless it is documented that the amount is not practical, in which case the Commission may set the amount of the payment bond, but it may not be | Mo. Rev. Stat. § 107.170 |

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| | | wastewater or wastewater treatment facilities, vehicle parking facilities, and any related infrastructure needed for these projects. The law excludes any highway, interstate or bridge construction, or any rest area, rest stop, or truck parking facility connected to an interstate or other highway from the definition of "project" under the law. | less than the amount of the performance bond. Excerpt: "Private partner to provide financial information—bond may be required. 2. Notwithstanding the provisions of section 107.170 and section 227.100 to the contrary, a bid bond shall not be required for the project; except that, the commission may require the private partner to provide such other bonds in such amounts determined by the commission to be adequate for the protection of the commission and provided by a surety or sureties satisfactory to the commission, including but not limited to: (1) A performance bond; (2) A payment bond for the protection of all persons supplying labor and material in carrying out the work provided for in the comprehensive agreement for the project. The amount of the payment bond shall equal the total amount payable under the terms of the comprehensive agreement unless the commission determines in writing supported by specific findings that a payment bond in such amount is impractical, in which case the commission shall establish the amount of the payment bond; except that, the amount of the payment bond shall not be less than the amount of the performance bond." | |
| Montana | No P3 program identified. | | | MCA §§ 18-2-201 to 18-2-208 |
| Nebraska | No P3 program identified. | | | Neb. Rev. Stat. § 52-118 (payment) Neb. Rev. Stat. § 72-803 |
| Nevada (2003) | Nev. Rev. Stat. | The law allows private entities to submit a request to a public | No surety bond language. | Nev. Rev Stat §§ 339.015 to 339.065 |

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| | §§ 338.161 to 168 | body to develop, construct, improve, maintain or operate, or any combination of these, a transportation facility. The law excludes toll roads and toll bridges. The law does not authorize public financing. | | |
| Nevada (2011) | Chapter 478, Senate Bill No. 506 (2011) | The law authorizes the Regional Transportation Commission of Southern Nevada to enter into a P3 for a toll road demonstration project for the Boulder City Bypass Project. | The law provides that the private partner must provide a performance bond and a payment bond, letter of credit, parent company guarantee, any other acceptable security, or a combination of these as the Commission may require. The bond must be in an amount adequate to protect the interests of this State and its political subdivisions and to ensure completion of the project without this State or its political subdivisions being liable for any of its direct costs. | Nev. Rev. Stat. §§ 339.015 to 339.065 Nev. Rev. Stat. § 408.357 |
| Nevada (2017) | Chapter 321, Assembly Bill No. 371 (2017) | The law authorizes the State Land Registrar to purchase historic buildings that are at risk and to enter into a P3 for | No surety bond language. | Nev. Rev. Stat. §§ 339.015 to 309.065 |

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| Nevada (2017) | Chapter 338, Senate Bill No. 448 (2017) | <p>the preservation, reconstruction or adaptive reuse of such buildings.</p> <p>The law authorizes counties with a population exceeding 700,000 to enter into P3s for transportation projects, including mass transit facilities.</p> | <p>The law provides that performance and payment bonds, in compliance with the Little Miller Act, may be required for the design and construction portion of a project. Additional bonds or other security may be required if needed.</p> <p>Excerpt: 5. (r) (r) Require the person to provide performance and payment bonds for design and construction pursuant to chapter 339 of NRS and, if additional security is required in addition to such bonds, require the person to provide surety bonds, parent company guarantees, letters of credit or other acceptable forms of security or a combination of those.</p> | Nev. Rev. Stat. §§ 339.015 to 309.065 |
| New Hampshire (2009) | N.H. Rev. Stat. §§ 33:3 to 33:3g | The law authorizes municipalities and counties to use P3s for broadband infrastructure projects. | No surety bond language. | N.H. Rev. Stat. § 447:16 |
| New Hampshire (2016) | N.H. Rev. Stat. §§ 228:107 to 110 | <p>The law authorizes the DOT to enter into P3s for intermodal infrastructure and transportation projects. The law creates the Public-Private Partnership Infrastructure Oversight Commission to administer these projects, including determining contract terms and qualifications for bidders.</p> | <p>The law requires bonding for the design and construction portion of the P3 to comply with the state Little Miller Act.</p> <p>Excerpt: 228:115 Liability Insurance. – Any contract for public-private design-build-finance-operate- maintain or design-build-operate-maintain services shall provide for securing and maintaining a liability insurance policy for contractors and engineers in the design phase of a project which shall be limited to 10 percent of the cost of such project. A certificate of liability compliance shall be included in the bid.</p> | N.H. Rev. Stat. § 447:16 |

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| New Jersey (2003) | N.J. Rev. Stat § 18A:64-85 | The law authorizes state and county colleges to use P3s for facilities for the on-campus construction, reconstruction, repair, alteration, improvement, extension, management, or operation of a building, structure or facility. | <p>Any such contract shall require a bond under RSA 447:16 for the design-build and bonds, letters of credit, or other forms of security for the operations and maintenance phases of the project.</p> <p>The law requires the public owner's chief financial officer to require the private entity to provide bonds.</p> <p>Excerpt:</p> <p>"d. (2) Where no public fund has been established for the financing of a public improvement, the chief financial officer of the public owner shall require the private entity for whom the public improvement is being made to post, or cause to be posted, a bond guaranteeing prompt payment of moneys due to the contractor, his or her subcontractors and to all persons furnishing labor or materials to the contractor or his or her subcontractors in the prosecution of the work on the public improvement."</p> | N.J. Rev. Stat §§ 2A:44-143 to 148 |
| New Mexico | No P3 program identified. | | | NMSA § 13-4-18 |
| New York | No P3 program identified. | | | <p>N.Y. State Finance Law § 137 (payment)</p> <p>N.Y. State Finance Law § 163 (state agencies)</p> |
| North Carolina (2003) | N.C. Gen. Stat. § 115D-20(13) | The law authorizes community colleges to use P3s for new facilities. | No surety bond language. | N.C. Gen. Stat. §§ 44A-25 to 44A-35 |
| North Carolina (2009) | N.C. Gen. Stat. §§ 136-89.180 to 198 | The law authorizes the Turnpike Authority to enter into agreements with the DOT, political subdivisions and private entities, and to expend its funds as it deems | No surety bond language. | N.C. Gen. Stat. §§ 44A-25 to 44A-35 |

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| | | necessary pursuant to agreements, to finance the acquisition, construction, equipping, operation or maintenance of any turnpike project. The law permits the authority to study, plan and conduct preliminary design work on up to nine projects and then to design, establish, purchase, construct, operate and maintain five identified projects only. | | |
| North Carolina (2013) | N.C. Gen Stat. §§ 143-128.1C | The law authorizes the state to enter into P3 agreements for public buildings or any other work of improvement. | <p>The law requires a payment bond from a surety company authorized to do business in the State in the amount of 100 percent of the total anticipated amount of the construction contracts to be entered into under the development contract. The payment bond is conditioned on the prompt payment for all labor or materials for which the private developer or its contractors or their subcontractors are liable, and the bond is for the sole protection of persons furnishing such labor or materials. The law outlines the procedures for filing bond claims and provides a payment bond form. Performance bond is discretionary.</p> <p>Excerpt:</p> <p>“(g) The following bonding provisions apply to any development contract entered into under this section:</p> <p>(1) A payment bond shall be required for any development contract as follows:</p> <p>A payment bond in the amount of one hundred percent (100%) of the total anticipated amount of the construction contracts to be entered into between the private developer and the</p> | N.C. Gen. Stat. §§ 44A-25 to 44A-35 |

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| | | | contractors to design or construct the improvements required by the development contract... The development contract may provide for the requirement of a performance bond." | |
| North Dakota (1993) | N.D. Cent. Code §§ 48-02.1-01 et seq. | The law authorizes public authorities to solicit or accept proposals from private operators for the construction, improvement, rehabilitation, operation, management, and owing of a fee-based facility situated in an area subject to the public authority's jurisdiction. The law outlines the requirements for agreements between the public authority and the private operator. | No surety bond language. | N.D. Cent. Code § 48-01.2-10 |
| Ohio (2011) | Ohio Rev. Code § 5501.71 to 5501.75 | The law authorizes the Department of Transportation to enter into an agreement with a private entity for the development, financing, maintenance, or operation of a transportation facility. | <p>The P3 agreement must include provisions requiring a performance and a payment bond in an amount that the Director of Transportation will determine for the construction portions of the P3 agreement. The law provides that the performance bond is conditioned on the private entity performing the work according to the agreed upon terms, within the time prescribed. The payment bond is conditioned on the payment for all labor, work performed, and materials furnished in connection with the agreement.</p> <p>Excerpt: Ohio Rev. Code § 5501.73 "(B)(1) A public-private agreement under this section shall provide for all of the following: ... (j) If the agreement contains a construction</p> | Ohio Rev. Code § 153.54 (non-transportation) Ohio Rev. Code § 5525.16 (DOT) |

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| | | | <p>services component, a contract performance bond executed by a surety authorized by the department of insurance to write surety bonds in an amount specified by the director of transportation, conditioned upon the private entity or contractor performing the construction services portion of the work in accordance with the agreed upon terms, within the time prescribed;</p> <p>(k) If the agreement contains a construction services component, a payment bond executed by a surety authorized by the department of insurance to write surety bonds in an amount specified by the director, conditioned upon the payment for all labor, work performed, and materials furnished in connection with the construction services portion of the work."</p> | |
| Oklahoma (2012) | Okla. Stat. tit. 61 §§ 1 to 4 | In 2012, Oklahoma enacted an amendment to the State Little Miller Act to cover some P3 projects. | <p>(Little Miller Act) "Prior to an award of a contract exceeding Fifty Thousand Dollars (\$50,000.00) for construction or repair of a public or private building, structure or improvement on public real property or private real property using public funds, the person that receives the award shall:</p> <ol style="list-style-type: none"> 1. Furnish a bond with good and sufficient sureties payable to the state in a sum not less than the total sum of the contract." | OK Stat. tit. 61 §§ 1 to 4 |
| Oklahoma (2017) | Okla. Stat. tit. 74 §§ 5151 to 5158 | The Office of Public-Private Partnership Committee is charged with reviewing proposals for public projects to determine if a P3 is the best method for delivering the project. The law provides that the conditions for the P3 will be set forth in the P3 | The P3 agreement may include requirements for performance and payment bonds for all construction activities. Letters of credit, surety bonds or other security may be required under the agreement for the development and operation of the qualifying project, in the forms and amounts that are satisfactory to the responsible governmental entity. | OK Stat tit. 61 §§ 1 to 4 |

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| | | <p>agreement. The DOT and the Turnpike Authority are exempted from the requirements in the P3 law, but these agencies may use the general provisions and process to develop a P3 contract for a transportation project in consultation with the Director of the Office of Management and Enterprise Services. The P3 contract will be subject to the approval of the Transportation Commission or the Authority's Board, as applicable.</p> | <p>Excerpt: Section 5 “G.... Partnership contracts may also include a requirement for the delivery of performance and payment bonds required for all construction activities and letters of credit, surety bonds or other security in connection with the development or operation of the qualifying project in the forms and amounts satisfactory to the responsible governmental entity.”</p> | |
| Oklahoma (2017) | Not yet codified. | <p>The law authorizes local governments to enter into P3s for any public projects. The law provides that the terms and conditions of the P3 will be set forth in the P3 agreement and generally outlines what may be included.</p> | <p>The P3 agreement may include requirements for performance and payment bonds for all construction activities. Letters of credit, surety bonds, or other security may be required for the development or operation of the qualifying project in an amount the local government will determine.</p> <p>Excerpt: Section 5 “C. Partnership contracts may also include a requirement for the delivery of performance and payment bonds required for all construction activities and letters of credit, surety bonds or other security in connection with the development or operation of the qualifying project in the forms and amounts satisfactory to the responsible governmental entity.”</p> | OK Stat tit. 61 §§ 1 to 4 |
| Oregon (1995) | Or. Rev Stat §§ 383.001 to 075 | <p>The law provides that private funding should be encouraged as an additional source of</p> | No surety bond language. | Or. Rev Stat § 279C.380 |

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| | | funding for transportation projects and facilities. The law authorizes the state DOT to enter into agreements with private entities and/or units of government to acquire, design, construct, reconstruct, operate or maintain and repair tollway projects. | | |
| Oregon (2003) | Or. Rev. Stat. §§ 367.800 to 826 | The Oregon Innovative Partnerships Program within the state DOT is authorized to enter into agreements with private entities to plan, acquire, finance, develop, design, construct, reconstruct, replace, improve, maintain, manage, repair, lease and/or operate transportation projects. | <p>The DOT may not enter into, and the commission may not approve, an agreement under this section for the construction of a public improvement as part of a transportation project unless the agreement provides for bonding, financial guarantees, deposits or the posting of other security to secure the payment of laborers, subcontractors and suppliers who perform work or provide materials as part of the project.</p> <p>Excerpt: “367.806 Agreements. 7(b) The department may not enter into, and the commission may not approve, an agreement under this section for the construction of a public improvement as part of a transportation project unless the agreement provides for bonding, financial guarantees, deposits or the posting of other security to secure the payment of laborers, subcontractors and suppliers who perform work or provide materials as part of the project.”</p> | Or. Rev. Stat. § 279C.380 |
| Oregon (2017) | Not yet codified. | The law authorizes the Port of Hood River to conduct tollway projects within its district through a P3. Private entities may own and operate the tollway in an agreement with | <p>The Little Miller Act applies to these projects if they are a public work project.</p> <p>Excerpt: Section 2 (4)(a)</p> | Or. Rev. Stat. § 279C.380 |

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| | | the port. | ... (A) ORS 279C.380, 279C.385 and 279C.390 and 279C.800 to 279C.870 apply to the bridge project activity | |
| Pennsylvania (2012) | PA. CSA 74 §§ 9101 to 9124 | The law permits P3s for transportation projects. | The P3 agreement must include requirements for a private development entity to provide performance and payment bonds, parent company guarantees, letters of credit, or other acceptable forms of security in an amount acceptable to the public entity. Excerpt: “A public private partnership agreement shall include the following provisions: (8) Requirements for a private development entity to provide performance and payment bonds, parent company guarantees, letters of credit or other acceptable forms of security in an amount acceptable to the proprietary public entity.” | PA CSA Title 8 Cha. 13 § 193 |
| Rhode Island | No P3 program identified. | | | R.I. Gen. Laws § 37-12-1 |
| South Carolina (1962) | S.C. Code Ann. §§ 57-5-1310 to 1495 | The law authorizes the state DOT to construct and operate turnpike facilities. The law appears to allow the use of P3s for these facilities by allowing the DOT to exercise authorizations as are granted by the provisions in other law to designate, establish, plan, abandon, improve, construct, maintain and regulate turnpike facilities. | No surety bond language. | S.C. Code Ann. § 57-5-1660 (DOT) |
| South Carolina (1994) | S.C. Code Ann. § 57-3-200 | The law authorizes the state DOT to expend such funds as it deems necessary to enter | No surety bond language. | S.C. Code Ann. § 57-5-1660 (DOT) |

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| | | into partnership agreements with private entities to finance, by tolls and other methods, the cost of acquiring, constructing, equipping, maintaining and operating highways, roads, streets and bridges in the state. | | |
| South Dakota | No P3 program identified. | | | S.D. Codified Laws §§ 5-21-1 to 5-21-8 |
| Tennessee (2007) | Tenn. Code Ann. §§ 54-3-101 to 113 | The law authorizes tolling as an additional and alternative method for funding or financing transportation facilities, and it authorizes the DOT to enter into agreements with private parties to develop or operate a tollway, toll facility or any part thereof. Limits authorization for tolling initially to a pilot program of two projects. | No surety bond language. | Tenn. Code Ann. § 54-5-119 (Highways) |
| Tennessee (2016) | Tenn. Code Ann. §§ 54-23-101 to 121 | The law authorizes the State, counties and municipalities to enter into P3s for mass transit system projects. | The law requires performance and payment bonds in compliance with the DOT's bonding law or a letter of credit for the development or redevelopment of the project. The DOT determines the amount required. Bonds, letters of credit or other forms of security are required for the operation of the facility, in the forms and amounts satisfactory to the responsible public entity. | Tenn. Code Ann. § 54-5-119 (Highways) |

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| Texas (2005) | Tex. Transp. Code §§ 222.001 to 107 | The law prohibits the state DOT from using state highway funds to guarantee loans or insure bonds for costs associated with a toll facility of a public or private entity. The law authorizes the DOT to otherwise participate in the cost of acquiring, constructing, maintaining or operating a toll facility of a public or private entity, but specifies certain restrictions with regard to those funds. The law allows DOT to enter into an agreement with a public or private entity to pass-through tolls to that entity as reimbursement for the design, development, financing, construction, maintenance or operation of a toll or non-toll facility on the state highway system. | provide for: (1) Delivery of performance and payment bonds that comply with § 54- 5-119(a) or letters of credit in connection with any development or redevelopment of the qualifying transportation facility, and bonds, letters of credit, or other forms of security for any operation of the qualifying transportation facility, in the forms and amounts satisfactory to the responsible public entity;" No surety bond language. | Tex. Gov't. Code § 2253.021 |
| Texas (2005) | Tex. Transp. Code §§ 223.001 to 223.210 | The law authorizes DOT to enter into comprehensive development agreements with private entities to design, | The private entity entering into a comprehensive development agreement under this subchapter must provide a performance and payment bond or an alternative form of | TX Gov't. Code § 2253.021 |

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| | | <p>Tex. Transp. Code Ch. 228 develop, finance, construct, maintain, repair, operate, extend or expand toll projects. Certain portions of the law expired on Aug. 31, 2009, except in relation to certain non-ttolled managed lanes projects, which expired on Aug. 31, 2011. Chapter 228 relates to state highway toll projects, including county and voter approval requirements for conversion of a state highway to a toll road.</p> <p>The law also authorized regional mobility authorities to use comprehensive development agreements with private entities to construct, maintain, repair, operate, extend or expand transportation projects. This authority expired on Aug. 31, 2009, except provisions pertaining to certain non-ttolled and managed lanes projects, which expired on Aug. 31, 2011.</p> | <p>security in an amount sufficient to ensure the proper performance of the agreement and protect the DOT and payment bond beneficiaries who have a direct contractual relationship with the private entity or a subcontractor of the private entity to supply labor or material.</p> <p>The performance and payment bond or alternative form of security must be in an amount equal to the cost of constructing or maintaining the project. If the DOT determines that it is impracticable for a private entity to provide security in this amount, it shall set the amount of the bonds or the alternative security. The amount of the payment security must not be less than the amount of the performance security.</p> <p>A payment or performance bond or alternative form of security is not required for the portion of an agreement that includes only design or planning services, the performance of preliminary studies, or the acquisition of real property. The amount of the payment security must not be less than the amount of the performance security.</p> <p>Excerpt:</p> <p>“Sec. 223.205. PERFORMANCE AND PAYMENT SECURITY. (a) Notwithstanding Section 223.006 and the requirements of Subchapter B, Chapter 2253, Government Code, the department shall require a private entity entering into a comprehensive developing agreement under this subchapter to provide a performance and payment bond or an alternative form of security in an amount sufficient to: (1) ensure the proper performance</p> | |

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| | | | <p>of the agreement; and (2) protection: (A) the department; and (B) payment bond beneficiaries who have a direct contractual relationship with the private entity to supply labor or material.”</p> <p>Excerpt:</p> <p>“Sec. 370.308. PERFORMANCE AND PAYMENT SECURITY. (a) Notwithstanding Section 223.006 and the requirements of Subchapter B, Chapter 2253, Government Code, an authority shall require a private entity entering into a comprehensive development agreement under Section 370.305 to provide a performance and payment bond or an alternative form of security in an amount sufficient to:</p> <ul style="list-style-type: none"> (1) ensure the proper performance of the agreement; and (2) protect: <ul style="list-style-type: none"> (A) the authority; and (B) payment bond beneficiaries who have a direct contractual relationship with the private entity or a subcontractor of the private entity to supply labor or material. <p>(b) A performance and payment bond or alternative form of security shall be in an amount equal to the cost of constructing or maintaining the project.</p> <p>(c) If an authority determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), the authority shall set the amount of the bonds or the alternative forms of security.”</p> | |
| Texas (2005) | Tex. Transp. Code §§ 371.001 to 153 | The law sets forth the requirements for comprehensive development agreements for highway toll | No surety bond language. | Tex. Gov’t. Code § 2253.021 |

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| Texas (2007) | Tex. Transp. Code §§ 366.401 to 409 | <p>projects, including those developed by the state DOT, by a regional tollway authority, or by a regional mobility authority.</p> <p>The law permits P3s for toll way projects for turnpikes.</p> | <p>The law requires the private entity to provide payment and performance bonds or alternate security for the cost of constructing and maintaining the project. If the toll way authority finds it impracticable for the private entity to provide bonds or security in the amounts required, the authority will set the amount of the bonds or alternative security. The law provides that the authority may require alternative security in lieu of or in addition to performance and payment bonds. The design and planning services, among other non-construction items, do not have to be bonded.</p> <p>Excerpt: "Sec. 366.404. PERFORMANCE AND PAYMENT SECURITY. (a) Notwithstanding the requirements of Subchapter B, Chapter 2253, Government Code, an authority shall require a private entity entering into a comprehensive development agreement under this subchapter to provide a performance and payment bond or an alternative form of security in an amount sufficient to:</p> <ul style="list-style-type: none"> (1) Ensure the proper performance of the agreement; and (2) Protect: <ul style="list-style-type: none"> (A) the authority; and (B) payment bond beneficiaries who have a direct contractual relationship with the private entity or a subcontractor of the private entity to supply labor or material." | Tex. Gov't. Code § 2253.021 |

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| Texas (2015) | Tex. Gov't Code §§ 2267 to 2268 | The law authorizes the use of P3s for the development of any ferry, mass transit facility, vehicle parking facility, port facility, power generation facility, fuel supply facility, oil or gas pipeline, water supply facility, public work, waste treatment facility, hospital, school, medical or nursing care facility, recreational facility, public building, or other similar public facility and its related infrastructure, or for any improvements necessary or desirable to unimproved real estate owned by a governmental entity. | <p>The law requires performance and payment bonds that comply with the State's Little Miller Act for all construction activities in the P3. Letters of credit could be required for the development and operation portions of the project.</p> <p>Excerpt:</p> <p>“Sec. 2267.058. COMPREHENSIVE AGREEMENT. (a) Before developing or operating the qualifying project, the contracting person must enter into a comprehensive agreement with a responsible governmental entity. The comprehensive agreement shall provide for:</p> <p>(1) Delivery of letters of credit or other security in connection with the development or operation of the qualifying project, in the forms and amounts satisfactory to the responsible governmental entity, and delivery of performance and payment bonds in compliance with Chapter 2253 for all construction activities.</p> <p>Sec. 2267.0605. (a) The construction, remodel, or repair of a qualifying project may be performed only after performance and payment bonds for the construction, remodel, or repair have been executed in compliance with Chapter 2253 regardless of whether the qualifying project is on public or private property or is public or privately owned.”</p> | Tex. Gov't. Code § 2253.021 |
| Utah (2006) | Utah Code Ann. §§ 72-6-201 to 206 | The law authorizes public-private partnerships for the construction of tollways. | The law provides that a tollway development agreement may include requirements for performance security, including payment and performance bonds, letters of credit, security deposits, guarantees, and similar protections. | U.A.C. R916-1-7 |
| Utah | Utah Code | The law authorizes the DOT to | No surety bond language. | U.A.C. R916-1-7 |

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| (2006) | Ann. § 72-6-118; Utah Code Ann. § 72-2-120 | establish, expand and operate tollways and related facilities. The DOT is authorized to enter into contracts, agreements, licenses, franchises, tollway development agreements, or other arrangements for tollway projects. The law prohibits the DOT or other entity from establishing or operating a tollway on an existing state highway unless approved by the Transportation Commission and the Legislature, except for high occupancy toll lanes or additional capacity lanes. | | |
| Utah (2017) | Utah Code Ann. § 63G-6a-103; § 63G-6a-702; § 63G-6a-703; § 63G-6a-707 | The procurement code authorizes state and local procurement units to use P3s for public works projects. | <p>The State Little Miller Act is incorporated in the procurement code.</p> <p>Excerpt: “63G-6a-1103. Bonds or security necessary when contract is awarded -- Waiver -- Action -- Attorney fees. (1) When a construction contract is awarded under this chapter, the contractor to whom the contract is awarded shall deliver the following bonds or security to the procurement unit, which shall become binding on the parties upon the execution of the contract: (a) a performance bond satisfactory to the procurement unit that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in the state or any other form satisfactory to the procurement unit; and (b) a payment bond satisfactory to the procurement unit that is in an amount equal to</p> | Utah Code Ann. § 63G-6a-1103 |

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| | | | 100% of the price specified in the contract and is executed by a surety company authorized to do business in the state or any other form satisfactory to the procurement unit, which is for the protection of each person supplying labor, service, equipment, or material for the performance of the work provided for in the contract. | |
| Vermont | No P3 program identified. | | | Vt. Stat. Ann. tit. 19, § 10(8),(9) |
| Virginia (1995) | Va. Code Ann. § 33.2-1808 | The law authorizes a private entity to develop and/or operate a qualifying transportation facility, subject to approval from and a comprehensive agreement with the responsible public entity. | The comprehensive agreement shall, as appropriate, provide for the delivery of performance and payment bonds in connection with the development and/or operation of the qualifying transportation facility, in the forms and amounts satisfactory to the responsible public entity. | Va. Code Ann. § 2.2-4337 |
| Virginia (2009) | Va. Code Ann. §§ 56-575.1 to 575.18 | The law authorizes government agencies to use P3s for education facilities, technology infrastructure, and other public facilities. | <p>Excerpt: “§ 33.2-1808. Comprehensive Agreement. A. Prior to developing and/or operating the qualifying transportation facility, the private entity shall enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement shall, as appropriate, provide for: Delivery of performance and payment bonds in connection with the development and/or operation of the qualifying transportation facility, in the forms and amounts satisfactory to the responsible public entity;”</p> <p>The comprehensive agreement must include a requirement for bonds in compliance with the Commonwealth’s Little Miller Act.</p> <p>Excerpt: “§ 56-575.9. Comprehensive agreement.</p> | Va. Code Ann. § 2.2-4337 |

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| | | | <p>A. Prior to developing or operating the qualifying project, the private entity shall enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement shall provide for:</p> <ol style="list-style-type: none"> 1. Delivery of maintenance, performance and payment bonds, letters of credit in connection with the development or operation of the qualifying project, in the forms and amounts satisfactory to the responsible public entity and in compliance with § 2.2-4337 for those components of the qualifying project that involve construction;" | |
| Virginia (2015) | Va. Code Ann. § 67-1503 | The law establishes the Virginia Solar Energy Development Authority and authorizes it to use P3s for public facilities and infrastructure to provide for solar energy generation systems at or adjacent to public and private facilities. | The P3 bonding requirements under the Public-Private Education Facilities and Infrastructure Act of 2002 (Va. Code Ann. § 56-575.1 et seq.) apply to these projects. See above. | Va. Code Ann. § 2.2-4337 |
| Virginia (2015) | Va. Code Ann. § 33.2-1830 | The law provides for the creation of the Interstate 73 Transportation Compact, which allows the Commonwealth to enter into an agreement for developing and conducting the Interstate 73. As part of the Compact, the law permits participating states to coordinate for establishing a common legal framework in all those states to authorize and facilitate the design, construction financing and operation of the Interstate 73 corridor project or through | The P3 bonding requirements under the Public-Private Education Facilities and Infrastructure Act of 2002 (Va. Code Ann. § 56-575.1 et seq.) apply to these projects. See above. | Va. Code Ann. § 2.2-4337 |

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| | | P3s similar to those authorized in the Commonwealth's P3 laws for transportation projects (see above). The law also establishes the Transportation Compact Commission in each participating state for the Interstate 73 corridor project. | | |
| Washington (2005) | Wash. Rev. Code §§ 47.29.010 to 290 | The law authorizes the state DOT to enter into P3s for transportation projects, whether capital or operating, where the state's primary purpose for the project is to facilitate safe transportation of people or goods by any mode of travel. | Provisions for bonding, financial guarantees, deposits, or the posting of other security to secure the payment of laborers, subcontractors, and suppliers who perform work or provide materials as part of the project must be included in any agreement to which the State is a party. | Wash. Rev. Code § 39.08.010 |
| West Virginia (2008) | W.Va. Code §§ 17-27-1 to 18 | The law authorizes the DOT to use P3s for the construction of any transportation facility, which is any public inland waterway port facility, road, bridge, tunnel, overpass or existing airport used for the transportation of persons or goods, and the structures, equipment, facilities or | The law provides that the comprehensive agreement must provide for performance and payment bonds on the construction portion of the project for qualifying transportation facility. The law permits the Division of Highways to determine the form and amount for the bonds that would be satisfactory. | W. Va. Code § 38-2-39 |

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| | | improvements to such facilities. | <p>"The comprehensive agreement shall provide for:</p> <p>(1) Delivery of performance or payment bonds in connection with the construction of or improvements to the qualifying transportation facility, in the forms and amounts satisfactory to the division;"</p> | |
| West Virginia (2010) | W.Va. Code §§ 17-28-1 to 12 | The law provides for P3s for transportation facilities, which are a public highway, road, bridge, tunnel, overpass, building, structure, airport, vehicle parking facility, riverport facility, rail facility, or intermodal facility used for the transportation of persons or goods. The comprehensive agreement for the project will be between the governmental entity sponsoring the project and the West Virginia Division of Highways. | <p>The law provides that the comprehensive agreement must provide for performance and payment bonds on the construction portion of the project for a transportation facility. The new law allows the Division to determine the form and amount for the bonds that would be satisfactory.</p> <p>Excerpt:</p> <p>"§ 17-28-7 Comprehensive agreement.</p> <p>(a) Prior to acquiring, constructing or improving a transportation facility, the project sponsors shall enter into a comprehensive agreement with the division. The comprehensive agreement shall provide for:</p> <p>(1) Delivery of performance or payment bonds in connection with the construction of or improvements to the transportation facility, in the forms and amounts satisfactory to the division;"</p> | W.Va. Code § 38-2-39 |
| Wisconsin (1998) | Wis. Stat. § 84.01 (30) | The law authorizes the state DOT to enter into build-operate-lease or transfer agreements with private entities for construction of transportation projects and for maintenance or operation of projects not purchased by the state upon their completion. An agreement may not be entered into unless the DOT | No surety bond language. | Wis. Stat. § 779.14 and 779.15 |

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| | | determines it advances the public interest and the private entity meets certain criteria. | | |
| Wyoming | No P3 program identified. | | | Wyo. Stat. Ann. § 16-6-112 to § 16-6-121 Wyo. Stat. Ann. § 9-2-1016(b)(xviii) |
| Puerto Rico (1965) | PR Laws Title 9 § 2001 to 2021 | The Puerto Rico Highway and Transportation Authority or the Department of Transportation and Public Works is empowered to contract with private parties to design, construct, operate and maintain new highways, bridges, avenues, expressways and ancillary transit facilities, and informative electronic signboards or billboards. | No surety bond language. | PR Laws Title 22, Public Works, Chapter 3, Public Works Contracts, §§ 47 to 58 |
| Puerto Rico (2003) | PR Laws Title 27 §§ 2601 to 2623 | The law establishes the Public-Private Partnership Authority as an entity of the Government Development Bank. It empowers the authority to establish P3s for infrastructure projects, and makes the authority the sole government entity responsible for implementing public policy on P3s as set forth in this act. The law provides guidelines for evaluating, approving, contracting for and overseeing P3 projects. Final approval of P3 contracts is required from the governor. | A partnership contract shall contain, insofar as applicable, provisions concerning the kind of bond or security to ensure compliance with the partnership contract. | R Laws Title 22, Public Works, Chapter 3, Public Works Contracts, §§ 47 to 58 |

