



Public-Private Partnership Legislation for 2014

Jurisdiction	Bill	Recent History	Summary
CA	AB 749	Carryover for 2014.	<p>AB 749 would restructure Public Infrastructure Advisory Commission (Commission), which governs the use of public private partnerships (PPPs) in California. The bill provides that the Commission would advise the department (DOT) and regional transportation agencies, upon request, regarding infrastructure partnership suitability and best practices.</p>
DC	LB 595	Carryover for 2014.	<p>LB 595 would establish the District of Columbia Office of Public-Private Partnerships (Office) for the procurement and administration of public-private partnerships (P3) in the District of Columbia. Of note, the bill’s legislative findings state that “[even] without clear enabling legislation, the District of Columbia has also entered into public-private partnerships previously, including a performance-based road maintenance contract.” This bill would provide such authorization. The bill provides that the P3 agreements approved and entered into by the Office would have to include requirements for performance and payment bonds or other security and risk-mitigation tools that the Office deems suitable. The bill would authorize the Office to make or cause to be made any appropriate claims under the maintenance, performance or payment bonds, or lines of credit, as set forth in the agreement.</p> <p>The bill provides that qualified P3 projects would be projects for the planning, acquisition, financing, development, design, construction, reconstruction, rehabilitation, replacement, improvement, maintenance, management, operation, repair, leasing, and, or ownership of education facilities,</p>

			transportation facilities, cultural or recreational facilities, a building or other facility that is beneficial to the public interest and is developed or operated by or for a public entity, utility facilities, and improvements necessary or desirable to any unimproved District-owned real estate.
Federal	H.R. 2821	Carryover for 2014.	HR 2821 would create the American Infrastructure Financing Authority to provide financing for infrastructure projects, including public-private partnerships, among other types of project delivery methods. The bill also would provide for other infrastructure project funding and grants.
Federal	S. 1716	Carryover for 2014.	S. 1716 would establish the Infrastructure Financing Authority (IFA) to provide investments and financing of infrastructure projects. The bill would outline the structure and authority of the IFA. The IFA would be a government-owned entity, but it would operate independent of federal agencies. Projects eligible for funding would include transportation infrastructure, water infrastructure, and energy infrastructure that are at least \$50 million in size. Rural projects would have to be \$10 million in size to qualify. The IFA would provide direct loans and loan guarantees to facilitate eligible infrastructure projects that are economically viable, in the public interest, and of regional or national significance. The bill would set forth additional requirements for projects to receive funding through the IFA, including special qualifications for funding for public-private partnerships. The bill would outline the terms of receiving and repaying loans from the IFA, as well as the methods for funding the IFA. The bill also provides for evaluations and studies of the operations of the IFA to be conducted by the Government Accountability Office.
Federal	H.R. 3080	11/20/2013 Pending in Conference.	S. 601 and H.R. 3080 create a pilot project for PPPs for projects of the Army Corps of Engineers. Both bills contain a provision that the private partner must comply with all federal laws and regulations that the Secretary of Army would have to comply with if the Secretary carried out the project. S. 601 also contains provisions for a Water Infrastructure Financing and Innovation Authority (WIFIA) patterned after the existing Transportation Infrastructure Financing and Innovation Authority (TIFIA).

FL	HB 541	01/09/2014 Pre-filed for 2014.	<p>HB 541 would authorize state universities to enter into public-private partnerships (P3) for the development of facilities. The bill provides that the state university board of trustees would have to 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. The bill provides that for the components of the qualifying project which involve construction, performance and payment, bonds would be required and would be subject to the requirements of the State's little Miller Act. Bonds would be required under the comprehensive agreement for the P3.</p> <p>The bill defines "qualifying project" as a facility or project that serves a public educational, research, housing, parking, infrastructure, recreational, or cultural purpose used by a state university or an improvement of a facility that will be used by a state university.</p>
GA	SB 255	Carryover for 2014.	<p>SB 255 would authorize public private partnerships for public facilities and infrastructure. The comprehensive agreement between the public owner and the private entity would have to provide for maintenance, performance and payment bonds, letters of credit, or other form of security acceptable to the public owner in connection with the development or operation of the project. The bonds or other security would have to be in the forms and amounts required under the State's little Miller Act for the components of the project that involve construction. Current law permits letters of credit for contracts under \$300,000. The bill provides that if the private entity has a material default, the public owner could terminate, with cause, the agreement and exercise any other rights and remedies that may be available, including, but not limited to, claims under the maintenance, performance, or payment bonds or other forms of security.</p>
IN	SB 225	01/09/2014 Introduced for 2014.	<p>SB 225 would expand the types of projects that may be conducted as a public-private partnership (P3). The law provides that performance bonds may be required for a P3.</p>
MI	HB 4925	Carryover for 2014.	<p>HB 4925 would authorize the Michigan DOT to enter into public private partnerships (PPPs) for public transportation facilities. The PPP agreement</p>

			shall specify the amount of the payment and performance bonds or other security. The concessionaire for the facility could provide a payment or performance bond or a letter of credit. If bonds and letters of credit are not available in reasonably sufficient amounts, the DOT could accept another commercially reasonable form of security, including parent corporation guarantees, to supplement available payment bonds, performance bonds, or letters of credit. The DOT would have to require sufficient security to fulfill the purposes of a payment and performance bond. In lieu of the concessionaire posting the security, or to supplement the security posted, the DOT could accept bonds, letters of credit, and other security from entities other than the concessionaire so long as the purposes of a payment and performance bond are fulfilled.
NC	HB 887	Carryover for 2014.	HB 887 would authorize governmental entities to use public-private partnerships for public buildings. The bill provides that the governmental entity shall require a private-developer to provide a payment bond for the construction work.
NJ	SB 2982	09/30/2013 Introduced. New Jersey adjourns for 2013 in early January, at which point the bill will be dead if it does not pass as there is no carry over to 2014. SFAA expects that the bill will die in 2013 and be reintroduced.	SB 2982 would allow school districts to enter into school construction public-private partnership agreements with private entities for the construction, reconstruction, repair, alteration, improvement, or extension of a school facilities project. The private entity would have to agree to assume full financial and administrative responsibility for the project. The bill provides that the school district would have to require the private entity financing a school facilities project to post, or cause to be posted, a bond that guarantees prompt payment of moneys due to the private entity's contractor, the contractor's subcontractors, and to all persons furnishing labor or materials to the contractor or the contractor's subcontractors in the performance of the work on the project.

NJ	2985	<p>11/14/2013 Introduced.</p> <p>New Jersey adjourns for 2013 in early January, at which point the bill will be dead if it does not pass as there is no carry over to 2014. SFAA expects that the bill will die in 2013 and be reintroduced.</p>	<p>SB 2985 would authorize a governmental entity to enter into a public-private partnership agreement with a private entity to develop, design, build, operate, or maintain, one or more energy-related projects, and to assume financial, operational, and administrative responsibility for one or more energy-related projects, in partnership with a governmental entity. The bill provides that if no public fund has been established for the financing of the project, the governmental entity may require the private entity to cause to be posted, a bond guaranteeing prompt payment of funds due to the contractor, its subcontractors, and to all persons furnishing labor or materials to the contractor or its subcontractors in the conduct of the work on the project. The bill provides that the application that the private entity would have to complete would have to include a demonstration of the private entity's bonding capacity for the development and operation of the project.</p>
NJ	4082	<p>06/24/2013 Passed the Assembly.</p> <p>New Jersey adjourns for 2013 in early January, at which point the bill will be dead if it does not pass as there is no carry over to 2014. SFAA expects that the bill will die in 2013 and be reintroduced.</p>	<p>AB 4082 would authorize private entities to propose to governmental entities energy-related infrastructure projects at governmental facilities through a public-private partnership agreement. The bill provides that if no public fund has been established for the financing of an energy-related project developed, the chief financial officer of the governmental entity may require the private entity responsible for the development of the project to post a bond. The bond would have to guarantee the prompt payment of funds due to the contractor, its subcontractors, and to all persons furnishing labor or materials to the contractor or its subcontractors for the project. As a part of the application for the project, the private entity would have to provide evidence of the private entity's bonding capacity for the development and operation of the energy-related project and a long-term maintenance plan if applicable, among other information.</p>

NY	SB 402	Carryover for 2014.	SB 402 would authorize the use of alternative project delivery methodologies, which the bill would define as any “construction project delivery methodology whereby the procurement for the construction services is other than the traditional design-bid-build process.” The legislative findings in the bill note that such methodologies include design-build, construction manager at-risk, public-private partnerships, and integrated project delivery. The bill would authorize the following agencies to use such methods on projects exceeding \$25 million: the Department of Transportation, the Office of General Services, the Dormitory Authority, the Thruway Authority, the State University Construction Fund, the City University Construction Fund, the New York City School Construction Authority, the Metropolitan Commuter Transportation Authority, and the Metropolitan Transportation Authority.
NY	AB 2877/ SB 740/ SB 6264	AB 2877/ SB 740 are Carryover bills for 2014. 01/09/2014 SB 6264 has been introduced for 2014.	AB 2877/SB 740 would authorize the use of public private partnerships for transportation infrastructure projects for the Commissioner of Transportation, the New York State Thruway Authority, and the New York State Bridge Authority. The bill provides that the project agreement may provide for insurance or surety requirements for the project. The bill also would create Innovative Infrastructure Development Board for the review of solicitations for proposed projects.
NY	SB 5501	Carryover for 2014.	SB 5501 would authorize state and local governments to use public private partnerships (PPP) for funding the design and/or construction of public infrastructure, and/or operating and/or maintaining public infrastructure following the completion of the construction. The bill does not specify any bonding requirements for the PPP.

PA	HB 1838	Carryover for 2014.	<p>HB 1838 would permit public private partnerships (P3s) for building projects. Eligible projects would include educational facilities, buildings or facilities for government agency, buildings or facilities for public water supply or treatment, storm water disposal or waste treatment or used for public parking facilities, an improvement, including equipment, that enhances public safety and security of a building for a government agency, telecommunications and other communications infrastructure, and utility infrastructure. The agreement for the P3 would have to provide for the delivery of maintenance, performance and payment bonds or letters of credit in connection with the acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance or operation of the project. The bonds or letter of credit would have to be in the forms and amounts satisfactory to the responsible government agency.</p>
SC	HB 3860	Carryover for 2014	<p>HB 3860 would revise the bonding requirements for public works projects. Existing law requires performance and payment bonds on contracts exceeding \$50,000 in an amount equal to 100% of the contract price for the construction portion of the project, not including operation, maintenance, and finance costs. For construction manager at risk contracts, the bill provides that the bonds required under existing law could be furnished for one or more designated portions of the project for 100% of the value of the construction of each designated portion. The bill also provides that for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain contracts, the bonds required under existing law could be furnished for one or more designated portions of the project for 100% of the value of the design and construction of each designated portion. The bill also would authorize the public owner to prescribe the time of delivery of the bonds. The bill provides that construction could not commence until the bonds are in place.</p>

TN	HB 883/ SB 1153	Carryover for 2014.	<p>HB 883/SB 1153 would authorize the use of public-private partnerships for public infrastructure and public facilities projects. The comprehensive agreement between the public entity and the private entity would have to include a requirement for maintenance, payment, and performance bonds, letters of credit, or other forms of security that are acceptable to the responsible public entity for the construction components of the project in connection with the development of the project. The bill also provides that if the private entity has a material default, the public entity would be authorized to terminate an interim agreement or a comprehensive agreement and exercise any other rights and remedies that may be available to the responsible public entity, including without limitation claims under the maintenance, payment, and performance bonds, letter of credit, or other forms of security required in connection with the comprehensive agreement.</p>
WA	HB 1979	Carryover for 2014.	<p>HB 1979 would revise the State bond threshold to exempt public private partnerships from the bonding requirements. The current law for public-private partnerships (PPPs) provides that the partnership agreement must include 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. Under the bill, the state threshold would not apply to this provision concerning a PPP.</p>