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PUBLIC-PRIVATE PARTNERSHIPS

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Public-private partnerships have become integral to developing infrastructure in Colorado and across the country. This *issue brief* describes public-private partnerships and summarizes public-private partnership law in Colorado.

Public-Private Partnerships

A transportation system is vital to a state's economy and the movement of its citizens and products. Many states are turning to public-private partnerships to repair or replace failing infrastructure. A public-private partnership occurs when a government entity contracts with a private entity to design, finance, construct, operate, or maintain an infrastructure project, such as a road or municipal water system. Colorado is one of 34 states with laws authorizing public-private partnerships for transportation projects.[1]

Structure. Public-private partnerships aim to leverage the expertise and resources of the private sector for public good. Under a traditional approach to transportation, commonly referred to as design-bid-build, a public entity pays for a new project with a combination of state and local funds, federal funds, and borrowed funds. The public entity then conducts all aspects of the project itself, or works with private companies to design or construct the project via competitive bid. Under this type of project, the public entity retains a large amount of the project's risk.

With different forms of public-private partnerships, the private sector entity generally assumes more of the risk. The most common, *design-build*, involves a fixed-price contract between a public and private entity to jointly manage a project. The private entity is responsible for increases in costs associated with the project, while the public entity maintains ownership and is responsible for maintenance. With a *design-build-finance* partnership, the private entity assumes the additional risk of providing the upfront capital for the project, but is generally repaid through tolls or tax revenue. Finally, with a *design-build-finance-operate-maintain* project, the public and private entities may jointly finance the project, usually leveraging debt, and the public entity maintains ownership, while private parties build, operate, and maintain the project.

Financing. Private-public partnerships can be financed in several different ways.[2] Some partnerships utilize debt financing by issuing bonds. Other projects use concessions as part of the financing. Under a concession agreement, the private entity may use its own funds to complete the project, maintain and operate the project for a specific period of time, and is repaid through tolls or other revenues.

[1] Federal Highway Administration, https://www.fhwa.dot.gov/ipd/p3/state_legislation/.

[2] According to the Congressional Budget Office, between 1989 and 2013, at least 29 transportation projects utilizing private financing were completed.

Assumption of Risk. Public-private partnerships shift risk burdens. Project risks include cost overruns, unanticipated design challenges, and unforeseen weather, among others. Public-private partnerships allow governments to shift some risk to the private sector and provide the flexibility to reallocate future state resources. However, long-term concession agreements may create more rigid situations that hinder the government's ability to respond to future needs because of the concession's negotiated terms that repay private sector investment.

Public-Private Transportation Initiatives in Colorado

Current Colorado law allows the Colorado Department of Transportation (CDOT) to solicit and enter into public-private initiatives. Public-private initiatives are arrangements between CDOT and one or more public or private entities that provide for:

- accepting private contributions for public benefit;
- sharing of resources and the means of providing transportation system projects or services; and
- cooperation in researching, developing, and implementing transportation projects or services.[3]

CDOT may solicit and consider proposals, enter into agreements, grant benefits, and accept contributions for public-private initiatives. Colorado law also allows counties to enter into public-private initiatives for county highways and bridges.[4] Counties may also privatize or assess tolls on county roads.

The High-Performance Transportation Enterprise. In 2009, the General Assembly created the High-Performance Transportation Enterprise (HPTE) to seek out public-private partnerships for the purpose of completing surface transportation infrastructure projects.[5] The HPTE board consists of four members appointed by the Governor and three members of the Colorado Transportation Commission. In addition to public-private partnerships, the HPTE may finance projects through concession agreements, user-fee based project financing, and design-build contracting.

Examples of public-private partnerships in Colorado. E-470 was one of the first major toll road public-private partnerships in the country. The U.S. Highway 36 Express Lanes project was the first HPTE venture to rely on a private consortium to finance, build, operate, and maintain a major Colorado roadway under a long-term contract. Currently, HPTE plans on utilizing a public-private partnership for its upcoming central I-70 project.

Other Public-Private Partnerships

Beyond transportation, common public-private partnerships include the construction of public facilities, such as stadiums, airports, or hospitals. In Colorado, Sports Authority Field at Mile High is a public-private partnership between the Metropolitan Football District and the Denver Broncos. The Metropolitan Football District, comprised of all or parts of seven metro Denver counties, contributed 75 percent of the funding for the stadium, while the Denver Broncos funded the remaining 25 percent of the cost.

New types of public-private partnerships. The number and diversity of public-private partnerships in the United States is growing. Along with the traditional public-private partnerships for transportation and construction of public facilities, governments are exploring such partnerships for high-tech projects, such as broadband networks and clean energy projects. For example, in Kentucky, the KentuckyWired project aims to build and maintain a state-owned, open-access broadband network through a public-private partnership. Kentucky and private companies will share service fee revenue and dark fiber[6] sale proceeds to finance the project.

[3] Section 43-1-1201 (3), C.R.S.
[4] Section 43-2-219, C.R.S.
[5] Senate Bill 09-108

[6] Dark fiber is unused, installed fiber-optic cable.