

THE BOND BUYER

Colorado enacts broad P3 law, Illinois eyes similar move

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A Colorado law will for the first time give state agencies the ability to enter into public private partnerships, while a bill pending in Illinois would extend the authority to state agencies and all local governments.

The new Colorado law features a broad statute for P3 authority, with advocates like Gov. Jared Polis saying they hope the method will be used to finance “foundational” state needs like broadband access, affordable housing and childcare.

In Illinois, P3 market participants are watching SB 1900, a bill that would expand P3 authority across the state, particularly for local governments. Currently only home-rule local governments are allowed to enter into P3s.



“Any project a [Colorado] state agency can do, can now be done by P3,” said Greg Johnson, who leads the P3 practice at Squire Patton Boggs. **Squire Patton Boggs**

The U.S. P3 sector is a [patchwork of state laws](#), which vary from project-specific to broad enabling statutes, like in Colorado. Currently 36 states plus the District of Columbia and Puerto Rico have some type of P3-enabling legislation either for transportation or social projects, according to the U.S. Department of Transportation. Maryland, Florida and increasingly Louisiana and Georgia are considered some leaders in the transportation P3 space.

In many cases, states enacted P3 legislation to advance a certain project. But in Colorado's case, [SB22-130](#) originated from the governor and lawmakers deciding the state would benefit from an additional financing method, said Greg Johnson, who leads the P3 practice at Squire Patton Boggs, which helped craft the new law.

"What makes Colorado unique is that it wasn't driven by a particular need, but by a perception that it's a good tool in the toolbox," Johnson said.

"Any project a state agency can do, can now be done by P3," he said. "It's a very broad authorization and the key is to take a measured approach, so we can work toward successes and demonstrate the viability of the program and then go from there."

The AA-rated state faces major capital needs but is constitutionally prohibited from issuing general obligation bonds, though Johnson noted that it can issue certificates of participation.

The Colorado Department of Transportation has enjoyed P3 authority for a few years, which has led to projects like the [Central 70](#), and the state's universities have also had the ability to enter into P3s.

The new law allows the private partner and state public entity to use any money that may be available for the public project and to enter into specified financing agreements.

The Department of Personnel will act as the "interface" between a state agency that wants to embark on a P3 and a private entity, Johnson said. The department has appointed a P3 director, Natriece Bryant, and the office is in

the midst of writing rules and regulations for the procurement program, which is expected to take a few months.

The law also allows for unsolicited proposals, which Johnson said is a key provision for the sector's private participants. "A lot of projects get done on an unsolicited basis," he said.

Meanwhile, [SB 1900](#) in Illinois would allow non-home rule governments and certain state agencies to use the method, said Adam Margolin, an Energy, Infrastructure and Environment partner in the Quarles & Brady Chicago office.

"It's a significant bill," Margolin said. "What's really key about this legislation is that the authority in Illinois for P3s is relatively limited now."

Currently, the P3 model is limited to the Illinois Department of Transportation, the Illinois State Toll Highway Authority and home-rule local governments, which make up about 15% of the state's municipalities, Margolin said.

Broadening P3 authority to non-home rule entities would mean an estimated 85% of the state's cities and towns would be authorized to use the financing method.

The bill covers existing assets as well as new ones, allowing for the possibility of asset-recycling, and would apply to a variety of assets like airports and ports as well as any new or existing local, county or state road, Margolin said.

"The selection of the private partner and the definition of the facilities is very broad and covers many different industries and types of projects," Margolin said. "If folks are interested in P3s, that's the type of broad-enabling authority that they would like to see."

The bill was introduced last year and in February was referred to the Senate Assignments Committee.

Separately, Illinois Gov. JB Pritzker in June signed into law a bill he said would streamline infrastructure projects. The Innovations for Transportation Infrastructure Act allows IDOT and the tollway authority to use a design-build delivery method, a model that brings in the private contractor earlier in the design process. The agencies currently use design-bid-build models. The alternative structure can only be used for projects that cost no more than \$400 million.

“A design-build delivery method won’t just save taxpayers money — it will streamline our construction process and deliver the infrastructure improvements that our state requires,” Pritzker said in a statement. “With this legislation, our Rebuild Illinois investment plan will be expedited in a time-efficient, cost-effective, and equity-based manner.”