

# With an Increasing Focus on Infrastructure, States are Stepping Up Funding

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A number of changes in 2016 are shaping 2017 and beyond to be formative years in which states begin to address a shortfall in infrastructure funding and financing. Many states have taken the responsibility to find new ways to ensure that they are providing safe and efficient infrastructure to their constituents. This is in light of the federal government's reluctance to increase funding for infrastructure through changes to the federal gas tax, which is intended to fund highway and transportation projects across the country but has been set at 18.4 cents since 1993. The increasing visibility of the American infrastructure gap seems to have made voters more willing to take responsibility for funding critical investments. In 2016, an increasing number of states passed public-private partnership (P3) enabling legislation to expand procurement options for the delivery of infrastructure. Other states saw increases in their state gas tax on January 1, 2017, while voters in two states passed constitutional amendments to ensure that their transportation-related taxes and fees are reserved exclusively for transportation infrastructure projects. Voters in many other states threw their support behind significant infrastructure packages funded through other means such as increases to sales and property taxes.

## Recap of Changes in 2016

### **Public-Private Partnership Legislation**

New Hampshire, Tennessee, and Kentucky passed new enabling legislation to permit entities to pursue projects through P3s. While these states are new to the P3 space, they are actively preparing to move forward with P3 projects. New Hampshire's legislation sets out the creation of a P3 Transportation Infrastructure Commission to establish procedures for engaging in P3s and will likely begin to pursue a passenger rail P3 in the coming years. Tennessee passed legislation which was signed in April by Governor Bill Haslam and has already introduced legislation early in 2017 by creating an Office of Public-Private Partnerships to help coordinate state and local transportation agencies manage the P3 process. Similarly, Kentucky's governor, Matt Bevin, signed enabling legislation in April, which enables the state to procure projects through a P3 structure for a broad array of assets, with the exception of establishing tolls on bridges connecting the state with Ohio.

In addition to new enabling legislation passed throughout the year last year, other states passed legislation to modify their existing processes, such as Florida's recent move to allow school districts to pursue P3s and Louisiana's legislation extending P3 authority to the state's Department of Transportation and Development.

### **Lockbox Initiatives**

Voters in Illinois and New Jersey voted on constitutional amendments to require that transportation related fees paid to the state government are placed in a lockbox intended only for transportation projects. The Illinois vote on a constitutional amendment sought to address past complaints about gas taxes and vehicle registration fees, intended for use in infrastructure, that were instead used for state programs like social services or healthcare. The constitutional amendment passed overwhelmingly, with 78.9% of the vote.<sup>1</sup> The New Jersey vote was slightly closer, passing with 54.5% of the vote, and allocates all the state's gas tax revenue and all revenue from gross receipts on petroleum products to the state's Transportation Trust Fund.<sup>2</sup> These votes suggest that voters feel there has been an underinvestment in transportation infrastructure, and that they are willing to take steps to ensure they are receiving quality assets paid for through transportation related taxes and fees.

<sup>1</sup> Illinois State Board of Elections, November 8, 2016 General Election Results

<sup>2</sup> New Jersey Department of State, Official General Election Results

## Gas Taxes

In addressing the shortfall in federal funding through the gas tax, many states have taken it upon themselves recently to raise state-level gas taxes, a key source for state transportation funding. Nine states increased their gas tax rates. Of these states, four changed gas tax rates due to automatic adjustments that track inflation, population, or overall energy prices. Another four states had increases as part of earlier legislation intended to gradually step-up gas tax rates over time. New Jersey made headlines by radically increasing its gas tax rate by 23 cents/gallon, the first increase in nearly 30 years. Two states reduced their gas tax on January 1st, due to policies that have the gas tax fluctuating annually with the price of gas.

### Gas Tax Changes from 2016<sup>3</sup>

State	Gas Tax Change	Effective Date	Legislation
Maryland	+0.9 cents/gallon	July 1, 2016	Part of a 2013 law indexing to inflation
Washington	+4.9 cents/gallon	July 1, 2016	Part two of a two-part gas tax increase established in a 2015 law
New Jersey	+23 cents/gallon	November 1, 2016	Part of a multi-part tax restructuring deal
Nebraska	+1.5 cents/gallon	January 1, 2017	Part of a 2015 law to raise the gas tax by 6 cents over four years
Michigan	+7.3 cents/gallon	January 1, 2017	Part of a 2015 law that raises the gas tax in 2017 and will begin tracking inflation in 2022
Pennsylvania	+7.9 cents/gallon	January 1, 2017	Part of a 2013 law tying gas taxes to overall gas prices
Georgia	+0.3 cents/gallon	January 1, 2017	Gas tax is linked to inflation and changing vehicle fuel economy
North Carolina	+0.3 cents/gallon	January 1, 2017	Gas tax is linked to changing population and energy prices
Florida	+0.1 cents/gallon	January 1, 2017	Gas tax is linked to inflation
West Virginia	-1.0 cents/gallon	January 1, 2017	Gas tax is linked to gas prices
New York	-0.8 cents/gallon	January 1, 2017	Gas tax is linked to gas prices

<sup>3</sup> Institute on Taxation and Economic Policy, Gasoline Taxes

## Major Project-Specific Initiatives

According to the Transportation Investment Advocacy Center, voters in at least 22 states approved measures in November to improve or increase infrastructure spending for large infrastructure projects. A number of these initiatives were funded either through increases in sales tax or property taxes at the state or county level. Voters in Los Angeles County voted to increase its sales tax by one percent, potentially raising \$860 million annually and up to \$120 billion over 40 years, to fund a major expansion of the LA Metro, among other projects. Additionally, voters in three counties in Washington State approved a \$54 billion package to significantly expand the regional light rail system over the next 25 years, paid for by increases in property and sales taxes and vehicle fees. In addition to California and Washington, voters in four other states passed initiatives to spend at least \$1 billion on infrastructure projects, with another five states passing initiatives of at least \$100 million, with total voter approved funding of \$203 billion. To see the full list of approved measures, see the Transportation Investment Advocacy Center's [report on state and local ballot initiatives](#).

## Current and Upcoming Legislative Sessions

Early in the legislative season, many states are contemplating passing or amending public-private partnership enabling legislation, making the pursuit of a P3 more transparent and competitive with traditional procurement. States that have introduced enabling legislation include New Mexico, Oklahoma, Michigan, and Hawaii. Though Michigan completed a street lighting P3, the state does not currently have legislation that explicitly permits P3 projects. The legislation under consideration would require the public authorities procuring infrastructure assets to consider multiple methods of procurement, including P3s.

States that already have enabling legislation are also working to expand and amend their legislation to increase the participation of private partners. At least five states have already introduced bills in the new legislative session to enhance P3s. Lawmakers in Illinois have introduced a project-specific bill to procure the managed toll lane project on I-55 as a P3, while lawmakers in Mississippi are seeking to expand P3 authority to counties and municipalities. The Tennessee legislature is contemplating creating an Office of Public Private Partnerships, while Oregon is considering allowing P3s for transportation projects at levels lower than the state department of transportation. Additionally, Arkansas legislators have introduced a bill that will allow the procurement of the Grand Prairie Irrigation project as a P3. Lastly, the Utah legislature has passed a bill up to the governor's desk which would expand opportunities for P3s beyond the current structure, which is limited to tollroads.

A number of states are currently considering whether to increase their gas tax rate in 2017 and to peg them to inflation. Currently, 21 states have gas taxes that vary either with gas rates, inflation, or other factors.<sup>4</sup> States that have brought gas tax issues forward in legislatures in the first few months of the year so far include Alaska, California, Minnesota, and Tennessee, among others. Voters and legislatures are now increasingly willing to tax themselves to fund infrastructure and to ensure that the value of those taxes do not wither with inflation like the federal gas tax. While many states have coalitions and advocacy groups fighting to raise gas taxes, the following states have governors or legislators who have explicitly proposed increases this year.

<sup>4</sup> Institute on Taxation and Economic Policy, "Most Americans Live in States with Variable-Rate Gas Taxes," January 17, 2017

### States Contemplating Changes to Gas Tax Rates in 2017<sup>5</sup>

State	Proposed Increase	Proposed by Whom?
Alaska	16 cents/gallon	Governor Bill Walker
Arizona	10 cents/gallon	House Committee on Transportation and Infrastructure
California	11.7 cents/gallon	Governor Jerry Brown
Minnesota	6.5% sales tax	Governor Mark Dayton
New Mexico	10 cents/gallon	Democrats in the Legislature
South Carolina	10 cents/gallon over 5 years	House Republican Leaders
Tennessee	7 cents/gallon	Governor Bill Haslam

While states are making significant changes to the way they fund and procure projects, the federal government continues to provide key programs that bring funding and innovative finance to infrastructure development. Though the federal gas tax's value has ebbed, the federal government will continue to provide large support to states' infrastructure needs: as for the foreseeable future, the Highway Trust Fund will spend \$50+ billion annually;<sup>6</sup> TIFIA program has budget authority for nearly \$300 million in the current fiscal year, which implies a potential credit assistance of \$2.5-\$4 billion;<sup>7</sup> and Private Activity Bonds have \$3.8 billion in remaining allocation.<sup>8</sup> Much of the President's campaign around infrastructure investment has plugged public-private partnerships as a key component for addressing the country's infrastructure gap. The 2016 U.S. public-private partnership market closed over \$7.5 billion worth of projects and is on track to close more than \$11 billion in 2017, far more than in any previous year. The uptick in the P3 project pipeline and the increasingly public discussions of P3s' place in the infrastructure landscape may suggest that current and future legislative sessions will likely continue to improve the procurement process for P3s.

<sup>5</sup> Tax Justice Blog, "What to Watch in the States: Gas Tax Hikes and Swaps," February 2, 2017

<sup>6</sup> Congressional Budget Office, "The Status of the Highway Trust Fund and Options for Paying for Highway Spending," June 17, 2015

<sup>7</sup> US Department of Transportation, TIFIA Notice of Funding Availability

<sup>8</sup> Federal Highway Administration, Innovative Finance Support – Federal Debt Financing Tools: Private Activity Bonds

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