

LAW WEEK

COLORADO

Trends In Social Infrastructure

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FEDERAL, state and local budgets are in disarray in the United States. Funding at all levels is challenged, if not essentially unavailable, further exacerbated with political polarization in full swing. At the same time, in recent years, public entities in the U.S. have begun to utilize alternative funding vehicles for public infrastructure such as public-private partnership, or P3, models imported from Australia, Canada and England. A P3 has many variations but is essentially a contract between a private concession and a public entity to design, build, finance, operate and maintain (or some combination thereof) a public facility over time.

In a P3 model, the private sector provides capital and an efficient life-cycle project delivery system to build a public facility and, once completed, operates the facility for an agreed term. The public sector usually will own the facility (or the facility will later revert to public ownership) and will provide some form of long-term revenue source paid to the private concessionaire during the operational phase of the concession program.

These funds can include project related revenues or potential "availability payments" whereby the public sector ensures payment to the private sector subject to the private sector's performing according to certain standards. The P3 model has been traditionally used in the United States for transportation projects such as highways, transit, ports and other forms of transportation or hard infrastructure.

In Colorado, the Eagle P3 Project initiated by the Denver-area Regional Transportation District, or RTD, is being delivered and operated under a concession agreement between RTD and a concessionaire, Denver Transit Partners, a special-purpose company owned by Fluor Enterprises and several other partners who are providing expertise and investment into the project. The Eagle P3 Project concession agreement requires DTP to design-build-finance-operate-maintain several segments of the regional FastTracks transit system under a single contract.

RTD will retain all assets while



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shifting much of the risk of designing and building the project to DTP. The Concessionaire has also arranged around \$450 million of private financing for the project. This allows RTD to spread out large upfront costs over approximately 30 years, making it more affordable, much like a 30-year mortgage versus a 15-year mortgage. In return, RTD will make service payments to DTP based on their performance of the operation and maintenance of the project. The concessionaire will provide and maintain the rail vehicles for the three commuter rail corridors and will also operate and maintain everything it designs and builds, assuring safe and reliable commuter rail service for almost 30 years.

More recently, mainly as a result of the same shrinking budgets at all public levels, the P3 model has begun to be applied to other public facilities such as schools, hospitals and courthouses, or "social" infrastructure. Partnerships British Columbia is a P3 entity utilized in Canada and provides one model of the expanded scope of such P3's beyond just

hard infrastructure. Its model includes both forms of infrastructure.

During recent years, there has been an increase in the use of the P3 model for social infrastructure in the United States. Seeing the rising demand in the health care industry and tremendous need in the educational world for repair of existing and construction of new facilities, the private market place has entered the social infrastructure world with enthusiasm.

Typically, these P3 concessions are best accomplished in states where there is legislative authority and support. States such as Virginia, Texas, Florida, Maryland and, most recently, Connecticut, have passed legislation to advance the ability of state and local authorities to use the P3 model in the development of social infrastructure. For example, Texas has recently passed legislation significantly expanding state and local ability to tap infrastructure P3s for schools, hospitals and other public use facilities. Similarly, Virginia has enacted the Public-Private Education Facilities

Act, enabling the state and local authorities to enter into P3s for education infrastructure projects.

There is increasing interest in the possibility of pursuing the application of the P3 model in Colorado, a state with budgets that are also severely challenged with regard to the repair and construction of infrastructure. In 2009, the Colorado legislature authorized the formulation of the High Performance Transportation Enterprise to pursue innovative financing vehicles, specifically including P3's, for the construction and operation of surface transportation projects. The recent US 36 corridor construction program is an example of the P3 model enhanced by the financing program. The pursuit of social infrastructure projects with the P3 model in Colorado could be enhanced by enabling legislation. Using Texas and Virginia as models, a local taskforce has been formed to investigate this possibility. •

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