



Special Transportation & Infrastructure Panel Releases Report on Public-Private Partnerships

Last week, the U.S. House of Representatives Transportation and Infrastructure Committee's Panel on Public-Private Partnerships (P3 Panel) released its final report and recommendations regarding how to improve the delivery, oversight, and transparency of P3s ([Report](#)). This Report comes at the same time the Obama Administration has taken a series of visible actions, including a Presidential Memorandum (see [GT Alert](#)), to enhance the use of P3s. The purpose of this *GT Alert* is to provide a brief overview of the Report and its key recommendations.

Overview of the Report

The P3 Panel's Report is the result of a series of roundtables, hearings and meetings held in 2014 regarding P3s, their delivery and how to balance the needs of the public and private sectors in delivering successful P3 projects. The Panel was formed in January 2014 at the direction of House Transportation & Infrastructure Committee Chairman Bill Shuster (R-PA) and Ranking Member Nick J. Rahall, II (D-WV) to study the use of P3s across a variety of infrastructure - transportation, public buildings, water and maritime infrastructure. The Panel was led by Chairman John J. Duncan, Jr. (R-TN) and Ranking Member Michael E. Capuano. (D-MA)

The Panel concluded that P3 procurements have the potential to deliver "certain high-cost, technically complex projects more quickly or in a different manner than would otherwise occur under traditional procurement and financing mechanisms." At the same time, the Panel cautioned that P3s are not a panacea for the country's infrastructure needs and not a solution to the long-term, comprehensive infrastructure challenges we confront. In particular, the Panel stated that, if done properly and for the appropriate infrastructure project or need, a P3 can achieve results that the public or private cannot deliver by themselves. Additionally, the Panel highlighted the critical role that federal credit and tax

programs, especially the U.S. Department of Transportation's (U.S. DOT) Transportation Infrastructure Finance and Innovation Act (TIFIA) financing and Private Activity Bonds (PABs), play in P3 project financing.

Based upon these general conclusions, the Report contains a series of specific recommendations for action by Congress and federal agencies, including:

- > Directing the U.S. DOT to establish a Transportation Procurement Office to work with the U.S. DOT agencies, states and other grant recipients on implementing design-bid-build, design-build and P3 procurement best practices, including P3 model contracts;
- > Encouraging the simplification and standardization of P3 contracts to strengthen public and private sector understanding of P3 contract terms, while maintaining flexibility to modify contract terms as appropriate;
- > Promoting further coordination between states regarding P3s by establishing state P3 offices that are tasked with developing regional partnerships to achieve common infrastructure objectives beyond transportation projects;
- > Continuing the TIFIA program and reviewing PAB eligibility to support infrastructure P3s across the jurisdiction of the Committee;
- > Clarifying statutory authority to allow states to use federal-aid highway funds to ensure robust competition in P3 procurements;
- > For new fixed guideway transit projects, requesting that the Federal Transit Authority (FTA) identify ways the Capital Investment Grants (New Starts) review and approval process can potentially be modified to better suit the unique nature of P3 procurements;
- > Modifying budgetary scoring rules for commercially-leased office space to enable operating lease treatment of long-term leases and fixed-priced, below market purchase options;
- > Directing U.S. DOT to require project sponsors that include federal investment (grants, loans or tax incentives) to conduct and make publicly available a detailed Value for Money (VfM) or similar comparative analysis prior to deciding to advance the project using P3 procurement; and
- > Requiring that the key terms and conditions of a proposed P3 agreement that includes federal investment be made available to the public at an appropriate time in the decision-making process and that project sponsors review and report publicly (within three years of construction completion or revenue service) on whether the private partner is meeting the goals and terms of the P3 agreement.

Conclusion

While the Panel made a series of specific and balanced recommendations regarding the appropriate use of P3s, the Report will likely contribute generally to the increasing emphasis and support for the use of P3s nationwide. As the Panel stated in the Report, P3s do not present a complete solution to the more comprehensive challenges facing infrastructure investment and the Highway Trust Fund. The confluence of the bi-partisan Report with the Obama Administration's current initiative to promote the expanded use of P3s, however, suggests an escalating federal focus on P3s for certain complex infrastructure projects. Likewise, while it may be some time before we see implementation of many of the detailed

recommendations in the Report, it reinforces the Obama Administration's independent efforts to highlight the important role played by TIFIA and PABs in successful infrastructure P3s and suggests that those programs will continue in future transportation authorization bills.

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Public-Private Partnerships

Greenberg Traurig has extensive experience in advising clients in the public-private partnership (P3) sector. Our P3 team is comprised of attorneys from a wide range of disciplines, including project and public finance, construction, environmental law and tax. We advise both private sector and governmental clients in all aspects of the P3 process, from planning, development, procurement and financing through to design, construction and operation. With our extensive resources and international reach, our team is well positioned to provide clients with legal services on projects throughout the United States and overseas.

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