

Public private partnerships (P3) are an increasingly popular method of delivering infrastructure projects in the US. They are primarily based on benefits they offer in terms of cost and schedule savings, risk-shifting, innovation, enhanced certainty of delivery, long-term cost advantages and other benefits.

In Colorado, P3s have been used at the state and local levels as a delivery mechanism for various forms of infrastructure. At the state level, the legislature established the High Performance Transportation Enterprise, now known as the Colorado Transportation Investment Office (CTIO), as an arm of the Colorado Department of Transportation (CDOT). CTIO is authorized to employ a P3 delivery mechanism for highways in the state, such as the recently completed Central 70 Project, the US 36 managed lanes project and other improvements. At the local level, efforts were pursued to employ P3 as a delivery mechanism for airport improvements and other public assets.

Recently, a major step occurred to expand the use of P3 at the state level in Colorado. The Colorado General Assembly enacted, and the governor signed, SB22-130. This permit states public entities, including the executive, legislative and judicial branches of the state government, to enter into agreements with private companies to develop and/or operate public projects. The bill excludes CDOT and any institution of higher education, while preserving any existing P3 authority available to those entities.

A P3 is defined as an agreement between one or more state public entities, and one or more private partners by which a state public entity may allocate responsibility or risk to a private partner to develop or operate a public project. In return, the private partner may receive the right to all or a portion of fees generated by the public project, availability payments made by the state public entity with respect to the public project, other public money or any other legally available consideration.

A “public project” is defined as any construction, alteration, repair, demolition or improvement of any state-owned land, building, structure, facility, asset or other public improvement suitable for, and intended for use in, the promotion of the public health, welfare or safety and any maintenance programs for the upkeep of such projects.

The stated purposes of the law include a finding by the General Assembly that the law is intended to assist the state to address its most “pressing and foundational needs, such as increased behavioral health capacity, broadband deployment, affordable housing development, and child care services.” It is likely these projects will have a priority under the new law.

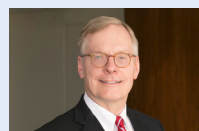
The bill specifies the project delivery methods or agreements that a state public entity may use to develop or operate a public project. The financing of a public project may be in the amounts and upon the terms and conditions determined by the parties to the agreement. The private partner and state public entity may use any money that may be available for the public project, and may enter into specified financing agreements.

The executive director of the Colorado Department of Personnel or the executive director’s designee is required, under the bill, to oversee any P3 undertaken pursuant to the bill. This ensures that each P3 undertaken by a state public entity within the executive branch of state government is in the best interest of the taxpayers of the state. Additional approval requirements by a separate committee are required for transfers of interests in state property.

The bill provides that the executive director shall establish requirements for state public entities to initiate requests for proposals, or receive unsolicited proposals, subject to the executive director’s approval. These requirements are expected to address issues such as advantages associated with the P3 delivery method, a value-for-money analysis, suitability of the proposal and other matters pertinent to the exercise of approval rights by the executive director. The bill also creates the Public-Private Collaboration Unit within the department to assist and promote the use of P3 as a delivery mechanism for state projects.

We will be following developments regarding the bill on behalf of our infrastructure clients.

## Contacts



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