

Public-Private Partnerships in Transportation

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Public-private partnerships or P3s are quickly becoming the new avenue of choice for meeting highway transportation needs. Recognizing that Florida's infrastructure has not kept pace with its growth, P3s have the potential to increase the private sector role in achieving Florida's transportation objectives while adding critical financial capital to expand Florida's infrastructure.

P3s are contractual agreements formed between a public agency and private sector entity that expand the private sector's role in public transportation projects where they had previously been restricted to performance on a fee for service basis. Public agencies determine the scope of the relationship based on their transportation needs, goals, and objectives. P3s are becoming so popular that the Federal Highway Administration (FHWA) even has a website dedicated specifically to defining and identifying the more common public-private partnership structures. Addressing the legal issues involving P3s is complex. In order to provide an overview we will do a three-part series on public/private partnerships. This is the first part and will address general background information regarding P3s. The second part will address legal concerns of the private sector. The third part will address the legal concerns of the public sector.

During 2003 and 2004 the Federal Highway Administration (FHWA) and the Office of the Secretary of Transportation sponsored a series of workshops on the topic of P3s and their applicability to the nation's highway development program. These workshops were designed to educate state and local legislatures and transportation agencies about P3s and their potential to leverage limited public resources to address critical transportation needs. An initial workshop was held in Washington, D.C followed by six P3s workshops in Florida, North Carolina, Washington/Oregon, Minnesota, Texas, and California. From the workshops, a report was drafted to address the elements of a successful P3 projects from a public and private perspective, impediments to P3s, strategies for overcoming these impediments, and next steps to promote P3s. The report also summarized the status of P3 programs within the above states that hosted a workshop. At the Florida workshop it was concluded that FDOT and its Florida's Turnpike Enterprise subsidiary have been at the leading edge of P3s for a number of years, with several successful projects. Moreover, there is an imperative need for communication, understanding public interests, clear guidelines for how process works, and an understanding of available tools for the continued success of P3s.

In the *FHWA Manual for Using Public-Private Partnerships on Highway Projects*, according to Richard Capka, the 16th Federal Highway Administrator, the current system

built to meet our transportation needs is suffering under the demands placed on the transportation system and the public sector, thus affecting our quality of life and the economy as a whole. “More and more states are beginning to discover the benefits of partnering with private sector firms to deliver transportation facilities. Public-private partnerships often provide greater flexibility in the design, construction, and maintenance of transportation facilities through the use of innovative financing, design, construction, and management techniques. As a result, these partnerships have the potential to reduce project costs and deliver higher quality transportation projects more quickly than with traditional financing and contracting methods.”

Additional key benefits of public-private partnerships in transportation include access to new and increased sources of capital and financing, relief from staff burdens, risk allocation, project cost savings, and expedited completion of transportation project delivery methods. In turn, P3s can be utilized for a large array of transportation functions including design-build, construction, operation, maintenance, and program management.

State laws and policies are important factors to the ease or difficulty of forming public-private partnerships. Impediments can include state enabling laws, centralized procurement, on low bid awards on construction contracts, prohibitions against tolling or commingling public and private funds, design-build laws and regulations against outsourcing certain agency functions, etc.

In conclusion, as P3s become a successful option in addressing funding shortages for transportation projects and as FDOT expands this model, they must continue to address important issues such as what are the key challenges to bringing the private sector to the table, especially for large transportation projects. In addition, they must also consider what incentives can be provided to the private sector, such as exemptions from certain governmental approvals, as well as, how to decrease impediments to the formation of public-private partnerships. Public transportation agencies in the state of Florida must create the right climate to attract, encourage, and facilitate the participation of the private sector in the development, financing, and operation of public-private transportation projects for the future of Florida’s transportation growth.

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