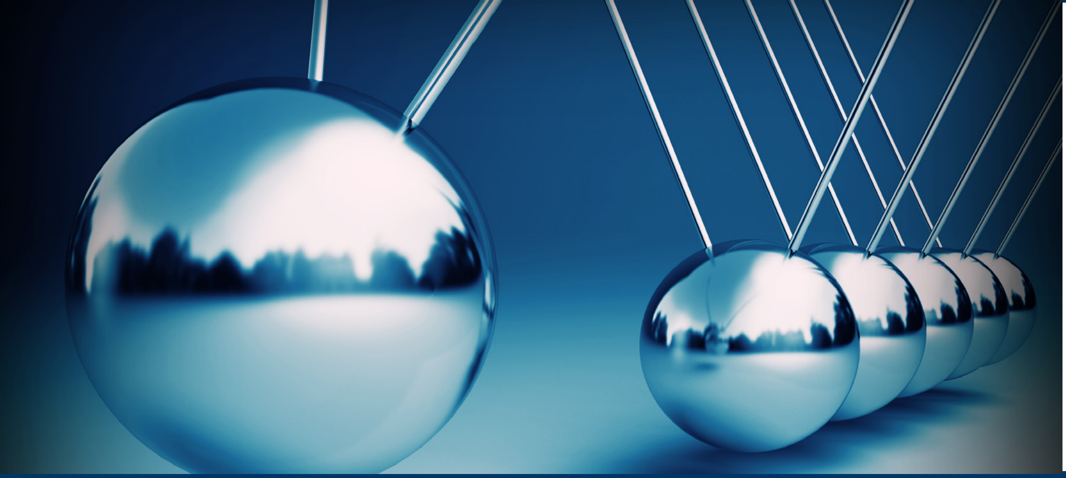

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Public-Private Partnerships: New Solution for First-Class Infrastructure?

"For too long, Congress has shied away from taking serious action to update our country's aging infrastructure." U.S. Senator Chris Murphy (CT)

Utilizing the backdrop of the recently closed I-495 bridge at the Port of Wilmington, Delaware, President Barack Obama, on July 17, 2014, announced a new federal public-private initiative to advance long-delayed transportation projects. The **Build America Investment Initiative** seeks to encourage collaboration between state and local governments and the private sector using federal credit programs and innovative financing strategies.

A memorandum sent by the President to all federal agencies mandates the development of recommendations for the White House "to promote awareness and understanding of innovative financing at the state, local, tribal and territorial levels of government …. and to increase effective public-private collaboration in infrastructure development."

Congressional Fumbling

After months of legislative wrangling, the U.S. House and Senate approved a short-term fix to shore up the federal Highway Trust Fund in late July, the fifth such patch in seven years. The measure transfers revenues totaling $10.8 billion into the fund to keep the $53 billion Trust Fund solvent through the end of May 2015. Without the prospect of a developing consensus on a long-term financial fix for this fund, Obama called for executive action to promote and stimulate alternative approaches to finance critical transportation infrastructure needs.

The Presidential Memorandum

Announcing that "First-class infrastructure attracts investment and first-class jobs," the President directed all federal departments and agencies to facilitate greater public-private partnerships to "develop, improve and maintain infrastructure across the country" where appropriate. In his Presidential Memorandum, Obama directed a series of actions to:

- Encourage "awareness and understanding" among state, local, tribal and territorial governments of public-private partnership opportunities for infrastructure development and improvement;

If you have any questions about the issues addressed here, or any other matters involving Business and Finance and/or Government Affairs issues, please feel free to contact:

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- Establish a Center of Innovative Transportation Finance in the federal Department of Transportation (DOT) to support innovative approaches to finance transportation infrastructure projects;

- Develop a federal website housed at DOT to serve as a "single point of access" for parties seeking information or assistance with the "Build America Investment Initiative;"

- Provide technical assistance to project sponsors on required environmental reviews;

- Create a fourteen-member federal working group co-chaired by the Secretaries of the Treasury and Transportation to support and advance public-private partnerships in the transportation sector, analyze roadblocks to public-private collaboration, identify innovative infrastructure financing mechanisms and share and support inter-departmental programs for infrastructure development; and

- Make recommendations for program initiatives to the President not later than 120 days from the execution of the memorandum.

Surface Transportation Infrastructure Crisis

Both the recent collapse of the I-5 bridge in Washington State and the 2007 failure of the I-35 bridge in Minnesota, point to the deficiencies of our nation's surface infrastructure programs. The American Society of Civil Engineers (ASCE) estimate that one-quarter of U.S. bridges are functionally obsolete or structurally deficient and another quarter of the nation's urban roadways that carry millions of cars and trucks each day are in such poor condition and congested that it is costing our economy an estimated $101 billion annually in wasted time and fuel. In Connecticut, according to the ASCE, 9.6 percent of the bridges are structurally deficient and 73 percent of the roads are in poor or mediocre shape. In Massachusetts, ASCE reports that 9.6 percent of the state's bridges are similarly deficient and 42 percent of the roads are in poor or mediocre condition. Nationally, studies have found that the current revenue shortfall needed to improve and sustain our highway systems to be as high as $105 billion a year.

Challenges

Public-Private Partnerships are contractual relationships between public agencies and organizations from the private sector. These partnerships can take many forms. In general, these partnerships shift the financial burden associated with projects from government to one or more private sector companies under a structured arrangement for the delivery of public services. Typically, such arrangements are bundled into a long-term contract in which a private entity controls and manages a public asset over a twenty to thirty year period in exchange for user fees. At the end of the contract, control reverts back to the government sponsor.

While European countries and Australia have a long history with public-private partnerships, their use in the U.S. has been relatively limited. Some recent U.S. examples include the Indiana Toll Road, the Chicago Skyway, the Eagle Urban Transit Project in Denver, the Port of Miami Tunnel, and the Hudson-Bergin Rail Line in New Jersey. In Connecticut, a public-private partnership currently is engaged in the redevelopment and operation of highway service areas. In Massachusetts, the state Department of Transportation is strongly considering a public-private partnership to build another bridge over the Cape Cod Canal.

The challenge for public officials employing this new development tool is to balance fiscal and performance benefits without sacrificing the need for transparency and accountability. Public officials must be mindful of the following:

- Degree of asset control
- Accurate valuation of an asset
- Misapplication of front-loaded payments
- Financial strength of private partner(s)
- Level of investment return
- Project goals and milestones
- Ongoing openness and transparency
- Continued stakeholder involvement
- Establishment of appropriate governance model

Opportunities

In difficult economic times, public officials must be open to new and innovative strategies for the delivery of goods and services to their constituencies. Thirty-three states permit public-private partnerships for public capital projects and activities. Opportunities exist to optimize underused assets, transfer capital and operations costs to the private sector and raise delivery levels for taxpayers. In Connecticut and Massachusetts, ripe for public-private partnership consideration are airports and rail stations, municipal energy facilities, municipal drinking and wastewater systems and hundreds of state and local parking facilities that clearly can be built, maintained and operated by private entities under public supervision.

Murtha's Public-Private Partnership Team

Murtha Cullina's public-private partnership practice consists of a team of skilled attorneys and government relations specialists with experience in finance, construction, energy, environmental, real estate, procurement and tax law and federal, state and local government relations. This multidisciplinary team brings individually tailored solutions to the complex and diverse transactions required for successful completion of public-private partnership projects. For questions and inquiries, please contact Attorneys Michael McDonough at mmcdonough@murthalaw.com, Michael Donnelly at mdonnelly@murthalaw.com, Andrew Wailgum at awailgum@murthalaw.com or David McQuade, Senior Government Affairs Consultant at dmcquade@murthalaw.com.