Public-Private Partnership
NEWS

MURTHA CULLINA

PUBLIC — PRIVATE PARTNERSHIPS: NEW OPPORTUNITIES FOR STATE AND LOCAL GOVERNMENTS

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"There is little to argue that the state's revenue picture will improve sufficiently to reduce massive, multi-billion dollar budget deficits over the next two to four years."

Peter Gunther, Senior Research Fellow
Connecticut Center for Economic Analysis

The Public-Private Partnership Practice Group at Murtha Cullina is pleased to provide clients and friends with information about topics of interest.

If you have questions about the issues addressed in this newsletter, or any other matters involving issues regarding public-private partnerships, please feel free to contact:

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Focus

State budget deficits will likely hit $140 billion in fiscal year 2011. Total state and local debt stands at $2.2 trillion and more than $2 trillion is needed over the next five years to build and repair state and local infrastructure. Given these circumstances, **public-private partnerships** will become an attractive option for cash-strapped governments.

The Fiscal Dilemma

Like a majority of the states, Connecticut is experiencing a dramatic decline in state revenues. Forty-one states have reported decreases in total tax revenues and Connecticut's revenues have fallen by 12.2%. Most economists predict that it will take state revenues several years to recover to previous levels and the Center on Budget and Policy Priorities projects that states' budget deficits will climb to $140 billion by 2011.

Connecticut continues to be mired in what is being called the Great Recession. Unemployment stands at 8.8%, new housing permits have fallen to a historic low, net business starts continue to decrease and new car registrations have marked their biggest drop in 46 years.

Compounding Connecticut's fiscal and economic problems is the fact that our state is carrying substantial public debt. According to Fitch Ratings, Connecticut has accumulated $13.7 billion in outstanding bonds, representing the highest tax-supported debt among the fifty states.

Nationally, in 2008, state and local debt rose to over $2.2 trillion. While this number appears small in comparison to the federal debt of $13 trillion, the financial hole these obligations create make it difficult, if not impossible, for states to balance checkbooks and for Washington to send additional financial resources to anxious public officials.

Adding to these burdens, Connecticut and its towns and cities are facing costly infrastructure problems. The American Society of Civil Engineers this year reported that 35% of Connecticut's bridges are structurally deficient or obsolete, 47% of the major roads are in poor or mediocre condition and the state's municipalities have $3.2 billion in drinking and waste water needs. Nationally, more than $2.2 trillion is needed to restore and repair similar structures and facilities.

To resolve these issues, Connecticut public officials will have to think creatively. With under-funded pension funds, massive health and benefit obligations, spiraling public debt, and diminished revenues, public officials must look for new solutions to save taxpayer dollars and to finance and operate needed state and local infrastructure projects.

Public-Private Partnerships

Increasingly, governments around the world are turning to **public-private partnerships** as an alternative to traditional financing for infrastructure projects. These public-private 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.

Public-Private Partnership Models

There are a wide variety of ways to structure public-private partnerships. A progression of these models (listed below) involves greater private control over management and facilities:

- **Design-Build**
- **Operation and Maintenance**
- **Design-Build-Operate-Maintain**
- **Design-Build-Finance-Operate-Maintain**
- **Design-Build-Finance-Operate-Maintain-Transfer**

Each of these public-private partnership models maintains aspects of public control through lease or contractual obligations and, again, requires the ultimate return to full public control upon the termination of legal agreements.

The Benefits of Public-Private Partnerships

Public-private partnerships have emerged as a new tool for the delivery of public services and infrastructure development for a number of reasons:

- **They are an alternative to privatization of public sector assets**
- **Offer a speedy approach to delivering cost-effective public services**
- **Transfer risk to private sector**
- **Provide access to alternative sources of capital**
- **Lower cost and greater innovation**
- **Substitute user fee revenues for general taxpayer dollars**

Challenges

While European countries and Austrailia have a long history of public-private partnerships, their use in the United States has been relatively limited. Some contemporary U.S. examples include the Indiana Toll Road, the Chicago Skyway, the Eagle Urban Transit Project in Denver, the Port of Miami Tunnel and current efforts to develop a public-private partnership for the renovation of the Louis Armstrong Airport in New Orleans.

The challenge to public officials seeking to employ this new tool will be to balance its 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 payment**
- **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. Opportunities exist in Connecticut to optimize underused assets, transfer capitol and operation costs to the private sector and raise services delivery levels for the taxpayers. For example, ripe for public-private partnership consideration are the state's airports and rail stations, municipal drinking and wastewater systems and state and local parking facilities that clearly can be built, maintained and/or operated by private entities.

Murtha's Public-Private Partnership Team

Murtha Cullina's public-private partnership practice group consists of a team of skilled attorneys and government relation specialists with experience in finance, construction, energy, environmental, real estate, procurement and tax law and federal, state and local government relations. This multidisciplinary practice group brings individually tailored solutions to the complex and diverse transactions required for the successful completion of public-private partnership projects. For questions and inquiries, please contact either Attorney Michael E. McDonough at mmcdonough@murthalaw.com or (860) 240-6056, or David J. McQuade, Senior Government Affairs Consultant, at dmcquade@murthalaw.com or (860) 240-6141.