



P3 Legislation Moving Slowly in the Short Sessions

The second year of a two-year session is when states adopt the next fiscal year budget, take care of urgent issues and go home. There usually is not time in the short sessions to fully consider issues such as committing a revenue stream for three decades under a public-private partnership (P3). Yet, states need to find a way to get needed public works projects completed, and P3s remain attractive because of the financing they provide, so that there are a number of P3s bills under consideration. The following is the SFAA report on P3 legislation given this week at the meeting of our Government Affairs Advisory Committee. Attached is an updated version of SFAA's chart of the 2014 P3 legislation.

There were bills in play this year in Virginia and Indiana to amend existing P3 laws. These are SFAA's priority states to amend the bonding provisions in existing law. In Virginia, there was a technical corrections bill for the transportation code and a bills addressing user fees under P3 agreements. In Indiana there was legislation to expand the types of projects that can be done as P3s, which included public buildings, park projects, airport or aviation related property or facilities, industrial development projects, and passenger or freight railway systems.

SFAA and AIA worked together and approached the bill sponsors in both states regarding amendments on the bonding provisions. In Virginia, the Administration changed from Republican to Democrat and the heads of all the agencies were newly appointed when the session started. The new Administration wanted time to study the P3 issue, which had been a priority project of the prior Administration. Virginia HB 1136/SB 91, which addressed tolling fees, died in committee. Virginia HB 311, which reorganizes the existing transportation laws and makes technical amendments, passed the legislature as introduced and is on the Governor's desk. In Indiana, the bill sponsor heard our concerns about the bonding provisions in the existing law and agreed to consider amendments in 2015. The bill sponsor was concerned that adding amendments on bonding or other issues would delay the 2014 bill, which already was coming up against crossover deadlines. When Indiana adjourned, the both the House and Senate adopted a conference report on SB 225 that revised the existing P3 law to address multiparty agreements in which other states were participating in the P3.

Of the pending legislation that would enact a new P3 law in a jurisdiction that currently does not have authorizing legislation, SFAA expects that the legislation in the District of Columbia, Georgia and Kentucky could be enacted. SFAA and AIA worked with the study commission there to have favorable bonding provisions included in SB 255. The bill passed the Senate, and a substitute bill passed out of committee in the House in early March, but it has failed to move in the House since then. The Georgia session ends this week, so it looks like SB 255 will not make it to the finish line this year. Kentucky HB 407 is on the House floor and the security provisions applicable to local governments need to be amended to clarify that bonding is required on the construction portion of the P3. Right now, AIA state counsel is looking for the right venue to seek amendments. The Governor and other interested parties are seeking floor amendments. A proposed toll bridge between Kentucky and Cincinnati, which likely will be a P3, is controversial and some of the stakeholders are seeking to include amendments that would make the P3 option unattractive to stakeholders and investors. We may have to seek amendments in the Senate. SFAA has received reports that the DC P3 legislation will be considered later this year. There is legislation in New Jersey to authorize the use of P3s for energy related projects and schools, and the local contractors' associations would like to move a broader P3 bill. There is plenty of time in New Jersey.

There also are several bills pending to enact authority for P3s that likely will wait until next year. Arkansas and New Mexico considered P3 legislation last year, and SFAA and AIA worked together to have the bonding provisions amended, but the bills did not pass. This year, both states prepared their budgets and adjourned this year. Pending legislation in Michigan and New York authorizing the use of P3s likely will not move this year. The Administration in Michigan believes that there is authority under current law to complete the P3s that are contemplated without going to the legislature with an issue that has generated partisan controversy in the past. There also are several P3 bills in New York for transportation, state and local government and school projects, but the Governor did not include P3s in this year's budget. We expect that P3 legislation will be considered next year in New York. The New Hampshire bill recently was heard. The bill would give the public owner the authority to reduce the payment and performance bond to 50% of the contract price. AIA state counsel provided testimony in opposition. The bill likely is headed to a study committee.

Of the legislation pending that would expand existing authority for P3s, SFAA expects that bills in Florida and Pennsylvania may move this year. The Florida bill would expand existing P3 authority to universities. The bill contains favorable language on bonding that SFAA worked with the Florida Surety Federation to include in a 2012 bill when Florida expanded its P3 authority to public buildings and again in 2013 when Florida expanded its P3 authority to local governments. This year's bill authorizing universities to engage in P3s contains the same bonding provisions from our work together in past sessions. The Pennsylvania bill would expand P3 authority to social infrastructure and has bonding provisions that need to be amended to assure that the construction portion of any P3 is bonded.

There is carryover legislation in South Carolina and Tennessee that is not moving this year, at least not yet. There also is carryover legislation in North Carolina, which convenes in May.