



Georgia Study Commission Recommends Use of P3s for Public Infrastructure

The Georgia Senate Public-Private Partnership Study Committee recently issued its final report. Georgia has a law in place that permits public-private partnerships (P3s) for state transportation projects. The State currently has over 100 million square feet of space in its public buildings, 80% of which is more than 20 years old. Georgia's resources are inadequate to fund all the needed repair and replacement of its existing inventory and development of new infrastructure.

The Study Committee concluded that all state and local agencies have a legitimate need to address infrastructure issues with P3s. Based on the discussions in its meetings, the Study Commission concluded that the P3 process needs to be streamlined and that a standardized framework must be developed for all state and local government P3 projects. The Study Committee recommended that SB 255, introduced in 2013, be enacted in the 2014 session.

The attached report summarizes the testimony and discussion at the Study Committee's three meetings. As expected, a major concern was the impact of long term P3s on Georgia's credit rating. A related concern was whether state and local governments would over-obligate themselves if unsolicited P3 proposals were permitted. Assuring that local contractors and workers perform the work on P3s and that small and emerging contractors are used in P3s also was raised. A related concern was the competitiveness in the P3 process if only large contractors could effectively be the private partners. The Study Commission also questioned what happens upon the insolvency of the private partner.

Many of the stakeholders that testified at the Study Commission's meetings urged Georgia to follow the Virginia P3 model because Virginia has the most experience with P3s for public infrastructure. In fact, a representative of the Virginia Administration testified at one meeting.

The following were cited as the benefits of the Virginia model: 1) Legislative approval of the P3 process and creation of a P3 oversight office; 2) transparency in the process with public hearings on any proposed P3 and public access to the resulting P3 contract; 3) required use of financial and other advisors paid for by the bidders; and 4) clarity, certainty and standardization of the P3 process.

The use of financial advisors, for example, was cited as valuable in negotiating the financing arrangements so that no downgrade in the state credit rating would occur. While some of the stakeholders told the Study Commission that public entities had less to worry about regarding insolvency because instances of default are low and the private partner now bears that risk, some stated that insolvency protections would be negotiated and included in the P3 agreement and the financial advisors would assist. The stakeholders also noted that state and local governments could negotiate provisions in the P3 agreement for use of local businesses and small and emerging contractors, and the P3 arrangement also gave them the flexibility to give preference to P3 proposals from bidders that included diversity plans or contained teaming arrangements. The clarity and certainty in the Virginia rules was cited as helpful in addressing unsolicited bids. Virginia requires a proposal and will consider unsolicited bids only for projects in its capital improvement plan. When receiving an unsolicited bid, Virginia seeks out other bidders. The Virginia P3 oversight office also assures that all P3s operate under the same rules and process.

AIA met with the Chairman of the Study Commission regarding bonding and had their state counsel testify at the final hearing to raise the bonding issue publicly. They report that no concerns were raised with bonding. SFAA has given AIA provisions to be included into SB 255 that specifically require bonding of the construction portion of any P3.