CARLTON FIELDS

Debt Deal, Shrinking Revenues Has States Looking to Private Sources for Infrastructure

August 26, 2011

NEW YORK – The economic recovery may be on hold but plenty of states continue to make progress with large-scale, billion dollar infrastructure projects that would seem challenging in far better economic times. The flow of capital from private companies is keeping many of these projects alive. The list of some of the P3 mega-projects underway in the United States includes the I-495 Capital Beltway in Virginia, Port of Miami Tunnel in Florida, North Tarrant Expressway and I-635 LBJ Expressway in Texas, Eagle P3 Commuter Rail in Colorado, and California's Presido Parkway project. “In the last four to five years we have had some spectacular successes” with P3 projects, particularly in Texas and Florida, Geoffrey Yarema, a partner at Nossaman LLP in California, said in an interview. Yarmea heads the firm's infrastructure practice group. Two trends are likely to make the list of public-private projects under consideration grow in the coming years, market participants and policy analysts say. First, federal appropriations for state transportation and infrastructure projects are expected to dwindle in the next budget cycle, a reality of the debt ceiling deal reached by Congress this month and the ongoing recession. States see further budget belt tightening as a real threat to transportation and infrastructure funding. Additionally, municipalities are dealing with declining revenue streams as property taxes nosedived in many regions of the country during the housing crisis. This drop in revenue will make it harder for local governments to raise capital for infrastructure projects in the bond market, industry participants and policy analysts say. **Expected Movement Toward P3s**. “States and local government are all going to be moving toward P3 modes of one sort or another,” said Larry Gold, shareholder at Carlton Fields, a law firm working on private financing deals for infrastructure projects in Georgia said. More and more states have passed P3 authorization legislation in the past three years to give officials the option of using private capital as they confront the question of how they will amass the billions of dollars in upfront costs to construct and maintain roads, bridges, airports, rail lines and ports amid a prolonged economic downturn and shrinking pools of infrastructure funding. P3 agreements typically give private firms responsibility for designing, building, financing, operating and maintaining public infrastructure for a set lease period that can range from 20 to 99 years in exchange for a portion of the revenue the infrastructure will collect over the same period. There are more than a dozen different finance models finance models for such projects that allow different levels of private involvement and state control. “For the right project, P3 will be a valuable tool,” Yarema said, adding “the value proposition might be more obvious in a capital scarce environment.” **State Legislatures Turn to P3 Bills.** By April 2011, the number of states with enabling statutes for public-private partnerships had jumped to 31 and Puerto Rico. Nine of these states — Delaware, Florida, Indiana, Maine, Missouri, North Carolina, Tennessee, Washington and West Virginia — give legislatures a say in whether some projects are approved, according to a June report by the American Association of State Highway and Transportation Officials and the National Conference of State Legislatures. In 2005, just 23 states had statutes authorizing state and local agencies to explore, and in some cases enter into, partnerships to finance infrastructure with private capital. During the 2010 legislative session, 21 states and the District of Columbia debated 52 legislative measures concerning transportation P3s, according to a report by the National Conference of State Legislatures that reviewed legislative activity through Oct. 1, 2010. In 2009, 33 bills were introduced in 18 states, according to NCSL. “There has been a trend for some time now with states putting more tools in their toolbox,” Yarema said of the growing trend among states to consider and pass P3 authorizing legislation. Participants in the P3 market are cautiously optimistic about the flurry of bills being introduced in statehouses across the country. “The fact that legislation is passed does not evidence deal flow,” Yarema said, noting that the flow of P3 deals remains “modest” but appears to be ramping up meaningfully in the near to midterm. The use of P3 models in the infrastructure marketplace has been making gradual progress for the past 20 years, Thomas Moore, a partner at Bracewell & Giuliani LLP, noted. While it may be a drop in federal funding to states and municipalities that triggers more interest in P3s, this new awareness “isn't a fad,” Tim Heilmeier, vice president at infrastructure firm HNTB, said in an interview. “There is a lot of expectation that P3's are going to help move the states forward.” There is also a general consensus among industry participants that P3 projects will find more traction in large metropolitan areas where higher traffic will make projects like toll roads and bridges more attractive and be less likely to be used for smaller “cookie-cutter” projects in low population areas. Frank Shafroth, director of George Mason University's Center for State and Local Government Leadership, sees P3-type projects emerging mostly in the country's large urban centers. “There's 80 percent of the country where it probably won't make sense,” Shafroth predicted, pointing to the country's more rural areas specifically. Moore agreed, saying, “urban projects are the ones that are more likely to be successful candidates for P3s.” **'Dark Clouds' on the Horizon.** Shafroth sees a number of "dark clouds" on the horizon for states that are likely to lead to a further transportation and infrastructure funding, which in turn would push more states to look for innovative ways to replenish infrastructure funds. He points to federal appropriations and the bulk of the gas tax which is set to expire Sept. 30, leaving Congress with limited time to carve out an agreement before the Oct. 1 start of the federal 2012 fiscal year budget. The debt ceiling deal signed into law by Pres. Obama Aug. 2 is also expected to bring uncertainty to the flow of federal dollars to states for transportation and infrastructure spending plans. The new debt ceiling agreement “is more likely than not going to be selected in a manner to guarantee no agreement, thereby triggering subsequent across-the-board triggers under the new debt ceiling law: how can a state possibly issue infrastructure bonds for sewer, water, transportation, etc. with any confidence whatsoever?" according to an analysis by George Mason's State & Local Government Leadership Center. Federal deficit reduction may have an impact on the municipal bond market, according to financial analysts. "Logically, there could also be a trickle-down effect that may impact counties, cities, etc.," an Aug. 12 analysis of the municipal bond market by MorganStanley SmithBarney said. While most of the states and local governments have "been in expenditure reduction mode for years and have proven adept at balancing their respective budgets," the analysis said "we continue to expect that these issuers will make the "hard choices" to offset any potential lost support from the U.S. government." The extraordinary downgrading of the sovereign debt of the United States from AAA to AA+ by the rating agency Standard & Poor's Aug. 5 also could also have an impact on state and local governments' ability to raise capital in the municipal bond market. States issue such debt to pay for large-scale infrastructure projects. "The loss of the sovereign credit rating, which Treasury debt has held for nearly a century, could raise the cost of borrowing for state and local governments, universities, school boards and other entities," the analysis by the State & Local Government Leadership Center warned. Downgrades of some AAA-rated state and local government issuers might result from the downgrade of U.S. debt. "A lower rating would make it more expensive for them to borrow money," a July report from the Pew Center on the States warned. "That could have important consequences — for instance, for their efforts to repair and replace roads, bridges and other infrastructure vital to the safety and economic vitality of communities across the nation." **State, Local Revenue Collections.** As economic battles play out on the federal stage the financial strains facing states are not much better. With growing fiscal uncertainty from Albany to Sacramento, governors have been forced to make sweeping cuts in the most recent budget cycle. In the past four years, nearly all states balanced their budgets by cutting spending and raising taxes, enabling them to close budget shortfalls totaling nearly $480 billion, according to the report from The Pew Center on the States. After two years of declines, state tax revenue collections grew by 9.3 percent in the first quarter of 2011 compared to the same quarter a year ago, according to the Nelson A. Rockefeller Institute of Government released in July. While this increase is positive, there is even greater competition for these funds today than a year ago and tax revenue collections "are still roughly 3.1% lower than prerecession levels, and state and local governments must continue to cut spending in order to balance their budgets," a June report from Asset Preservation Advisors warned. Financial analysts note that most states cut spending by decreasing aid to local governments. Local governments in turn have had to make "substantial cuts to compensate for shrinking property tax revenue and declining aid from states," according to the report by The Pew Center on the States. The mortgage meltdown eroded the property values in towns across the United States, siphoning off local revenue without the expectation of a turnaround in the near term. Local government tax revenue, the principal source of revenue for local governments, dipped 0.6 percent in the first quarter of 2011 compared to a year ago, according to the report by the Rockefeller Institute. As the revenue coming in falls off, so too does the municipalities' ability to raise funds in the municipal bond market for capital projects like infrastructure. "Many large-scale projects wouldn't be possible without debt-financing," a May report from the Washington State Budget and Policy Center warned. “Without the ability to issue debt, many essential state infrastructure projects would simply be too expensive to pay for up front. The ability to sell bonds (the major debt instrument for states) makes such projects affordable because their costs are incrementally paid over multiple years or decades.” **In Wake of Deal, Lawmakers Urge Private Partnerships.** All of this implies an environment of “capital scarcity” for infrastructure and transportation projects that could last a decade, market participants said. Washington lawmakers looking at the fiscal landscape ahead view the private sector as a necessary partner in the infrastructure arena more than ever. The day the House voted to pass the debt ceiling agreement, Democratic leaders pointed to the need for “a partnership between the public sector and the private sector” to address infrastructure investment to bring in private sector funds. “We need to facilitate efficient private sector investments in infrastructure. We need to compete from broadband to energy systems to ports,” House Whip Steny Hoyer (D-Md.) said at a press conference Aug. 2. **State Experiences, Interest Vary.** The P3 legislation passed by states during the 2010-2011 state legislative sessions varied significantly. For a number of states that passed legislation to authorize P3's, they are moving one step closer to making the decision to move ahead. HNTB's Heilmeier, who is working with Georgia's Department of Transportation on infrastructure projects, calls these the “middle” states and points to Georgia and California as examples. These states are not “viewing P3 as a temporary bridge,” Heilmeier said. “This is a long term model.” Yet plenty of other states continue to take a wait-and-see approach to the P3 model, despite having authorizing legislation in place. Other states continue to face opposition to the notion of private control over public assets. Market players point to P3 projects underway in Virginia, Texas, and Florida as the states that transportation officials are most interested in seeing completed. These states have large P3 projects underway and successful completion is expected to drum up support in other states. “What is going to bring states around is a larger inventory of successful P3 projects,” Bracewell's Moore said. The following sections highlight the experience of a number of states that have tried to or have successfully passed P3 legislation and the progress being made on P3 projects throughout the United States. **California Implementing 2009 Law.** California is implementing S.B. X2 4, which became law in 2009 and established the guidelines by which public-private partnerships on transportation projects could be crafted. The California Transportation Commission (CTC) approved the first such partnership in May 2010. The proposal was moved by the San Francisco County Transportation Authority (SFCTA), which sought to engage private contractors in its renovation of the southern entryway to the Golden Gate Bridge. Known as Doyle Drive/Presidio Parkway, phase two of the project proceeds apace, while Professional Engineers in California Government (PECG) challenges its compliance with the enabling statute in state court. The union claims the project lacks an isolated revenue source, or a toll, as required by S.B. X2 4, while drawing on availability payments from the State Highway Fund. The union also challenged earlier phases of the development process wherein private companies did prep work it says should have been the domain of the California Department of Transportation under the law. PECG did not prevail at the trial court level and, on Aug. 3, argued its case before the California Court of Appeals (*Professional Engineers in California Government v. California Department of Transportation,* Cal. Ct. App., A131449, *filed* 3/15/11). A decision is pending. SFCTA chose Golden Link Partners GP in January to handle the renovation. Golden Link is a consortium including Germany-based Hochtief PPP Solutions North America, Mina USA, HNTB Corp., Flatiron West Inc., and Kiewit Pacific Co. After the contract was signed, the state's legislative analyst said it was not a “good fit” mostly because of its lower-than-expected risk transfer to the private sector. In November 2010, the CTC authorized a design-build demonstration program for the $950 million Gerald Desmond Bridge Replacement Project in Long Beach. Under S.B. X2 4, the demonstration program allows for design-build procurement on five local projects and 10 Caltrans proposals. Since then it has awarded nine other such contracts bringing the overall total to approximately $2.2 billion. Caltrans said June 28 that one of those demonstration projects had culminated in its awarding a first design-build contract for the State Highway 99 Chowchilla Rehabilitation Project to Granite Construction Co. The $37 million project began construction in mid-July. In July, the San Diego Association of Governments (SANDAG) approved the purchase of South Bay Expressway, State Route 125, for approximately $345 million. South Bay Expressway and California Transportation Ventures, a private partnership, built and leased the facility from the state of California. The project was the first-ever recipient of a federal Transportation Infrastructure Finance and Innovation Act loan to a private toll operator. In 2010, the owners were forced to seek federal bankruptcy protection. A settlement was reached, and SANDAG followed with its decision to buy. **Texas OKs Private Toll Roads.** During the 2011 legislative session, the Texas Legislature authorized the Texas Department of Transportation to enter into a number of comprehensive development agreements with private partners to build toll roads in congested urban areas. S.B. 1240, which reauthorized TxDOT, was signed by Gov. Rick Perry (R) June 17. The law lists ten specific projects, most of them near Houston, Dallas/Fort Worth, or Austin. Although the Legislature approved a TxDOT budget of $19.8 billion, including federal funds, March 31 the state needs at least double the amount it is currently spending to maintain competitive roads, according to recommendations from the Texas 2030 Committee, a group of professors, officials, and members of the business community appointed by Texas Transportation Commission Chair Deirdre Delisi. The committee suggested a combination of toll roads, increased gasoline taxes, and increased user fees to provide the added money needed for transportation in a state that expects to see an additional 15 million people by 2035. However, while the Legislature approved the private toll road projects, it declined to increase the gasoline tax. Texas developed statutory authority for comprehensive development agreements in the 2005 and 2007 legislative sessions. **Illinois Successfully Passes P3 Bill.** Illinois was one of the states that found success this year with legislation promoting public-private partnerships. During its spring legislative session, the Illinois General Assembly passed House Bill 1091, creating the Public-Private Partnerships for Transportation Act. H.B. 1091 enjoyed wide support from a coalition of local units of government, municipal planning agencies, contractor groups, and labor unions. Gov. Pat Quinn (D-Ill.) has signaled general support for a PPP law for Illinois, but sources said he has some concerns about specific components of the legislation. H.B. 1091 specifically authorizes the Illinois Department of Transportation and the Illinois State Toll Highway Authority to pursue P3 agreements with private partners aimed at transportation infrastructure projects. The proposed law, however, bars airport authorities from pursuing PPP transactions. The legislation establishes guidelines for procurement, operational standards, financing, labor relations, law enforcement and other matters during the development, construction and operation of infrastructure projects under the PPP model. While H.B. 1091 encourages public private partnerships, it also places certain limitations on the state's authority to pursue such agreements. For instance, all PPP projects must be approved by the General Assembly prior to the proposal stage. All PPP projects must conform to corresponding regional transportation plans. Projects linked to existing transportation facilities must adhere to all existing employee contracts. And, the legislation specifies that property belonging to the state is not subject to taxation. MarySue Barrett, president of the Metropolitan Planning Council, said planning organizations such as hers have campaigned for P3 legislation in Illinois for five years. She said H.B. 1091 finally caught lawmakers' attention due to the state's difficult fiscal position, juxtaposed against the need for transportation infrastructure improvements. “We have a history of not being able to stick to timetables with respect to predictable investments in our infrastructure,” Barrett told BNA in an interview. “At the same time, infrastructure is one of the elements that makes Illinois' and Chicago's economies tick. We are a transportation crossroads and you can't coast on that reputation. You have to continually modernize. So funding for expansions and new services are hard to come by even in a good economy.'' Barrett said lawmakers finally saw the value of P3 as a tool for achieving massive infrastructure improvements without some of the financial pressures and operational risks that have historically been undertaken by the state. Barrett said H.B. 1091 was written as a “project neutral'” piece of legislation, permitting its use on a wide range of potential projects. But she noted that P3 has often been discussed as a tool for the development of the proposed Elgin-O'Hare West Bypass and the proposed Illiana Expressway. While regional planners see both projects as important drivers for economic development, state and local officials have been scared off by the terrific price tags associated with the projects. The Elgin-O'Hare West Bypass would extend the Elgin-O'Hare Expressway east to O'Hare International Airport and build a bypass around the airport, linking to Interstate 294 to the south, the expressway in the center and Interstate 90 to the north. The cost of the project has been pegged at $3.6 billion. A recent report presented to Quinn estimates the new expressway system could generate 78,000 short- and long-term jobs. Similarly, planners have long discussed the need for an Illiana Expressway, connecting northern portions of Illinois and Indiana. The 23-mile expressway would reduce congestion on roadways following the southern shores of Lake Michigan and create opportunities for more efficient east-west transportation between the two states. Regional planners estimate the project would generate up to 20,000 short- and long-term jobs. Barrett acknowledged that while Quinn is conceptually supportive of P3, he has voiced some uncertainties about H.B. 1091. Barrett expressed optimism that Quinn would sign the bill and request modifications at a later date. “We would prefer that any clean up issues be added to a trailer bill and these could be addressed in the fall veto session,'' Barrett said. **Ohio Governor Throws Support Behind P3s.** With Republican Gov. John Kasich at the helm, Ohio sees public-private partnerships in a more favorable light, most notably within the infrastructure realm. The state's current transportation budget (H.B. 114), would permit a private company to partially or fully fund construction costs for public infrastructure projects. Part of Kasich's larger plan to privatize economic development, the transportation budget offers private groups that partner on projects with the state potential profits through interest payments, toll collections or other user fees. Kasich says the public-private partnership approach is needed now as Ohio is fending off an $8 billion deficit projected for the 2012-2013 fiscal cycle. At the bill signing on March 30, Ohio Department of Transportation Director Jerry Wray said the use of private dollars would not add to the overall cost of projects and would enable the state to divert some of the risk on projects to the private sector. Wray also mentioned replacement of the Brent Spence Bridge at Cincinnati, which carries I-71 and I-75 across the Ohio River into Kentucky, as a project that could be completed at lower cost if the state partners with the private sector. The state DOT is studying which projects would benefit from private sector participation. Under the new law, Ohio can solicit partnerships for projects, or private groups can propose partnerships unsolicited. Legislation introduced in 2009 to authorize public-private partnerships to create a “transportation innovation authority” (H.B. 166) passed the Ohio House but died in the Senate Highways and Transportation committee when the two-year legislative session adjourned Dec. 31, 2010. After Kasich became governor this past January both chambers of the GOP-dominated Ohio General Assembly demonstrated support for the public-private partnership concept, passing the $6.8 billion transportation budget scarcely a month after it was introduced. **Georgia Projects Underway, Water Projects Possible.** Georgia's Department of Transportation has three public-private projects in the planning stages, and a recently enacted state law will make similar projects possible for the construction of water infrastructure resources. Real estate developer Forest City Enterprises Inc. and Atlanta-based Cousins Properties Incorporated were chosen in March by Georgia DOT to negotiate for the master contract to develop the second project through its Public-Private Partnership program, the construction of a multi-modal passenger terminal bringing together bus, rail, and subway service in downtown Atlanta. The team, which also includes Atlanta real estate development firm The Integral Group, design firm Cooper Carry, architectural firms FXFOWLE Architects, Parsons Brinckerhoff, and civil engineering firm Kimley-Horn, has proposed a below street level transit hub for the 119-acre site with “a vibrant mixed-use urban environment” above street level connecting local neighborhoods. The site is an undeveloped area known as The Gulch located near CNN headquarters, Philips Arena, the Georgia World Congress Center and the Georgia Dome. Three consortiums have bid on Georgia's first announced public-private road construction project, the addition of reversible managed lanes to portions of four interstates in the Atlanta area, known as the North by Northwest project. The project will add approximately 16 miles of new lanes along I-75 and about 14 miles along I-575, along with adding managed lanes to portions of interstates 285 and 20. A third project will create a public-private partnership to maintain and operate the state's highway rest areas and welcome centers in return for marketing of leased advertising space. The firms bidding for the Rest Area and Welcome Center Management Program are DBI and The InterConnect Group Inc., as well as Infrastructure Corporation of America and Traveler's Marketing. **P3s for Water Infrastructure Projects.** Local governments in Georgia also may wind up using P3s to finance water infrastructure projects under a bill (S.B. 122) signed May 2 by Republican Gov. Nathan Deal. The “Georgia Public/Private Water Supply Act of 2011” will allow state and local governments to voluntarily partner with private investors on the construction of reservoirs and other water infrastructure projects. In remarks at the time of the bill signing, Deal said "this legislation is particularly useful at times such as these when budget cutbacks hinder our ability to invest in new infrastructure." Deal said the bill would "stretches public dollars," adding that a lack of funding has hampered progress on increasing the water supply in Georgia despite a "punishing" drought. "Two years ago, Georgia made structural changes that vastly improved how we go about identifying and constructing reservoirs and other essential water infrastructure. The public-private partnership gives local governments the tools they need to take advantage of those changes," Deal said. The process outlined in the bill is similar to the public-private procurement code that has been successfully implemented at the Georgia DOT. Local governments can enter into contracts with private persons, firms, associations, or corporations to build reservoirs or other water infrastructure, according to the bill. The state has already identified 16 reservoir projects around the state that need investment, said Larry Gold, who is working on securing the private financing for one of these projects. "These are expensive projects," Gold said, adding "the state doesn't have the money." But the legislation passed by lawmakers will need some tweaking to make it possible for the project to move forward, Gold said. He is hopeful the state legislature will consider and approve an amendment to the law during the January session. **Maryland's Mixed Experience.** Maryland has had a mixed experience more recently with P3 projects but it remains committed to advancing several projects. The largest such projects stems from a partnership struck in 2010 with Ports America Chesapeake, a private company. The project to complete a new 50-foot-deep berth at the Port of Baltimore's Seagirt Marine Terminal in 2012 remains on schedule. In exchange for constructing the berth and installing four new cranes, Ports America Chesapeake obtained exclusive 50-year rights to operate Seagirt, the Port of Baltimore's largest shipping container terminal. The terminal improvement is needed to accommodate the larger "New Panamax" vessels that will be able to transit the Panama Canal after its expansion in 2014. The company pays the port administration an annual lease of $3.2 million under the agreement. Ports America Chesapeake assumed responsibility for the operation of Seagirt, including gate, terminal, and vessel activity, on Jan. 12, 2010, according to the Maryland Department of Transportation, parent agency of the Maryland Port Administration. Since the transfer of operation, "cargo tempo has increased significantly and terminal efficiencies have remained high," MDOT's said in a report to lawmakers. The Seagirt project was financed with $248.7 million in revenue bonds that will pay for the $82 million terminal expansion and other state transportation projects, with all bonds to be repaid from terminal revenues. In contrast to the port project, an ambitious public-private partnership to redevelop the 28-acre State Center parcel in midtown Baltimore has been stalled by a law suit. Maryland's Department of General Services and MDOT joined with a team of private partners in a $1.5 billion project to transform the site into a mixed-use, mixed-income, transit-oriented development hub containing office space, residential units, and retail sites. The center currently houses five aging state office buildings. Although supported by city officials and nearby community groups, the project has drawn the ire of several Baltimore businesses and property owners who fear the midtown initiative will hurt the city's downtown area, which already faces high vacancy rates. The owners filed suit in circuit court, arguing that the state failed to follow proper procurement procedures in selecting the private developers and that the project would unfairly create a void in the downtown commercial district (*Commercial Rental Property Owners v. Department of General Services,* Md. Cir. Ct. for Baltimore City, 24C10009242, *filed* 12/17/10). Judge Althea M. Handy July 13 denied the state's motion to dismiss, allowing the property owners' law suit to go forward. But state officials aren't abandoning the project and Maryland is hardly scaling back its efforts to find and use private financing for redevelopment projects because of one setback. “The State Center project has received all the state and city approvals necessary to proceed to final design and groundbreaking,” MDOT spokeswoman Erin Henson told BNA. “The lawsuit has delayed temporarily the financing of the private components of the project,” Henson acknowledged but the state and the developers “are continuing design work on the project and are considering ways to proceed with financing and construction in spite of the lawsuit.” **Partnership for Public Health Lab.** The Maryland Transportation Authority, which operates the state's toll roads, bridges, and tunnels, is awaiting responses from private developers to handle the redevelopment, financing, and long-term operation of two aging travel plazas on Interstate 95 under a 35-year arrangement that would require concession payments to the authority. Developers' responses are due Sept. 23. Additionally, Maryland officials have entered into a partnership with a private developer to build a new, state-of-the-art public health laboratory for the Department of Health and Mental Hygiene at the East Baltimore redevelopment project known as the Science and Technology Park at Johns Hopkins. The project will be financed through $185 million in lease revenue bonds to be issued by the quasi-public Maryland Economic Development Corp. (MEDC) and repaid through lease payments made by DHMH over a 20-year term, MEDCO executive director Robert Brennan told BNA. The private developer, Forest City-New East Baltimore Partnership, will manage the project and has begun the search for a prime contractor qualified to construct the high-tech, 234,000-gross-square-foot lab, including a bio-safety containment space and numerous other features. “This asset is viewed as a critical function for the state. One advantage of a public-private partnership is speed of delivery,” said Brennan. Once Maryland's Board of Public Works approves the lease that will provide the basis for the financing, MEDCO will be able to get a more accurate price from contractors and hopes to sell the bonds this fall, he said. MDOT also received responses June 30 to a request for qualifications seeking a private developer to redevelop an 11.77-acre Maryland Port Administration waterfront parcel in Cambridge, Md., into a private, mixed-use community. The department is similarly considering purchasing the Curtis Bay Ordnance Depot from the U.S. General Services Administration and seeking a private developer to turn it into a warehousing, storage, and distribution complex for the Port of Baltimore, although that project still is in the very early stages, MDOT's Erin Henson told BNA. **Study on Reporting, Oversight Ordered.** As the number of Maryland public-private partnerships has grown, so has the sentiment among some General Assembly members that lawmakers have had little involvement in projects that could entail the disposition of state assets, the assignment of future revenues to a private party, or the execution of leases that obligate the state to long-term budget commitments. In 2009, the General Assembly took initial steps to adopt reporting requirements for public-private partnerships by adding language to that year's budget bills. The effort was codified more formally into state law in 2010 with the passage of S.B. 979/H.B. 1370, which defined public-private partnerships, adopted reporting requirements for agencies that enter into them, and modified reporting requirements that already existed for the Maryland Transportation Authority. The 2010 legislation created a 15-member Joint Legislative and Executive Commission on Oversight of Public-Private Partnerships, which must submit a report and legislative recommendations to Gov. O'Malley by Dec. 1. The report will assess other states' oversight, best practices, and approval processes; recommend procedures for ongoing legislative monitoring and oversight; and make recommendations regarding whether a long list of "policy parameters" should be required for public-private partnerships. Although S.B. 979/H.B. 1370 took effect June 1, 2010, and the joint commission must report by Dec. 1, the panel has not yet convened, and Gov. Martin O'Malley (D) has not designated its chair. **New York Ends Session Without Action on Bill.** Legislation that would allow the state's principle transportation agencies to use public-private partnerships and other innovative financing arrangements for the development of transportation infrastructure projects were left in the transportation committees of each house when the state legislature adjourned its regular 2011 session in June. The bill (S. 5445, A. 8487), known as the Innovative Infrastructure Development Act, would create the Innovative Infrastructure Development Board to oversee use of public-private partnerships. The bill covers projects by the state Department of Transportation, the Metropolitan Transportation Authority, the New York State Thruway Authority, and the New York State Bridge Authority. The second largest union of state workers, the Public Employees Federation (PEF) opposed the bill. PEF, which represents white collar state workers, contends that public-private partnerships result in higher costs, pose the potential for private defaults, and restrict competition through no-compete clauses. The state Department of Transportation supports the potential use of public-private partnerships for large and complex projects and for so-called design-build projects that would allow for project design and construction under a single contract, Joan McDonald, the state transportation commissioner, said in testimony before the Senate Transportation Committee earlier this year. But she also said private-public partnerships should not be viewed as a substitute for stable, ongoing funding needed to maintain the state's infrastructure. P3s are also supported by business groups and the New York Building Congress, a coalition representing the design, construction and real estate industry. The Associated General Contractors of New York State also supports the use of public-private partnerships, but as a supplement to a strong publicly financed transportation infrastructure program. "Our massive transportation infrastructure is facing a crisis which current funding sources alone cannot address," State Sen. Charles J. Fuschillo (R), the chief sponsor of the P3 bill and chairman of the Senate Transportation Committee, said in a statement. "Public-private partnerships are a proven tool which governments across the country and around the world have used to build and rebuild their infrastructure." **Michigan Bridge Plans Blocked By Republicans.** In Michigan, legislation that would have authorized the state to enter into P3s died in the legislature in 2010 after opposition from Republicans. Different versions in the House and Senate were drafted specifically with a proposed bridge linking Detroit and Windsor, Ontario, in mind. Republicans argued the legislation was too broad and had the potential to give the Michigan, and Canadian, governments too much influence over roadways and construction, as it left the door open for additional P3s that could be drafted without legislative oversight. A narrower package of bills (S.B. 410, 411) that authorizes a partnership only for the bridge project was reintroduced this year, and Republican Gov. Rick Snyder has made passage of the legislation a priority. Like the old legislation, the new bills have broad support among Democrats and Republicans, as well as business leaders and labor unions. However, the bridge plan also has formidable opponents, among them the family that owns the Ambassador Bridge, the existing Detroit-to-Windsor crossing. The Detroit International Bridge Co. has hired consultant Dick Morris to campaign against the proposed New International Trade Crossing, and Americans for Prosperity has also begun a drive opposing the project. Opponents have cast the project, which the governor calls the New International Trade Crossing, as a “government bridge,” and say that cross-border traffic has declined to the point where a second crossing is not needed. DIBC has plans for a second span, which it would finance on its own, to be built to meet future needs. The Michigan portion of the proposed bridge and toll plaza would cost $1.3 billion, and, supporters say, generate 10,000 construction jobs and another 25,000 jobs once the project is completed. In a move designed to appease lawmakers' concerns that cash-strapped Michigan cannot afford any new investment, the government of Canada pledged to put up $550 million to cover Michigan's portion of the investment in the bridge, which would be built and operated by a private partner. Canada's money would be paid back through toll revenue, and the latest version of the legislation contains a provision barring the use of state funds for the project. Still, some Republicans say they remain unconvinced that Michigan taxpayers will not eventually end up paying for it, should toll revenue not meet expectations and private partners exit the venture. The bills are currently with the Senate Committee on Economic Development, which has been holding hearings on them. No timeframe for a vote has been set. **Colorado Lawmakers Considered Study on P3s.** A bill (S.B. 145) was introduced in 2010 in the Colorado General Assembly that would have required a feasibility study of a trolley system connecting a university campus near downtown Denver with a medical center about 10 miles to the east. The project would have cost upwards of $350 million, according to some estimates by City and County of Denver officials, and the bill's chief sponsor pulled it before it had a hearing. Then-Sen. Chris Romer (D) asked the Senate Committee on Transportation to kill the bill, according to the Colorado Legislative Council. The bill, which had been introduced Feb. 4, was scuttled April 22. Romer had proposed the project be funded as a public-private partnership, with the majority of the funding coming from private sector development that would occur along the corridor, as well as federal funding. The trolley would have run from the Auraria higher education campus to the Anschutz Medical Center campus in east Denver. House co-sponsor of the bill, Rep. Beth McCann (D), told BNA the project is unlikely to be proposed again in the near future, since there is not sufficient state funding for it. **Virginia Creates Infrastructure Bank.** Legislation to vastly increase state funding available to Virginia's public-private partnership program passed the General Assembly early this year. The legislation was a priority for Gov. Bob McDonnell (R), who campaigned for office promising to expand and improve the state's surface transportation without raising taxes. The measure was also a top priority for the state's road building industry. The House of Delegates and state Senate voted overwhelmingly to approve the final bill (H.B. 2527) April 6 creating a Virginia Transportation Infrastructure Bank, authorizing $1.2 billion in new bonding authority for transportation projects, and expanding the state's public-private partnership efforts. Although the thrust of the measure had broad support in the legislature, lawmakers were concerned about the bank itself having bonding authority, Richmond lobbyist Philip Abraham said Aug. 2. A lobbyist for the road building sector and other interests, Abraham told BNA that the enacted legislation gave that responsibility to the Virginia Resources Authority, an independent state agency created to manage bond issues for localities in the commonwealth. Another barrier to passage was the House's support for sending $150 million is state general funds to the bank annually. The Senate opposed the idea, and ultimately, the chambers agreed to a general fund deposit of $32.7 million in the fiscal 2012 budget. The budget bill (H.B. 1500) also officially designated to the bank $250 million in unspent or uncommitted funds found in a McDonnell-ordered audit of the Virginia Department of Transportation. Virginia has a handful of P3 projects underway and officials announced in August they will add a $1.9 billion tunnel connecting Norfolk and Portsmouth to its P3 portfolio. Skanska Infrastructure Development and Macquarie Group Ltd. will partner on the project, which will include $1.45 billion in equity, bank debt, and a loan from the Transportation Infrastructure Finance and Innovation Act. The companies created Elizabeth River Crossings, the private entity that will develop, manage and funds all operations and maintenance for 58-years and collect tolls. Virginia will contribute $395 million from a P3 fund in its transportation budget and retain ownership over the infrastructure. **Florida Moves Ahead with P3 Projects.** In Florida, three P3 transportation infrastructure projects have been completed and six remain under contract, Bob Burleson, president of the Florida Transportation Builders' Association, told BNA July 29. During the 2010 session, two P3-related bills (H.B. 497, S.B. 106) were introduced but died without being take up in committee. No P3-related bills were introduced in the 2011 session, which concluded in May, a legislative aide told BNA. The current projects under contract resulted from negotiations in past years between concessionaires and the Florida Department of Transportation (FDOT). Florida law (section 334.30, Florida Statutes) allows financial assistance from the private sector to advance projects programmed in the department's five-year work program using funds provided by public-private partnerships or private entities to be reimbursed from FDOT funds, the department said on its website. FDOT also may use state resources to participate in funding and financing the projects as provided for under its enabling legislation for projects on the State Highway System. In a telephone interview, Burleson said the nine P3 transportation projects were unaffected by executive orders issued by Florida Gov. Rick Scott (R) that required reviews of many state contracts. Scott issued the order shortly after taking office in January. “None of those contracts were stopped. There is really no holdup,” Burleson said. He added that about “half a dozen” other public-private transportation projects were being considered. Burleson declined to elaborate but said they likely would be announced in the coming weeks and would include projects that were either P3s or contractor-financed. A spokesman for Scott July 26 declined to comment on a request from BNA to state his policy on P3 projects. An FDOT spokesman was unavailable for comment. **Garden State Shows Little Appetite for P3s.** Not all states are amenable to private involvement in infrastructure. New Jersey lawmakers have shown little appetite for P3 legislation despite a push from the state's new Republican Governor Chris Christie. In 2010, a privatization task force named by Christie recommended enactment of public-private partnership (P3) authorization and oversight legislation as a key element in any strategy to address the state's transportation infrastructure funding crisis. But the state Legislature hasn't revived the P3 concept for transportation projects, despite the success of projects that were executed under authority provided in pilot P3 legislation enacted in 1997 that expired in 2002. The only pending legislation is a bill that would bar the sale, lease, or other transfer of state jurisdiction over certain highways, and that measure has remained in committee since its introduction in February 2010. New Jersey state lawmakers did approve one P3 authorization measure outside the transportation realm in 2010, with the enactment of S. 920 authorizing state and county colleges to enter into P3s in which the private entity assumes financial and administrative responsibility for construction or improvement of a project on campus. **Bill on Back Burner in Pennsylvania.** Pennsylvania House Transportation Committee Chair Rick Geist (R), who has been a strong proponent of P3s for nearly a decade, introduced an authorization bill that has been in position for a floor vote since March (H.B. 3). The measure stalled over objections from the business community to language requiring payment of prevailing wages on public-private transportation projects. The bill then moved to the back burner as the Legislature turned its attention to enacting a budget by the June 30 deadline before recessing for the summer. Earlier bills authorizing P3s have faced a similar fate. Bills authorizing state and local agencies in Pennsylvania to enter into public-private transportation partnerships (P3s) died in committee at the end of the 2009-2010 legislative session (Special Session House Bills 8 and 9; S.B. 693). Two of the measures had been introduced during a special session called by then-Gov. Edward G. Rendell (D) to address the state's transportation infrastructure funding needs, which a Rendell-appointed task force pegged at an additional $3.5 billion a year. The broadest of the three bills would have imposed a new oil company gross profits tax, raised the gas tax, and added surcharges on a variety of vehicle owner and driver fees to provide a revenue stream to pay for transportation projects. Republican Gov. Tom Corbett has attempted to revive the P3 debate since taking office in January. P3 authorization legislation is among the proposals under consideration by the Transportation Funding Advisory Commission appointed by Corbett. The recommendations in the commission's final report due out in August will help shape legislative action in the fall. But the Legislature's transportation funding options will be limited by Corbett's pledge not to raise taxes, which he signed during his campaign for governor. **West Virginia Budget Allows P3s.** In West Virginia, the state budget bill (H.B. 2012) enacted March 18, contains enabling legislation allowing the Department of Transportation to enter into public-private partnerships. At hearings on this portion of the bill, state transportation secretary Paul Mattox said traditional financing methods — chiefly fuel taxes — cannot generate the resources necessary to fund increasing costs of maintaining and upgrading highways and roads. But echoing the comments of West Virginia's former governor Joe Manchin (D), an ardent supporter of P3s, Mattox said the mostly rural state has few projects appealing to private investors. Currently West Virginia is exploring public-private partnership possibilities to accelerate construction of some infrastructure projects, according to the DOT. **Rhode Island Bill Dies.** In 2011, Rhode Island lawmakers considered a bill (S. 2132) that would have authorized the state Department of Transportation (RIDOT) to enter into public-private agreements with private entities for the planning, acquisition, financing, development, design, construction, leasing and other aspects of the development or operation of transportation facilities. The bill was introduced by then-state Sen. Leonidas P. Raptakis (D), but was never reported out of committee and died when the 2010 legislative session adjourned. Raptakis retired in 2010. According to the RIDOT, no similar bill was introduced in the 2011 legislative session which concluded in July. *By Stephanie Cohen, Tripp Baltz, Michael Bologna, Jeff Day, Drew Douglas, Nora Macaluso, Nancy Moore, Bebe Raupe, Kathy Lundy Springuel, Martha Kessler, Lorraine McCarthy, Gerald B. Silverman, Barney Tumey, and Stephen Siciliano.*

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