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Commentary Asset monetization and public facilities: New ground for P3s

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As municipalities, state agencies, and educational institutions look for creative ways to fund needed capital improvements, leveraging the value of underutilized public real estate assets through commercial development is a viable strategy. There is concern as to whether this type of project constitutes a Public-Private Partnership (P3) and is authorized or prohibited under states' P3 enabling legislation.

This concern hovers amidst the growth of the social infrastructure market, a class of public-facing facilities such as schools and courthouses, for which government agencies are increasingly seeking alternative funding sources. To address aging social infrastructure, some state and municipal governments are exploring P3 solutions, but many states' enabling legislation is either restrictive of or silent on the use of private capital and private delivery for social infrastructure projects. Even fewer states contemplate monetization of underutilized public assets as an allowable P3 structure.

Currently, 38 states have P3 enabling legislation, but few of these statutes allow monetization of public assets through commercial development. Legislators have assumed that P3 only applies to alternative delivery of an asset or service for public use through an availability payment or a concession model.

As an example, the State of Pennsylvania is delivering one of the nation's most significant transportation P3 projects, intended to replace over 500 aging bridges across the state, but its restrictive, transportation-focused P3 statute does not enable the delivery of social infrastructure, much less doing so by monetizing underutilized assets.

This limited approach to alternative financing, taken by so many states, results in missed opportunities to renew critical public facilities.

Asset Monetization as a P3

To demonstrate the viability of asset monetization projects as P3s, consider the alignment of a recent project in the City of Falls Church, Virginia and the definition of a P3, as promoted by the National Council for Public Private Partnerships (NCPPP). The City of Falls Church recently selected a team of private partners to develop a commercial economic development project on 10 acres of city-owned land, the proceeds of which are intended to offset the cost of delivering a new high school adjacent to the commercial site. NCPPP offers three primary criteria for any P3 project, each of which the City of Falls Church project meets:

- A contractual agreement between a public agency (federal, state or local) and a private sector entity.

The City of Falls Church will enter into a Comprehensive Agreement and a 99-ground lease with its private partner, dictating the uses to be constructed and the terms of payments.

- The skills and assets of each sector (public and private) are shared in delivering a service or facility for the use of the general public.

The City of Falls Church is contributing the land and assisting with entitlement; the private partner is contributing capital and real estate development and operational expertise. Additionally, the project will fund the development of the new high school and provide significant civic space.

- Each party shares in the risks and rewards potential in the delivery of the service and/or facility.

The City of Falls Church and private partner share in development risk as the City of Falls Church receives payments over time and as phases of development are completed. The City of Falls Church also shares in the long-term upside of the project through on-going capital event fees.
The City of Falls Church project is being executed under the authority of the Commonwealth of Virginia’s Public Private Education Act (PPEA). Virginia was an early adopter of broad-sweeping P3 legislation, passing the PPEA in 2002.

Some states are following Virginia’s lead to address mounting capital improvement and deferred maintenance needs. In August, the State of New Jersey expanded its P3 authority, previously focused exclusively on public higher education institutions, to include a broad set of local governments, school districts, public authorities, and state and county colleges. These entities can now enter into P3s for capital projects, including both social infrastructure and transportation. While regulations are still under development, New Jersey should look at the City of Falls Church’s example and create regulations that support and encourage monetization of underutilized public assets as one of the P3 tools available to municipal and educational institutions seeking to raise funds for critical facilities.

Conclusion

At a time when states are increasingly considering alternative financing or revisiting existing laws, recognizing asset monetization transactions that generate significant public benefit, like the City of Falls Church project, may encourage legislators to broaden the scope of allowable alternative financing projects, thereby allowing more social infrastructure projects to be funded by monetizing underutilized public and institutional assets.