THE NEW ENGLAND COUNCIL

Committee Update

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House Public-Private Partnerships (P3) Panel Releases Report

Dear Transportation Committee Member:

This morning, the House Transportation and Infrastructure (T&I) Committee's Public Private Partnerships (P3) special panel released its Findings and Recommendations on "balancing the needs of the public and private sectors to finance the nation's infrastructure."

The P3 Panel was commissioned by T&I Committee leaders in January and given the task of "examining the current use of P3s across the Committee's jurisdiction – including all modes of transportation, public buildings, water, and maritime infrastructure – and how P3s can help improve the Nation's infrastructure."

The special panel was chaired by Representative John Duncan (R-TN), and Representative Michael Capuano (D-MA) served as the Ranking Member. The two lawmakers "rolled out" the bipartisan report at a Capitol Hill press conference this morning where they were joined by T&I Committee Chairman Bill Shuster (R-PA) and a handful of T&I Committee colleagues who also served on the P3 panel.

The Chairman of the Panel, Representative Duncan, stated that "the use of public private partnerships is really growing across the nation" and added that they can "provide benefits, especially in high cost and technically complex projects." Mr. Duncan said that the panel had heard of examples where "states and localities are using partnerships to advance projects of national and regional significance," and mentioned several success stories from across the nation.

In his remarks, Representative Capuano noted the bipartisan nature of the panel and the report and praised the members of the panel. Mr. Capuano said that while he "pretty much adhered to what the Chairman said" in his remarks, he did "have some caveats." His first was to note that all throughout the hearing and roundtable process that the Panel undertook, not one person testified that "P3s could possibly take the place of federal investment" stating that the government "need(s) to put more money on the table to keep our infrastructure up to date and improve it." He made clear that he was not dismissing the role that P3s can play, but added that P3s are a specialized tool that "should not be seen as a panacea for our infrastructure needs across the country."

Mr. Capuano said that many feel P3s are "becoming important and necessary is because so many in public life lack the political will to do what is necessary" at all levels of government. He added that it is easier, for instance, for a private firm to raise tolls than it is for public officials to agree to do so.

Mr. Capuano stated that he wanted to make clear that "there are a lot of federal tax dollars on the table for each and every one of these P3 projects. There are none that are fully privately funded" adding that "we need TIFIA, PABs, traditional state and local funding" to make these P3 projects work. He said that "there is no free lunch – if you want to build a port you have to put public dollars on the table." He went on to say that the public dollars can be matched with private dollars, but to suggest that they are funded entirely with private money "is just wrong."

What follows is the <u>Executive Summary</u> of the P3 Panel's Report:

"The Panel on Public-Private Partnerships held roundtables, hearings, and meetings to examine the current state of public-private partnerships (P3s) across all modes of transportation, economic development, public buildings, water and maritime infrastructure and equipment. The Panel found that P3 procurements have the potential to deliver certain high-cost, technically complex projects more quickly or in a different manner than would otherwise occur under traditional procurement and financing mechanisms. However, given the limited number of high-cost, complex projects, P3 projects have the potential to address only a small portion of the Nation's infrastructure needs.

One consistent theme throughout the Panel's work was that P3s are not a source of funding and should not be thought of as the solution to overall infrastructure funding challenges. Adequate federal investment in transportation and infrastructure is a necessary precondition to modernize our Nation's highways, bridges, rail and transit systems, airports, ports, waterways, and public buildings – regardless of whether individual projects are carried out as P3s or not.

P3s are a financing and procurement tool, which in certain circumstances can accelerate the delivery of high-cost, technically complex projects and leverage private sector resources and expertise while mitigating construction and/or operations risk for the public sector.

However, regardless of the method of delivery or the source of financing, the cost of infrastructure projects are borne by the public – there is no free lunch. The Panel learned that a clear and transparent understanding of the relative costs and benefits of traditional and P3 project procurements to the public sector is a critical element to ensuring accountability.

The Panel's work analyzed whether, and under what circumstances, public sector investment can be targeted to harness the efficiencies generated by the competitive market and commercial incentives of the private sector. At the same time, the Panel recognized that P3 procurements require higher financing costs and significant additional legal and consultant costs to structure a successful P3 agreement. The Panel found that not all infrastructure projects are suited for a P3, and the cost and benefits of a P3 procurement approach must be carefully assessed.

Around the world, P3s play a significant role in the development and delivery of transportation and infrastructure projects. Internationally, P3s have had a mixed record of success and failure. The Panel found that successful P3s have several common elements, including leveraging the strengths of the public and private sectors, appropriate risk transfer, transparent and flexible contracts, and alignment of policy goals.

Unlike most other countries, the United States possesses a robust municipal bond market of approximately $3.7 trillion, of which a significant portion is for infrastructure financing. The Panel found that this is one major reason why the U.S. P3 market has not grown as quickly as in other countries (which do not offer tax-exempt municipal bonds) and why the potential for P3s in the United States is limited.

Despite the robust U.S. municipal bond market, there remain billions of dollars in infrastructure needs in the United States that are in search of funding. The Panel's work concluded that, in certain circumstances, a well-executed P3 can enhance the delivery and management of transportation and infrastructure projects beyond the capabilities of government agencies or the private sector acting independently. The Panel's work highlighted that the participation of the private sector in financing a project can bring discipline and efficiency to project delivery, which is too often lacking in the traditional public procurement process. Innovative solutions to complex infrastructure challenges, as well as injecting greater discipline and accountability into project delivery and performance, should be the standard for all infrastructure projects, regardless of how they are procured.

In certain circumstances, P3 projects can bring innovative solutions to infrastructure challenges as the private sector can bring a broad array of interested and invested parties to the project, often with substantial experience in the particular type of project being procured. In a P3 project, the oversight of investors and bondholders provides additional rigor and financial incentive to deliver a project on-time and on-budget. Furthermore, this focus on efficiency can also generate innovation. In many long-term concession agreements, the private partner is responsible for operations and maintenance of the asset. As a result, during design and construction of the project, the private partner will consider life-cycle costs to meet these long-term goals. The Panel found that traditional project delivery processes (i.e., design-bid-build methods) are not appropriately incentivized to focus on the long-term sustainability of the asset, and Congress should address this issue.

The Panel found that P3 agreements often involve significant federal assistance through credit and tax programs, such as the Transportation Infrastructure Finance and Innovation Act (TIFIA) program and Private Activity Bonds (PABs). The Panel found that TIFIA and PABs are often critical elements of P3 project financing. The important role that TIFIA and other federal credit programs play in lowering the cost of capital for infrastructure projects makes these projects more feasible for private sector investment.

Finally, the Panel found that state and locally elected officials are reluctant to raise infrastructure fees, such as highway tolls or water rates, which can lead to a lack of necessary funding for long-term capital infrastructure improvements. A well-structured P3 agreement may address this issue. However, such agreements, which often last 30 years or more, also circumscribe the ability of legislators to manage public assets in the future. It is critically important that P3 agreements protect the public interest because they often affect both current and future generations.

As a result of these findings, the Panel recommends a series of actions to balance the needs of public and private sectors when considering, developing, and implementing P3s to finance important infrastructure projects across the United States. These recommendations include:

Improving Public Sector Capacity. P3 procurements are complex undertakings, and can differ significantly from traditional project delivery and procurement procedures. P3s are most successful when there is a synergy between the policy goals of the public sector and the needs of private sector financing and expertise. The Panel identified the need for increased accountability in the highway and transit procurement process generally, including P3s. The Panel recommends several ways to improve the traditional design-bid-build procurement process and better structure P3 processes and agreements to maximize benefits to both public and private sector participants and to improve the capacity of the public sector to negotiate good agreements that result in benefits to the public.

Breaking Down Barriers to Consideration. The federal government can do more to ensure that our Nation's most pressing infrastructure needs are addressed through projects that expend taxpayer dollars more effectively. P3s, when carried out through well-designed contracts that ensure appropriate risk transfer and public benefit, may be an effective approach for certain types of projects. The Panel recommends several changes to federal programs to ensure fair consideration of P3 projects, where appropriate, and that the federal oversight processes take the realities of P3 procurements into account.

Ensuring Transparency and Accountability. P3s are long-term agreements that have been utilized to deliver and finance high-cost, complex infrastructure projects that involve multiple parties. Transparency is critically important to holding both the public and private partners accountable, and ensuring that the agreement is in the long-term interest of the public and all parties are meeting the terms of the agreement. The Panel recommends several ways to expand the use of analytical best practices, provide enhanced transparency, and ensure that the parties are held accountable. The Panel also recommends ways to ensure that there is an accurate accounting of the costs and benefits of the agreement and the total federal investment."

A copy of the report is attached.

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