

Insights: Publications

United States, Chapter 23

The Public-Private Partnership Law Review, Third Edition

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2016 saw continued developing interest in public-private partnerships (P3s) at both federal and state levels of funding. At the federal level, the trend toward P3 made more progress along avenues the Obama administration had previously paved in implementing the Transportation Infrastructure Finance and Innovation Act (TIFIA), the Fixing America's Surface Transportation (FAST) Act and the Water Infrastructure Finance and Innovation Act (WIFIA). In addition, the Obama administration oversaw a set of amendments to WIFIA as well as the Water Infrastructure Improvements for the Nation (WIIN) Act. Federal agencies in 2016 made progress establishing and expanding programmes to administer federal funding for critical road and water infrastructure projects. At this time, the federal government's commitment to P3 remains limited to 'horizontal' initiatives involving water systems and highways.

States have been more receptive to innovative P3 applications. Roughly two-thirds of states with P3 enabling legislation leave open the possibility of extending P3s from highway projects to transportation facilities such as airports and 'vertical' projects such as hospitals and schools. As significant vertical projects such as the University of California's 'Merced 2020 Project' and the City of Long Beach, California's Civic Center reach successful completion, we expect to see an increase in the number of single-purpose vertical projects built with shared risk and shared funding. We expect to continue to witness P3 agreements that rely on a combination of private and public funding of capital expenditures (utilizing tax-exempt sources such as capital bonds) and long-term operate and maintain concessions. Early indications from the incoming Trump administration suggest that tax credits may become a meaningful incentive to increase private investment in P3 projects.

2016 was less active than anticipated in the P3 clean energy sector, with no identified major P3 projects reaching financial close in 2016. Clean energy P3 projects remain a minority within the US P3 portfolio, while transportation, aviation and healthcare facilities continue to dominate the P3 landscape. We believe that clean energy as well as other high-tech projects will increase their P3 footprint in the US as the financial uncertainties of the election season subside and the underlying technologies mature and de-risk. Nevertheless, as elaborated hereunder, President Trump's rhetoric and executive actions taken thus far suggest that clean energy projects

may enjoy somewhat diminished federal support relative to recent years, which may impede the clean energy P3 presence in the US in 2017.

We anticipate 2017 to usher in the launch of several significant P3 projects. It also will see the early impacts of a new presidential administration that has simultaneously extolled the need for dynamic private investment in public projects while hinting at changes to the legislative and regulatory framework that could significantly alter traditional assumptions regarding the financial incentives, financing structures and divisions of scope and labour that public and private partners typically ascribe to P3s.

This chapter addresses the 2016 year in review and provides some additional discussion of what 2017 might hold for P3 in the United States.