

by Seth Eaton and William D. Locher

Give PPPs a CHANCE

Public-private partnerships may be a solution to California's infrastructure funding crisis

CONFRONTED WITH AGING, inadequate infrastructure and scarce financial resources to pay for construction of new facilities and renovation of existing ones, California has exhibited a renewed interest in public-private partnerships (PPPs). Rather than continue down the traditional path of limiting PPPs to transportation projects, the California Legislature is now exploring ways to tap the resources of the private sector and develop innovative means to finance and deliver a variety of infrastructure improvements.

PPPs are hardly a new concept. In 1652, the Water Works Company of Boston was the first private firm in America created to meet a public need by providing drinking water to the community. Over the past 350 years, private financiers and contractors have invested in and collaborated with government agencies to offer essential public services, including transportation projects. California was once a leader in using PPPs for projects with the Orange County Transportation Corridor Agencies and the San Joaquin Hills Toll Road. Other states soon recognized the value of these partnerships and began implementing different types of PPP projects, including water and wastewater facilities, power generation plants, and schools.

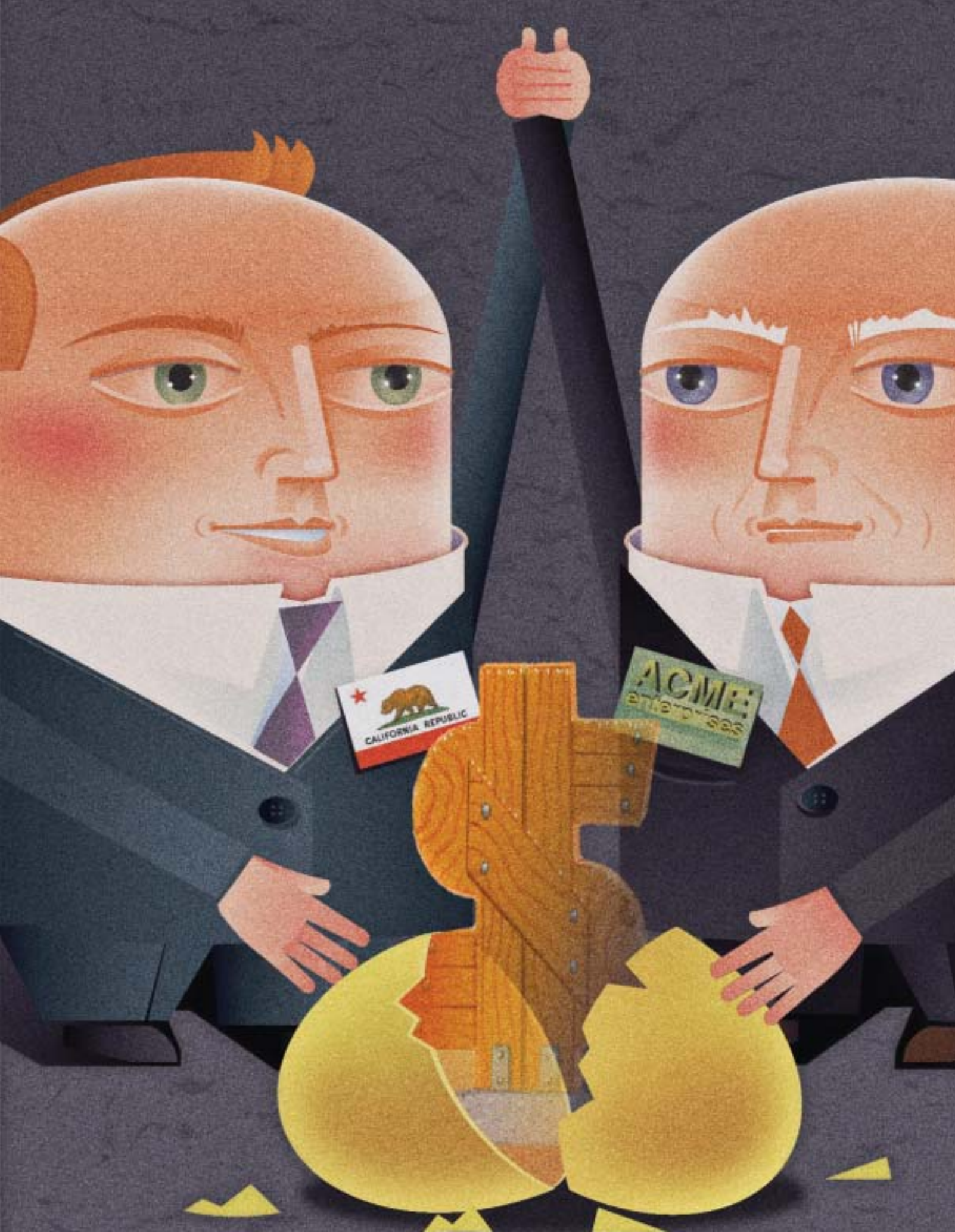
California has ample legal authority permitting the use of PPPs for public projects. Last year, the legislature considered several bills permitting new types of projects to be financed by PPPs as well as those that would have modified existing PPP programs. A new idea has emerged to use PPPs for state courthouse construction and improvements; however, legal and practical challenges need to be resolved to make this a reality.

A PPP has been defined as:

[A] contractual agreement formed between public and private sector partners, which allow more private sector participation than is traditional. The agreements usually involve a government agency contracting with a private company to renovate, construct, operate, maintain, and/or manage a facility or system. While the public sector usually retains ownership in the facility or system, the private party will be given additional decision rights in determining how the project or task

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will be completed.¹

PPPs differ significantly from privatization. In a PPP, the public agency and the private provider function as partners throughout project development and construction and, in some instances thereafter, during its operation and maintenance.

PPPs use many different means to deliver projects, including design-build operation and maintenance, design-build-finance-operate, and design-build-operate-transfer. Each one shifts a significant portion of a project's development risk to the private sector partner. The public benefit is that the time and expense normally needed to deliver a completed project is reduced in comparison to the traditional design-bid-build process. In return, the private partner receives steady cash flow by leasing the improvement to the public agency for a fixed period and sometimes from revenues derived from the improvement, such as tolls or user fees.

Privatization, on the other hand, is broadly defined as "the transfer of property or control of assets to deliver goods or services from the public to the private sector."²

Privatization agreements usually fall into two broad categories: 1) operational agreements that involve operations, maintenance, equipment replacement, or management services, and 2) disposition agreements that may involve encumbering or transferring a public asset to the private party and payment of nonoperational revenues (such as transfer or concession fees) to the public agency. Between the two, PPPs require significantly more collaboration between the public agency and the private partner than is customary under the privatization approach, and therefore offer greater flexibility in creating a development model for each project.

Courthouse Projects

Nearly 200 state and county court facilities are identified in the State Court Facilities Construction Fund as needing renovation, if not outright replacement. Despite this desperate need, two key factors are working against any attempt to satisfy it. First is the considerable cost to construct or renovate court facilities at a time when the state's coffers are essentially bare. The other is the current legal framework of court ownership and control that not only inhibits the state from funding new projects (assuming the availability of adequate funds) but also discourages local counties from making needed courthouse improvements.

As an example of the former, the estimated cost to replace the Long Beach courthouse alone is approximately \$340 million.³ Several years ago, Governor Arnold Schwarzenegger attempted to raise money for these and other related projects by proposing a bond issuance of \$1.8 billion; however, the legislature failed to support the proposal, and it was not placed on the ballot.⁴ Recognizing this problem, the legislature passed a more aggressive bill, SB 1407, in September 2008, creating \$5 billion in lease-revenue bonds⁵ for construction and renovation of court facilities.⁶ The bonds represent about half the estimated cost to bring all court facilities to safe standards and allow for future growth. The new law increases fees for civil filings; criminal convictions; parking violations; courthouse security; and license, registration, and mechanical infractions. A portion of the fees are then deposited into the Immediate and Critical Needs Account of the fund and will go toward construction and renovation of the most pressing projects.⁷

The legal impediments to financing courthouse improvements are exemplified by the interrelationship between the agencies involved in financing, developing, and operating court facilities—the Judicial Council of California and the Administrative Office of the Courts (AOC)—and local county agencies.

As the state judiciary's policy making body, the Judicial Council designates state court facilities "that may be built with [money] appropriated or otherwise available" from the construction fund.⁸ The

Judicial Council may use this authority to establish priorities for construction, recommend to the governor and the legislature those projects to be funded, and submit costs of proposed projects to the Department of Finance for inclusion in the governor's budget.⁹ The Judicial Council also has broad latitude to acquire property and create priorities for court construction.¹⁰ It is also responsible for developing performance standards for court facility proposals, including: 1) benchmark criteria for total project life cycle costs, 2) project cost comparisons to traditional delivery and financing options, 3) project risk assessments and allocations, 4) utility and energy conservation requirements (meeting or exceeding state standards), and 5) court security operations cost controls and reduction goals.¹¹ Finally, the Judicial Council has authority to consider court facility proposals that contemplate PPP arrangements.¹²

The AOC is the staff agency of the Judicial Council and implements projects that the Judicial Council selects. It also supervises court facilities under the control of the Judicial Council, including courthouse operations and general maintenance and repair. The AOC may use the construction fund for any of the following: 1) acquisition, rehabilitation, construction, and financing of court facilities, or 2) rehabilitating one or more existing court facilities together with the construction, acquisition, or financing of one or more new facilities.¹³ However, there are several notable restrictions and conditions on its authority. First, all projects are subject to the State Building Construction Act of 1955¹⁴ and the Property Acquisition Law, imposing stringent building requirements and constraints on the AOC's ability to acquire land for new courthouses.¹⁵ In addition, the AOC may not use money from the construction fund without prior authorization from the Department of Finance. Finally, 25 percent of all money collected by the fund from a particular county must be designated for trial court projects within that county, thus keeping the AOC accountable to the localities that generate the revenues.

Currently, many trial court facilities are owned and operated by the counties in which they are located. For example, Los Angeles County, with 50 court locations, has some facilities that were built in the 1950s, while most were constructed in the 1960s and 1970s.¹⁶ The county is struggling to cope with the dilapidated condition of its court facilities. The Judicial Council has been authorized to assume responsibility for these courthouses; however, the county must first invest significant time and money into these facilities.

By December 31, 2009, counties are supposed to transfer their courthouses to the Judicial Council.¹⁷ The actual number of facilities transferred pursuant to this mandate will depend on the ability of the Judicial Council to actively enter into agreements with the various counties. Also, it will depend on the counties' willingness to improve their facilities prior to transfer, because current law prohibits the transfer of facilities in poor condition.¹⁸ Any court facilities found to be deficient cannot be transferred unless the agreement provides for correction of the deficiencies.¹⁹ A court facility is deemed deficient if it 1) constitutes a significant threat to life, safety, or health, 2) has an unacceptable seismic safety rating, or 3) contains other deficiencies that "in their totality are significant to the functionality of the facility."²⁰ "[M]ajor structural upgrade[s]" are required to cure the dilapidated conditions in many county courthouses.²¹ In the case of seismic safety rating standards and some other statutory requirements, those upgrades can be very costly.²²

The state legislature has recognized the need to collaborate with local agencies and find innovative ways of financing infrastructure development. If it had been enacted last year, Assembly Bill 2278²³ would have added Section 65040.15 to the Government Code and required the Office of Planning and Research "to advise and educate local agencies and other interested stakeholders about the role that public-private partnerships can play in planning, studying, designing,

financing, constructing, operating, maintaining, or managing local infrastructure projects.”²⁴ The Office of Planning and Research would have also assisted in evaluating the feasibility of using a PPP for a particular project or whether a more traditional approach would be a better means of financing a proposed project.²⁵

In conjunction with the state’s efforts to implement PPPs, county offices responsible for court operations are actively investigating the use of PPPs for courthouse projects. Notably, the County of Los

Long Beach, and the Long Beach Redevelopment Agency, intends to use Long Beach to evaluate the effectiveness of PPPs to finance courthouse construction projects. The AOC has already solicited and received proposals and has entered into contract negotiations with a financial consultant and two law firms with regard to Long Beach and potentially other courthouse projects.³⁰ The next step will involve selecting a private partner and entering into a land transaction that will capitalize on the current facility at 415 Ocean Boulevard.³¹

Among the various options that the AOC is considering for completing the Long Beach and other courthouse projects are property transfers, sale/leaseback arrangements, and long-term leases. It is contemplated that legal counsel will work closely with the AOC and its financial consultant to develop the proper legal framework for construction of the new courthouse.

Other Projects

In addition to courthouse construction and renovation, the legislature has recognized the value of PPPs for other projects, including transportation and those that generate fees.

The use of PPPs is permitted under Streets and Highways Code Section 143. The California Department of Transportation (CALTRANS) and regional transportation agencies are authorized to solicit proposals or accept unsolicited ones and enter into “comprehensive development lease agreements with public or private entities” for transportation projects. Section 143 governs the planning, design, finance, construction, reconstruction, rehabilitation, improvement, acquisition, lease, operation, or maintenance of highway, public streets, rail, or related facilities supplemental to existing facilities. However, this authority is limited to four qualified transportation projects—two in Northern California and two in Southern California.

In selecting private sector partners, Section 143 provides that CALTRANS or a regional agency may use one or more approaches, including: 1) soliciting bid proposals, 2) prequalifying or “short listing” proposers before final evaluation of proposals, 3) final evaluation of proposals using either qualifications, best value, or a combination of the two, 4) negotiating with proposers, and 5) accepting unsolicited proposals while issuing requests for competing proposals. CALTRANS and regional transportation agencies thus have considerable flexibility in choosing a private partner for a transportation project.

Section 143 requires that the partnership agreement set performance standards for the project, such as levels of service, noise mitigation, and pollution control. Each project’s plans and specifications must also comply with the CALTRANS standards applicable to all state transportation projects. In addition, the partnership agreement may permit tolls or user fees to be imposed to cover the cost of constructing the facility, administration, police, and maintenance, while also allowing the private partner to earn a reasonable return on its investment. However, the agreement must provide for a complete reversion of the leased facilities to CALTRANS or a regional agency at the end of the term. Section 143 does not permit conversion of existing non-toll or nonuser fee lanes into toll or user fee lanes with the exception of a high-occupancy vehicle lane “that may be operated as a high-occupancy toll lane for vehicles not otherwise meeting the



Angeles has examined using PPPs for Los Angeles courthouse projects, prior to transferring ownership to the Judicial Council. The AOC has received approval to proceed with a PPP for the Long Beach Courthouse project.²⁶

Long Beach Courthouse

The decrepit state of the Long Beach courthouse perhaps best illustrates the problem that PPPs can remedy. The courthouse is among the most distressed facilities in the state. In fact, the deficiencies were so severe that the courthouse received a \$16 million emergency earthquake safety upgrade to ensure safe evacuation in the event of a major earthquake.²⁷

The AOC’s plans for Long Beach include a new court facility “with at least 31 courtrooms and all court support areas in a building that will comprise approximately 306,500 gross square feet.”²⁸ In addition—although not explicitly stated in the AOC’s plan—there is a strong indication that one alternative may be to capitalize on the significant value of the courthouse land by transferring ownership of it to a private developer or partner and having the private partner construct the new courthouse elsewhere.²⁹ All interested parties recognize that the Long Beach courthouse is in such poor condition that further improvements will not adequately address its defects and that a new structure is needed.

The AOC, in collaboration with Los Angeles County, the City of

requirements for use of that lane.” Finally, Section 143 prohibits CALTRANS or any regional agency from entering into a lease agreement with a public or private entity under the pilot program on or after January 1, 2012.

The South Bay Expressway in San Diego County (State Highway Route 125) is the only project that has proceeded under Section 143. This project was developed pursuant to a franchise agreement between California Transportation Ventures, Inc. (CTV) and the San Diego Association of Governments (SANDAG), the County of San Diego, the City of San Diego, and the City of Chula Vista.³² This agreement provides for up to a 45-year lease (to be extended if agreed to by the parties) and collection of tolls to reimburse SANDAG or CALTRANS for their costs, and CTV for one or all of the following: 1) capital outlay costs for the project, 2) the costs associated with operations, toll collection, and administration of the facility, 3) the costs of maintenance, police, and other services provided by the state, and 4) a reasonable return on investment.³³

The South Bay Expressway officially opened on November 19, 2007, and is a 10-mile state-of-the-art toll road, providing four traffic lanes, seven interchanges, and a high-tech toll collection system that allows drivers to pay tolls while maintaining highway speed. The successful completion of the project demonstrates that PPPs can be effectively used for state transportation projects.³⁴

In addition to Section 143, Streets and Highways Code Section 149.3 authorizes CALTRANS, in association with SANDAG, to construct “exclusive and preferential lane” facilities in cooperation with a public or private entity providing mass transit services. The section permits SANDAG to “conduct, administer, and operate a value pricing and transit development demonstration program” on a maximum of two transportation corridors in the County of San Diego.

Fee-Producing Projects

Under Government Code Sections 5956 et seq., a government agency may solicit proposals and enter into agreements with private entities for the design, construction, or reconstruction of specified types of fee-producing infrastructure projects, such as water and wastewater facilities.³⁵ The public entity may lease, license, or sell the infrastructure facilities to the private entity for a maximum of 35 years before rights revert to the public entity.

In 2007, Assembly Bill 1261 was introduced to amend this Government Code provision regarding infrastructure financing. According to the bill’s sponsor, Assembly Member Anna Caballero, local agencies and

private entities operating under this Government Code section are encountering problems because the statute’s lease/ownership/licensing provision is ambiguous.

If it had been enacted, this legislation would have assisted public-private partnerships on appropriate fee-producing infrastructure projects.³⁶ On April 19, 2007, AB 1261 was amended in the Assembly to accomplish several goals. First, the bill would require that the parties to any agreement for the design, construction, or reconstruction of certain qualifying fee-producing projects (as set forth in Government Code Section 5956.4) have adequate financial resources to perform the agreement. The bill defined “private sector financing” for public works projects broadly to include “cash and cash equivalents, loans, capital investments, in-kind contributions of materials or equipment, construction or equipment financing, carrying of costs during construction, [and] private sector assumption of risk.” Further, the bill required that the agreement provide security for the performance of the agreement and contractual provisions necessary to protect the funding and financial terms of the agreement.

Second, the bill would have extended the maximum term of the lease by the private entity to 99 years. Proponents of the bill argue the current 35-year maximum term does not provide sufficient time for a private entity to recover its substantial capital investment. By extending the term up to 99 years, a private entity would have the time needed to recoup its investment. However, there are concerns that in authorizing a 99-year term, local officials will not be able to anticipate the many contingencies that could arise over the course of a century.

Third, while Section 5956.6 currently authorizes a government agency to impose fees at the level needed to create an adequate revenue stream for a fee-producing infrastructure project, the bill would amend this section to allow for the user fees to be paid either to the government agency or the private entity. In addition, the amendment would have required that fees be used “exclusively to pay the government agency and private entity’s direct and indirect costs for project construction, financing, operations, fee collection, administration, maintenance, a reasonable rate of return to the private entity, and other project related costs.” Finally, the rate of return that the private entity proposed to earn would have been disclosed in the partnership agreement or provided for as part of the costs and fees during the procurement process.

Fourth, Section 5956.4 would have been amended to expand the current list of authorized projects to include sewer systems, power

transmission, and power distribution for which a governmental agency could solicit proposals and enter into agreements with private entities.

AB 1261 was amended further in the Senate on August 20, 2007. The Senate amendments modified Section 5956 to include additional items of “private sector financing,” including “debt assumption” and “letters of credit” while omitting “private sector assumption of liability relating to the project.” In addition, the Senate amendments omitted “power transmission and distribution” from the list of authorized projects. In response to concerns over a potential 99-year lease term, the Senate changed this to 50 years. It also amended the ownership and licensing provisions. These amendments also changed the selection criteria for choosing private entities to perform services under the public-private agreements and reverted back to language similar to the existing Section 5956.5, which provides that the demonstrated competence and qualifications of the private entity would be “a primary” selection criteria in choosing a private-sector contractor.³⁷

In addition to courthouse construction, transportation projects, and fee producing infrastructure facilities, several other statutory provisions authorize PPPs for less conventional projects. For example, the legislature mandated that the director of the Office of Emergency Services convene a working group consisting of, among other representatives, private sector experts in technology to evaluate the development of public-private partnerships to “expand an [emergency] alert system.”³⁸ Similarly, Education Code Section 81004 encourages community college districts to create PPPs to construct new education buildings or education centers. In addition, the legislature has declared its intent to promote the development of PPPs for a reuse plan at the California State University at Stanislaus.³⁹

Perhaps the most innovative PPP is the California Fuel Cell Partnership, consisting of seven government agencies, eight automobile manufacturers, four energy supply companies, and two fuel cell technology companies.⁴⁰ The Fuel Cell Partnership seeks to advance practical environmental transportation solutions with new fuel cell vehicle and hydrogen infrastructure technologies. It is touted as the first PPP to test fuel cell vehicles under real day-to-day driving conditions.

The renewed interest in PPPs is not limited to California. The Federal Highway Administration has developed a comprehensive Web site to inform the nation’s transportation professionals on “new forms of partnerships between the public and private sectors to plan, finance, build and operate the nation’s

transportation infrastructure.”⁴¹ The site provides background information, case studies, and summaries of the enabling legislation for 23 states having significant statutory authority for PPPs on transportation projects.⁴² These studies by the highway administration merely underscore the shift toward long-term concession agreements⁴³ and away from traditional debt and tax financing.

PPPs are not well suited to every public infrastructure project, nor will they single-handedly resolve the dilemma of aging public infrastructure and scarce public funds. However, PPPs may provide a viable alternative to the design-bid-build delivery system and to the traditional financing arrangements used on past public projects. The keys to a successful PPP are enabling legislation, strong public and private partners who are committed to the proposed project, a clear understanding of each partner’s objectives, and the appropriate allocation of risks and rewards in the final agreement. ■

¹ U.S. D.O.T., FEDERAL HIGHWAY ADMINISTRATION, REPORT TO CONGRESS ON PUBLIC-PRIVATE PARTNERSHIPS (Dec. 2004).

² KAMAL S. SHEHADI, LESSONS IN PRIVATIZATION: CONSIDERATIONS FOR THE ARAB STATES (UN Dev. Programme, Jan. 2002).

³ See LOS ANGELES SUPERIOR COURT ANNUAL REPORT 2008 EDITION, available at <http://www.lasuperiorcourt.org/courtnews/Uploads/142008311101628AnnualReport2008Issue.pdf>. “Construction costs have been rising rapidly, however, and the ultimate price is difficult to project.” *Id.* at 35.

⁴ See Memorandum from David E. Janssen, Chief Administrative Officer, County of Los Angeles, to Supervisor Michael D. Antonovich, Supervisor Gloria Molina, Supervisor Yvonne B. Burke, Supervisor Zev Yaroslavsky, and Supervisor Don Knabe (Apr. 19, 2006) (hereinafter Janssen Memorandum), available at http://lacounty.info/omd/q2_2006/cms1_043784.pdf.

⁵ STATE ADMINISTRATIVE MANUAL §6872, available at <http://sam.dgs.ca.gov/TOC/6000/6872.htm>. (Lease-revenue bonds are “a variant of revenue bonds used in the state’s capital outlay program. The revenue stream backing the bond is created from lease payments made by the occupying department to the governmental financing entity which constructs the facility.”).

⁶ See Press Release, Office of the Governor, Gov. Schwarzenegger Signs Legislation Continuing Investment in California’s Infrastructure, Economy (Sept. 26, 2008), available at <http://gov.ca.gov/press-release/10639>.

⁷ See 2008 Cal. Legis. Serv. ch. 311; see also GOV’T CODE §70371.5 (The total amount of the bonds may not exceed the amount that can be fully serviced by the fine and fee revenues deposited into the construction fund.).

⁸ GOV’T CODE §70391(l); see also Legal Services for Implementation of Public Private Partnership Projects, and Long Beach Courthouse Construction and Development: RFP No. OGC-070710-RB (July 11, 2007), available at <http://www.courtinfo.ca.gov/reference/rfp/legsvcs3-rfp.htm> (hereinafter RFP Legal Services).

⁹ *Id.*

¹⁰ The Judicial Council creates the facilities contracting policies and procedures, subject to consultation and review by the Department of Finance, for the acquisi-



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tion and construction of court facilities. See GOV'T CODE §70374(b).

¹¹ GOV'T CODE §70391.5 (Performance expectations at all times are to be consistent with current state building practices.). In April 2007, the Judicial Council adopted the *Judicial Branch AB 1473 Five-Year Infrastructure Plan* for fiscal year 2008-09. The latest version of the plan includes an updated trial court capital outlay plan of 175 new construction, addition, and major renovation projects, as well as a summary of the 2008-09 project funding requests submitted to the Department of Finance. See JUDICIAL COUNCIL OF CALIFORNIA, JUDICIAL BRANCH AB 1473 FIVE-YEAR INFRASTRUCTURE PLAN FISCAL YEAR 2008-2009, available at http://www.courtinfo.ca.gov/programs/occm/documents/final_to_dof_5yr_plan_fy0809_07_06_01.pdf. See also <http://www.courtinfo.ca.gov/programs/occm/5year.htm>.

¹² See GOV'T CODE §70391.5.

¹³ See GOV'T CODE §70374(c),(e). Section 70374(c)(1) and (2) appear to overlap; however, this apparent redundancy may have been intentional. Construction under §70374(c)(1), as modified by §70374(e), is partially exempt from the State Building Construction Act of 1955, while §70374(c)(2) has no apparent exemption.

¹⁴ GOV'T CODE §§15800 *et seq.*

¹⁵ *Id.*

¹⁶ See 2007 ANNUAL REPORT FOR THE LOS ANGELES SUPERIOR COURT, available at <http://www.lasuperiorcourt.org/courtnews/uploads/14200728112582007AnnualReport.pdf>.

¹⁷ GOV'T CODE §§70321 *et seq.*

¹⁸ The Chief Administrative Office for the County of Los Angeles has indicated its ongoing efforts to seek an author for legislation to implement PPPs for court-

house projects, including replacement of the Long Beach Courthouse. See Janssen Memorandum, *supra* note 4. ¹⁹ GOV'T CODE §70326(b).

²⁰ *Id.*; see also GOV'T CODE §70324 (If the transferred building has an acceptable, yet poor, seismic safety rating, the county shall remain responsible for damage and injury related to seismic activity and shall "indemnify, defend, and hold the state harmless" for any related claims.).

²¹ See Janssen Memorandum, *supra* note 4.

²² See GOV'T CODE §70323-70327.

²³ A.B. 2278 (as amended Apr. 23, 2008).

²⁴ *Id.*

²⁵ *Id.*

²⁶ See City Announces New Downtown Long Beach Courthouse to Move Forward: Public-Private Partnership Approved by State of California, available at <http://www.longbeach.gov>.

²⁷ See 2008 ANNUAL REPORT, *supra* note 3, at 35.

²⁸ For planning purposes, it has been assumed that the building will be seven stories tall, including a parking level below ground, in-custody holding cells, a vehicle sally port, surface parking, and landscaping. See RFP Legal Services, *supra* note 8.

²⁹ *Id.*

³⁰ On Sept. 18, 2007, the AOC published a letter announcing its election to enter into contract negotiations with Ernst & Young Orenda Corporate Finance, Inc., for consulting services on the public-private partnership for the new Long Beach Courthouse. See <http://www.courtinfo.ca.gov/reference/rfp/pubprivpart-rfp.htm>. See also Notice of Intent to Award: Legal Services for Implementation of Public-Private Partnership Projects, and Long Beach Courthouse Construction and Development: RFP No. OGC-070710-RB (Sept. 25, 2007), available at <http://www.courtinfo.ca.gov>.

³¹ See *supra* note 26.

³² See STS. & HIGH. CODE §143.1(a).

³³ *Id.* at §143.1(a)(1)(A)-(D).

³⁴ SR 125 was a planned freeway system dating back to 1959 that remained on SANDAG's calendar through 1989. See South Bay Expressway, Media Release (Nov. 16, 2007), available at <http://www.southbayexpressway.com>.

³⁵ GOV'T CODE §§5956 *et seq.*; see also GEORGE PASSANTINO, ENABLING PUBLIC-PRIVATE PARTNERSHIPS FOR TRANSPORTATION IN CALIFORNIA (Sept. 2006), available at http://www.reason.org/california/ballot/pb50_ppp.pdf.

³⁶ In addition to A.B. 1261, Assembly Member Caballero introduced A.B. 1756 in order to establish a state clearinghouse to help local agencies set up public-private partnerships for local infrastructure financing. See Press Release, Assembly Member Anna Caballero Calls for Increased Focus on Local Public Private Partnerships (Jan. 8, 2008), available at <http://democrats.assembly.ca.gov/members/a28/press/20080109AD28PR02.htm>.

³⁷ The history of A.B. 1261 (2008) is available at <http://www.leginfo.ca.gov/bilinfo.html>.

³⁸ See GOV'T CODE §8593.6(b)(1)(G).

³⁹ See EDUC. CODE §89450(a)-(b).

⁴⁰ See Cal. Exec. Order No. S-7-04 (Gov. Schwarzenegger, Apr. 20, 2004).

⁴¹ Federal Highway Administration, Public Private Partnerships, at <http://www.fhwa.dot.gov/ppp>.

⁴² Federal Highway Administration, PPP Model Legislation, at http://www.fhwa.dot.gov/ppp/tools_state_legis_model.htm.

⁴³ The long-term concession agreement is a form of PPP involving a long-term lease or equity interest to the private provider as compensation for construction of the project. JEFFREY N. BUXBAUM & IRIS N. ORTIZ, PROTECTING THE PUBLIC INTEREST: THE ROLE OF LONG-TERM CONCESSION AGREEMENTS FOR PROVIDING TRANSPORTATION INFRASTRUCTURE (June 2007), available at <http://www.usc.edu/schools/spdp>.



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