

Pennsylvania Lawmakers Consider Expansion of Public-Private Partnership Legislation



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by James P. McGraw, III, Esq.

In recent years, public entities across the country have increasingly turned to a public-private partnership model for construction or renovation of buildings and infrastructure. Commonly known as a “P3,” a public-private partnership is a contractual agreement between a governmental entity and a private sector company.

In a typical P3, responsibility for financing, designing, building, maintaining, and even operating a public facility is transferred to the private entity, thus relieving the public entity of traditional competitive bidding requirements and, in theory, allowing it to benefit from the private sector’s enhanced motivation to achieve greater cost and time efficiency. The private entity is then paid for its services by way of existing revenues, or through the collection of fees, tolls, or other forms of installment payments over the course of time.

Pennsylvania has, to date, lagged behind much of the nation in its approval of the use of P3s. In 2012, Governor Corbett signed a bill authorizing the use of the P3 model, but that bill applied only to transportation-related projects. Recently, however, there has been an effort by some legislators to expand the Pennsylvania P3 legislation to include projects undertaken by local governmental units, municipal authorities, and school districts. House Bill 1838 would amend the Pennsylvania Procurement Code to authorize such projects, and would exempt them from the requirements of the Pennsylvania Separations Act, which requires competitive public bidding of separate prime contracts for general construction, electrical, HVAC, and plumbing contracts. Under the proposed legislation, eligible projects would include educational facilities, facilities used principally by a government agency, facilities used for public parking, public water treatment or disposal facilities, storm water management infrastructure, and infrastructure for communications and utilities.

A governmental entity planning to undertake an eligible project would have the ability to solicit P3 proposals, evaluate which proposal provided it with the best value for its desired outcome, and enter into a partnership contract with the private company it selects. The terms

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New Child Protection Bills Signed into Law

by Lisa M. Colautti, Esq.



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Recently, Governor Corbett signed two more bills that are part of a comprehensive child protection package. House Bill 434 amended the Child Protective Services Law (CPSL) and takes effect December 31, 2014.

There are several important changes under the new CPSL. First, the standards for school employees no longer differ from the standards imposed upon other employees of other workplaces. House Bill 434 repeals the part of the CPSL which contained separate standards for substantiation and reporting procedures for school employees. School employees are now required to report any time they have reasonable cause to believe that a child is a victim of child abuse. Reports shall be made immediately by telephone to DPW’s Childline and, within 48 hours after the oral report, in writing. House Bill 434 also repeals the language regarding background checks for school employees. The new CPSL provisions state that school employees who are subject to the clearance requirements in Section 111 of the School Code must still abide by those requirements and in addition, must obtain a child abuse clearance statement. CPSL further directs that any school employees who are not governed by the School Code or volunteers who will be working directly with or caring for children must obtain a child abuse clearance statement before being permitted to work or volunteer in the school. This may represent a change in policy for some school districts that will need to be addressed prior to December 31, 2014.

Senate Bill 31, which was also signed into law by Governor Corbett, will require that any school

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Prayer at Local Government Meetings

by Nicole Wingard Williams, Esq. and Ira Weiss, Esq.



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In the recently decided *Town of Greece v. Galloway*, the U.S. Supreme Court upheld the practice of offering prayer before the start of town meetings. 572 U.S. ___ (2014). In the 5-4 decision, the Court

ruled that the Greece's town council could continue to permit prayer before the start of a meeting.

The controlling opinion closely examined the Court's previous decision in *Marsh v. Chambers*, which held that there was no First Amendment violation in the Nebraska Legislature's practice of opening its session with prayer. 463 U.S. 783 (1983). In *Marsh*, the Court concluded that legislative prayer was a tradition long followed by Congress and state legislatures and that it did not violate the Establishment Clause, even if religious in nature. In *Greece*, the Court found that the prayer practice in the town of Greece fit within this tradition and held that the First Amendment was not violated by the town's practice of opening its meetings with prayer that does not coerce participation by non-participants.

While the ruling does permit prayer before local government meetings, it should be noted that the ruling does not permit prayer at public school or before any public school-sponsored activities such as commencement or baccalaureate ceremonies. In determining whether the act of prayer compelled citizens to engage in religious observance, the Court in *Greece* noted that this is a fact-sensitive determination that requires consideration of both the setting in which the prayer arises and the audience to whom it is directed. In *Greece*, the prayer was being held before a legislative meeting where the prayer "invites lawmakers to reflect upon shared ideals and common ends before they embark on the fractious business of governing". This same rationale cannot be extended to public school-sponsored activities. Additionally, part of the Court's constitutional prescription for legislative prayer arising from its decision in *Greece* was that the government body may only allow prayer when most of the audience consists of adults. The Court took care to distinguish the holding of *Lee v. Weisman*, where the Court found that a religious invocation at a graduation ceremony was coercive because school authorities maintained close supervision over the conduct of the students and the substance of the ceremony. 505 U.S. 577 (1992). Despite the Court's ruling in *Greece* which permitted prayer at a town meeting, prayer in public schools and before events sponsored by public schools is still forbidden because it may tend to coerce young people in a religious way.

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employees report suspected child abuse immediately to DPW's Childline and immediately thereafter shall notify the person in charge of the school.

It is important to note that these changes do not affect a school administrator's duty to file mandatory reports with the Department of Education, if the perpetrator of the suspected child abuse is a professional school employee. To schedule a training session on the new Child Protective Services Law or for assistance revising your current policies to ensure compliance, contact Weiss Burkardt Kramer LLC today!

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of the contract would then govern all aspects of the public-private arrangement going forward, including maintenance, operations, and payment obligations for years into the future.

There is no timetable for action to be taken on the current bill, and it could undergo significant revisions prior to any vote. However, it is considered likely that an expansion of P3 authorization in Pennsylvania will occur in the near future. Given the profound impact that this legislation could have on how local governments and school districts might approach any new construction or major renovation, the progress of this law should be monitored by all governmental entities, especially those who might undertake any eligible project in the coming years.

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