

PUBLIC HEARING

ON

**Bill 20-595, “The Public-Private Partnership Act of 2013”
and the
Oversight of Implementation of the
“Pay for Success Contract Authorization Act of 2014”**

**Before the
Committee of the Whole
Council of the District of Columbia**

The Honorable Phil Mendelson, Chairman

**Thursday, June 12, 2014, 1:00 PM
John A. Wilson Building, Room 500**



**Testimony of
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Good afternoon, Chairmen Mendelson and Members of the Committee of the Whole. My name is John Ross, Senior Advisor and Director of Economic Development Finance for the Office of the Chief Financial Officer (OCFO). I am pleased to testify for the Office of the Chief Financial Officer today on Bill 20-595, the Public-Private Partnership Act of 2013, and about the implementation of the Pay for Success Contract Authorization Act of 2014.

Public Private Partnership Act

The Public-Private Partnership (or P3) legislation would establish an Office with personnel and budget authority to facilitate the procurement and administration of public-private partnerships in the District of Columbia. It sets the authority to adopt rules and regulations for P3s, sets requirements for the solicitation and procurement process, including Council approval, and it creates a District of Columbia Infrastructure Fund. The legislation also allows the Office enter into interstate P3 arrangements.

The OCFO supports the legislation and the concept of the Office of Public-Private Partnerships. While the District has entered into P3s without a dedicated office, the P3 Office could serve as a source of institutional expertise on the types of deal elements that are common to P3s. A dedicated P3 Office is also appealing to the private sector because it provides them with a clear point of contact and can create a standard RFP/negotiating process. Another important function of such an Office would be to ensure P3 deals are given appropriate oversight throughout the length of the contract, which could extend as long as 30 years. Absent such oversight,

performance standards for the P3 partners may not be realized, and the primary motivations for entering into such a transaction may not come to fruition.

While the OCFO supports the Office itself, a P3 structure is not always the best approach for any particular capital project. The OCFO looks at P3s as one tool in the tool box for the long-range capital planning of the District. In most cases, P3s which include a private sector financing will be a more expensive alternative, though there may be other benefits of a P3 that would make a P3 a preferred choice – such as a transfer of risks, or earlier funding of a project.

Because of the impact on debt and financial policy, it is imperative that the OCFO be involved in partnership with this new Office. For example, the OCFO will be required to assess all P3 contracts to determine:

- The tax exempt status of funds, debt or assets that the District will be contributing;
- Whether any District pledges violate the Anti-Deficiency Act;
- Whether any indemnifications included in the P3 contract are improper;
- Whether the P3 has an impact on the Debt Cap;
- Whether the contract could have an impact on District bond ratings;
- and
- If a joint venture P3 with another state is proposed, whether there are any interstate compact issues.

Rather than review these contracts after they have been negotiated, the OCFO should be involved on the front-end. Therefore, we recommend that the legislation add a requirement that the OCFO review and approve the policies and procedures prior to issuance by the P3 Office. Through this requirement, the OCFO can consider what its role in each type of P3 arrangement should be, and assure that the OCFO is properly included when appropriate.

Infrastructure Fund

The legislation establishes an Infrastructure Fund to be administered by the P3 Office. The Infrastructure Fund is funded with revenues generated by P3 transactions, and through fees collected as part of P3 solicitations. Most public infrastructure funds also include a public sector capital contribution, either from budgeted or bond-financed funds. This type of cash infusion (one time or periodic) can help bring an infrastructure fund to scale. Even if there are currently no available funds for a public contribution, it would make sense for the legislation to allow for this in the future as a potential revenue source.

The OCFO would need to make sure the operations and transactions stemming from use of the Infrastructure Funds do not violate any requirements of the SEC, IRS and other federal regulatory entities. Including the OCFO in the review and approval of the policies and procedures, as proposed above, will assure proper consideration of legal and financial issues related to the Infrastructure Fund.

Pay for Success Contract Authorization Act

The Pay for Success Contract Act (the Act) authorizes the Mayor to enter into pay-for-success contracts. The contracts, as described in the Act, are based on the concept of social impact bond financing. This type of financing, which is not technically a bond, is being explored in a number of states and cities around the country and a few jurisdictions have recently entered into such contracts.

Specifically, through a pay-for-success contract, the Mayor enters into a contract with a social service intermediary, who, working with the District, will coordinate a group of participating entities and negotiate additional associated contracts. Typically these arrangements include:

- A service provider who provides a social service or “intervention;”
- Private investors who pay the costs of the service provider;
- A philanthropic foundation that guarantees a portion of the private sector investment;
- A third-party evaluator who confirms whether the outcomes have been achieved, at which point the public sector will repay the investors;
- A public sector commitment to make payments for the services at a later date, but only if the social outcomes, as determined by the evaluator, are achieved; and
- These payments are structured to include the cost of the intervention as well as some interest (or “return”) for the investors.

The Act requires a determination by the Mayor that the contract will result in significant performance improvements and budgetary savings to the District across all impacted areas if the performance targets are achieved.

While pay for performance contracts can create future program savings, from a government budgeting perspective the costs cannot be paid from future savings. The reason for this is that investors want to be paid on the success of the intervention, not on the future savings in certain program areas. In other words the investor does not want to take on program or budgeting risks that are outside the scope of the social intervention that they are funding.

Because these contracts require payments at future dates if the outcomes have been met, the District has to identify these funds at the time the contract is signed to ensure that our fiscal obligations are met. To address the budget concerns, the Act sets up an O-type fund requirement under which, for each contract, the Mayor requests a multi-year appropriation for every fiscal year that the contract is in effect, in an amount equal to the expected payments that the District would ultimately be obligated to pay.

The Act also creates a non-lapsing Pay For Success Contract Fund. Each fiscal year the District will deposit into this fund the amount of the annual appropriation estimated to be paid in the following fiscal year so that funds will be available, as needed, to make the required performance payments.

Thank you for the opportunity to testify. This concludes my testimony and I am happy to answer any questions you have at this time.