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Landmark Bill to Regulate Public-Private Partnerships Introduced In the Senate

VIPA Executive Director Carlton Dowe's visionary leadership inspires regulatory framework for public-private partnerships

Business / **Published On December 19, 2023 06:55 AM /**

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Inspired by the V.I. Port Authority's efforts to [redevelop the territory's two airports](#), draft legislation to regulate public-private agreements has been introduced in the Senate.

Senator Marise James is the sponsor of Bill 35-0058, which if passed into law would become the Public-Private Partnership Act. When introducing the bill to her colleagues in the Senate Committee on Government Operations, Veterans Affairs and Consumer Protection on Tuesday, she said that her decision to bring forth the draft legislation was based on VIPA's "activity in the public, particularly educating the public on P3 arrangements, that then led me to notice that there was a lack of a legal and regulatory framework" for these types of agreements.

The legislation was not meant specifically for the Port Authority, Ms. James noted, but "for all government entities that are looking, and may be looking in the future."

Public-private partnerships, according to the senator, are an "effective way to combine the core competencies of the business community and the resources of the government. At the end of the day, the focus should be to "improve facilities for our people," she declared, noting that complaints about the condition of public infrastructure often do not take into account "that we just didn't have the funds, resources, or expertise."

Among the bill's many requirements is the expectation that public officials will "conduct due diligence reviews of the development or operation of projects that they determine will benefit the public." The draft legislation "requires public officials to obtain relevant information to show that the partnership will serve the desired purpose and protect Virgin Islands' resources," Ms. James noted.

Stephanie Berry, chief operating officer of the V.I. Housing Finance Authority, was one of a slew of testifiers to weigh in on the proposed legislation. She suggested that "emergency housing facilities be included as a qualifying project." However, Department of Public Works Commissioner Derek Gabriel adopted a more cautious stance, expressing his belief that "more discussion is needed to prevent any unintended consequence that may hinder the territory's ability to pursue future P3 agreements." Mr. Gabriel asked for more working sessions so that all parties could "collaboratively improve this legislation."

There were several suggestions coming from Mr. Gabriel, among them the "possible inclusion of an incubation period to be developed before public exposure," as well as "exclusive language that removes applicability to any P3 discussions or projects underway."

Nevertheless, The DPW Commissioner championed the idea of "alternative delivery models" for public projects. "Adding more tools and instruments for expedited project delivery brings us up to par with the rest of the industry and will make our projects more attractive to leading industry partners," Mr. Gabriel said.

Carlton Dowe, VIPA's executive director, lauded the value of public private partnerships. "We believe that the P3 process is a new and progressive method for the procurement and development of public infrastructure, public facilities and public transportation projects," he told lawmakers.

"This is certainly the future of infrastructure development worldwide," Mr. Dowe continued, urging the Virgin Islands to "catch up" to the rest of the world. "We must move fast when opportunities become available," he explained, noting that VIPA was using the P3 process to maintain the territory's leading position in the regional travel industry.

Mr. Dowe warned against making VIPA's ongoing P3 process subject to the strictures of the bill should it become law, arguing that it might "result in the abandonment of the project by the private partners by delaying the progress that has been made."

Economic Development Authority CEO Wayne Biggs was also in support of the draft bill, saying that it would "bring consistency to how public-private partnerships are reviewed and evaluated through the U.S. Virgin Islands government." Like Ms. Berry before him, Mr. Biggs wanted to see housing developments included as qualifying projects, "as the VI Government has plenty of land and we have a shortfall of inventory for housing and apartments here in the territory. He also suggested that alternative energy projects qualify under the proposed legislation, as a means of reducing land costs, as these are incorporated into the final cost of energy "as entities develop

alternative energy projects."

The Department of Education also supported the measure. Kimo Smith, the department's deputy commissioner of fiscal and administrative services, explained that P3 projects could ensure "enhanced infrastructure development, innovative educational programs, financial efficiency and risk mitigation, community engagement and inclusivity, flexibility and adoptability" in the education sector.

Mr. Smith, as well as other testifiers, noted the key role that the Department of Property and Procurement would play in any P3 arrangement, as that agency "has statutory authority for the general management and controls the acquisition and procurement of all property, non-personnel services, as well as the management and disposition of all government, real property and assets." Collaboration and further discussion with DPP would be essential to the success of the legislation, he argued.

The DPP's representative on Monday, Chief Counsel Magdalene Morancie, noted that "P3s are generally attractive to private investors where the project has a revenue stream, like user fees and tolls." In response to a question from Senator Novelle Francis, Mr. Morancie suggested that there be further discussions "to see how those financing streams would be worked for projects that don't have a traditional revenue stream."

Despite some concerns over some specific provisions of the draft legislation, lawmakers were generally welcoming of Ms. James's efforts. Senator Samuel Carrion commended his colleague, saying that the territory has "missed opportunities in the past by not opening up and realizing the benefit of this." He suggested that legislators consider inducements such as tax incentives for those projects that do not necessarily have a revenue stream incorporated.

Senator Kenneth Gittens, while supportive, cautioned that "we do not want to overly privatize the government."

In her closing arguments, Ms. James told her colleagues that the legislation provides a framework that investors can rely on. Committee members ultimately voted favorably on the bill, which now advances to the Committee on Rules and Judiciary for further vetting.