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Norton to Introduce Bill Affording New Way for D.C. to Secure Private Funding for Public Infrastructure Projects.

WASHINGTON, D.C.—Congresswoman Eleanor Holmes Norton (D-DC) today announced that she will introduce a bill that clarifies the District of Columbia’s authority to enter into public-private partnerships (P3s). The District recently began the procurement process for its first-ever P3s: rehabilitating the Metropolitan Police Department headquarters (Daily Building) and modernizing streetlights. The bill makes it clear that the federal Anti-Deficiency Act (ADA), which uniquely applies to D.C., does not prohibit the District from entering into P3s. The bill provides legal certainty that D.C. may enter into multi-year contracts to design, construct, improve, maintain, operate, manage and/or finance projects procured pursuant to a local D.C. law, the Public-Private Partnership Act of 2014.

“Federal law potentially limits the authority of only one jurisdiction, the District of Columbia, to enter into public-private partnerships,” Norton said. “The federal government, many states and other countries have used P3s. There is no reason that the District should not be able to take advantage of this option. Among other benefits, P3s will free up District funds that would otherwise be spent on infrastructure for other pressing needs, such as education and health care.”

The federal ADA prohibits the federal and D.C. governments from obligating or expending funds in advance or in excess of an appropriation. A critical benefit bestowed by P3s is that the District would not have to appropriate all the funds upfront, freeing up funds for the District to spend on other matters. An ADA violation may occur if the District terminates a P3 contract. Under P3 contracts, the District would make payments on an annual basis over the life of a contract, and the District would appropriate the funds for such payments annually. However, upon termination, the District would have to pay all costs incurred up to that point, but would not yet have appropriated all the funds for such payments, potentially causing an ADA violation.

Under D.C. law, “a ‘public-private partnership’ means the method in the District for delivering a qualified project using a long-term, performance-based agreement between a public entity and a private entity or entities where appropriate risks and benefits can be allocated in a cost-effective manner between the public and private entities in which:

(A) A private entity performs functions normally undertaken by the government, but the public entity remains ultimately accountable for the qualified project and its public function; and

(B) The District may retain ownership or control in the project asset and the private entity may be given additional decision-making rights in determining how the asset is financed, developed, constructed, operated, and maintained over its life cycle.”

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