Department of Legislative Services

2010 Session

FISCAL AND POLICY NOTE

House Bill 271 (Delegate Rice, *et al.*)
Ways and Means

Transportation - Public-Private Partnerships - Notice to the General Assembly

This bill defines a public-private partnership (P3) arrangement as it relates to the Maryland Department of Transportation (MDOT) and requires MDOT to provide certain information to specified legislative committees and the Department of Legislative Services (DLS) at least 45 days prior to issuing a "public notice of solicitation" and at least 10 days prior to entering into a P3 arrangement. The bill is not intended to apply to procurements, contracts, leases, or agreements that MDOT routinely enters into to develop, operate, or maintain transportation facilities. The bill expresses legislative intent to require MDOT to notify the General Assembly of agreements with private entities under which the private entity assumes exceptional new responsibility for the development, operation, financing, or maintenance of a transportation facility.

The bill takes effect June 1, 2010.

Fiscal Summary

State Effect: Notice can be provided with existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: A "public-private partnership" is defined as (1) a sale or long-term lease agreement between MDOT and a private entity under which the private entity assumes control of the operation and maintenance of an existing transportation facility; or (2) an agreement between MDOT and a private entity under which the private entity constructs or reconstructs, finances, and operates a transportation facility and is authorized to collect tolls or fees for the use of the transportation facility by the public. The bill specifies that certain leases and procurements entered into by MDOT and a private entity are not included in the definition of a P3.

At least 45 days prior to issuing a public notice of solicitation related to a P3, MDOT must provide to specified legislative committees, for their review and comment, and DLS a summary of the proposed procurement document to be used to solicit proposals.

MDOT must also provide a description of a proposed P3 and a financing plan to specified legislative committees, for their review and comment, and DLS at least 10 days prior to entering into a P3 arrangement. The information provided must include:

- the terms of the agreement;
- the scope of any authority to be granted to the private entity to charge tolls or fees;
- a cost-benefit analysis of the P3;
- the estimated dollar amount of any bonds, including private activity bonds, to be used to finance the P3 and the estimated impact of the issuance of the bonds on the bonding capacity of MDOT or other issuing entity; and
- a description (including estimated value) of the land, buildings, and other assets to be transferred to or exchanged with a private entity as part of the P3.

Current Law: Under Chapter 383 of 2007, a P3 arrangement is a lease agreement between the Maryland Transportation Authority (MDTA) and a private entity where the private entity assumes responsibility for operating and maintaining an existing or future revenue-producing highway, bridge, tunnel, or transit facility.

MDTA must provide a description of the proposed lease agreement and a financing plan to specified legislative committees, for their review and comment, and DLS at least 45 days prior to entering into a P3 arrangement. The information provided must include:

- the length of the proposed lease;
- the scope of any toll-setting authority to be granted to the private partner;
- the scope of payments to MDTA;
- a cost-benefit analysis of the proposed P3 arrangement; and
- requirements pertaining to the ongoing operation and maintenance of the facility and contract oversight.

At least 45 days prior to issuing a public notice of procurement related to a P3, MDTA must also provide to specified legislative committees, for their review and comment, and DLS a summary of the proposed procurement document to be used to solicit proposals. A public notice of procurement includes a request for proposals issued by MDTA.

A State agency, including MDOT and MDTA, must get the approval of the majority of affected governments to construct a toll road, toll highway, or toll bridge in affected counties.

Background: MDOT is responsible for managing the State's transportation systems. The department is organized into highway, motor vehicle, aviation, port, and transit administrations. Other departmental components include the Office of the Secretary and certain advisory and zoning boards. MDTA is a separate entity that operates revenue-generating transportation facilities.

Maryland's Transportation P3 Program

Maryland's Transportation P3 program was established in 1997. The P3 program focuses on nonhighway facilities – such as transit-oriented development projects, airport, and port facilities – and allows qualified private entities to submit unsolicited proposals to acquire, finance, construct, and/or operate new transportation facilities or undertake major rehabilitation of existing transportation facilities.

MDTA has undertaken several P3 projects using nontraditional financing mechanisms (sharing financial risk with private partners and providing a return on investment for the private partners) to finance projects, including port and airport support facilities. MDTA has traditionally focused on using design-build partnerships, whereby MDTA initiates the design process and a private entity completes design and construction. This approach is being used to build the planned express toll lanes on Interstate 95.

In November 2009, the Maryland Port Administration announced a 50-year lease agreement with Ports America Chesapeake for the 200-acre Seagirt Marine Terminal. In return, Ports America Chesapeake agreed to construct a 50-foot berth for the Port of Baltimore that will accommodate larger vessels and may create new business opportunities. This P3 project is expected to produce 5,700 new jobs and generate $15.7 million per year in new tax revenue. The total investment and revenue to the State may exceed $1.3 billion over the life of the agreement.

P3 National Efforts

P3s are used to finance billions of dollars worth of new highway projects in the United States and can take several forms. The 2005 *Current Practices in Public-Private*

Partnerships for Highways report lists billions of dollars for 2004 alone, and there have been large projects since then. For example, in 2006, Indiana leased a toll road to a private consortium in a 75-year lease for $3.8 billion. Virginia has completed three projects: Route 895; the Dulles Greenway – the first private toll highway development in Virginia in 170 years; and Route 288.

In some cases, P3s can supplement state or local budget shortfalls for transportation projects and accelerate project completion. In addition, a U.S. Department of Transportation report from 2004 states that such partnerships can save from 6% to 40% of the cost of construction. Such partnerships also contain inherent risks for both parties. For the public entity, those risks can include higher total project cost, adverse project selection, contract management problems, public opposition, and private-sector inefficiency. The private partner also faces certain risks, such as public opposition, approval and permit-related setbacks, land acquisition obstacles, and liability.

Additional Information

Prior Introductions: HB 1176 of 2009 passed the House, with amendments, and received a hearing in the Senate Budget and Taxation Committee, but no further action was taken.

Cross File: None.

Information Source(s): Board of Public Works, Department of Budget and Management, Department of General Services, Maryland Department of Transportation, U.S. Department of Transportation, Department of Legislative Services

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Analysis by: Amanda Mock

Direct Inquiries to:
(410) 946-5510
(301) 970-5510