Department of Legislative Services

Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1249 (Delegate Korman, *et al.*)

Environment and Transportation and Appropriations

I-495 and I-270 Public-Private Partnership - Partnership Agreement - Requirements (Maryland State Department of Transportation Promises Act of 2020)

This bill establishes various requirements for all public-private partnership (P3) agreements for the project to construct toll lanes on I-495 and I-270, including that at least 10% of the toll revenue remaining after construction costs from the toll lanes be deposited into a special fund to be used only for transit projects in the counties where the toll facilities are located. By October 1, 2021, the Board of Public Works (BPW) must request a determination letter from the Maryland Transportation Authority (MDTA) and the Maryland Department of Transportation (MDOT) confirming the plan to issue a final request for proposals for the project; provisions related to the P3 agreements and the special fund are contingent on BPW's receipt of the letter by October 1, 2021, and take effect on the date notice is received, as specified.

Fiscal Summary

State Effect: State operations and finances may be significantly affected, as discussed below; the State's proposed traffic relief plan is directly affected by the bill.

Local Effect: Local revenues and expenditures for transit projects may increase for counties affected by the construction of toll lanes on I-495 and I-270, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Project Reporting and Contingencies

By October 1, 2021, BPW must request a determination letter from MDTA and MDOT confirming that the reporting agencies plan to issue a final request for proposals for the project to construct toll lanes on I-495 and I-270. Within five days after receiving the letter, BPW must forward a copy to the Department of Legislative Services (DLS). The requirements for the P3 agreements for the toll lane project and the establishment of the related special fund are contingent on BPW receiving this letter. If the letter is received by BPW on or before October 1, 2020, the provisions take effect on the date the letter is received by DLS. Otherwise, the provisions do not take effect.

P3 Agreement Requirements

All P3 agreements for the project to construct toll lanes on I-495 and I-270 must:

- require that at least 10% of the toll revenue remaining after construction costs from the toll lanes be transferred to the special fund established by the bill, as discussed below;
- authorize MDOT to make those payments in scheduled fixed payments;
- prohibit MDOT from issuing a final request for proposal for the project unless the request (1) guarantees any local, State, or regional transit system may use the lanes for buses and other transit vehicles without charge and (2) requires the American Legion Bridge to have a separate pedestrian and bicycle lane or lanes;
- prohibit MDOT from using State funds to acquire land for the project before BPW approves the P3 agreement, except for option payments for the reservation of the purchase of land;
- prohibit MDOT from awarding a contract to a bidder unless the bidder agrees to initiate a community benefit agreement that demonstrates positive net economic, environmental, and health benefits to the State, as specified;
- require MDOT to share relevant data to the maximum extent practicable and in a timely manner, as specified, with county departments of transportation and the Maryland-National Capital Park and Planning Commission (M-NCPPC);
- require that all initial Transportation Trust Fund expenditures and MDTA loans be repaid by vendors or tolls and encourage that no additional State funds for the project be expended beyond what is allocated in the *Consolidated Transportation Program (CTP)* as of October 1, 2020;

- prohibit MDOT from submitting a contract to BPW for review until a final environmental impact statement (EIS) that complies with the National Environmental Policy Act (NEPA) is available;
- require any toll adjustments to be subject to public hearings in the county where the toll facility is located;
- require the State to undertake efforts to engage with Virginia to conduct a transit study of the American Legion Bridge corridor; and
- require MDTA and MDOT to complete a monorail feasibility study.

The P3 agreement may require a bidder to initiate a community benefit agreement that demonstrates benefits in addition to the benefits listed above. MDOT must enter into nondisclosure agreements with county departments of transportation and M-NCPPC with regard to the data sharing discussed above; through the agreements, MDOT may require confidentiality with regard to the data shared, including origin and destination data and traffic and revenue model data.

Special Fund Established

The bill establishes a special fund and requires at least 10% of the toll revenue remaining after construction costs from the project to be distributed to the fund. Revenues in the fund may only be used for transit projects in accordance with memorandums of understanding between MDOT and the governing bodies of the counties where the toll facilities that are part of the project are located.

Current Law/Background:

Public-private Partnerships

Chapter 5 of 2013 established a new framework for the approval and oversight of P3s in the State. It defined a "public-private partnership" as a method for delivering public infrastructure assets using a long-term, performance-based agreement between specified State "reporting" agencies and a private entity where appropriate risks and benefits can be allocated in a cost-effective manner between the contract partners, in which:

- a private entity performs functions normally undertaken by the government, but the reporting agency remains ultimately accountable for the public infrastructure asset and its public function; and
- the State may retain ownership of the public infrastructure 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.

Only specified "reporting agencies" may establish a P3. Reporting agencies include the Department of General Services, which oversees building purchases and leases for most of State government, MDOT, MDTA, and State higher education institutions.

Chapter 5 establishes the public policy of the State to utilize P3s, if appropriate, for (1) developing and strengthening the State's public infrastructure assets; (2) apportioning between the public sector and the private sector the risks involved in the development and strengthening of public infrastructure assets; (3) fostering the creation of new jobs; and (4) promoting the State's socioeconomic development and competitiveness. The public policy also asserts that private entities that enter into P3s must comply with the provisions of the Labor and Employment Article and the federal Fair Labor Standards Act. Any proceeds or revenues received by a reporting agency from a P3 that are not paid to the private sector must accrue to the fund that would have normally received those funds.

BPW must approve all P3 agreements, subject to specified processes; however, BPW may not approve a P3 partnership that results in the State exceeding its capital debt affordability guidelines.

Toll Lanes on I-270 and I-495

In September 2017, the Governor announced plans to add four new lanes to I-270 in Montgomery County, the Capital Beltway (I-495), and the Baltimore-Washington Parkway (MD 295), with the first two projects expected to be completed using P3s. In June 2019, BPW voted to designate the I-270 and I-495 projects as eligible for a P3 and approved the proposed competitive solicitation method for selecting a developer for each phase of the program. On January 8, 2020, BPW approved the plan with amendments, and, according to MDOT, on February 7, 2020, a request for qualifications was issued for the project – the preliminary solicitation schedule for Phase 1 anticipates execution of the P3 agreement in May 2021.

The *CTP for fiscal 2020 through 2025* includes $95.8 million to continue planning for the new lanes on I-270 and I-495. MDOT advises that one of the goals of the I-270 and I-495 project is that there will be no net cost to the State. To that end, MDOT advises that, in time, it will be repaid for these and other project development costs by the P3 partners. The CTP also includes $25,000 for planning of the MD 295 project.

Environmental Impact Statements

For major transportation projects, NEPA requires a range of alternatives to be considered and the environmental impacts of each alternative to be analyzed. This EIS is required prior to the commitment of federal funds to any major project or prior to any action taken by a federal agency that might cause a significant impact on the environment. Some of the basic steps in this process include a public scoping process, data collection, analysis of policy alternatives, and preparation of draft and final documents. The process involves numerous federal, state, and local partners; can take several years; and costs millions of dollars.

State Fiscal Effect: MDOT and MDTA are still in the planning stages of the traffic relief plan and, as such, the details of the proposed P3 to construct toll lanes on I-270 and I-495 have not yet been finalized. Even so, if the bill's provisions related to the P3 agreements and the special fund take effect, the bill likely affects State finances in the short term (as the State seeks a partner for the P3) and in future years (depending on if, when, and how the project is ultimately implemented).

For example, many of the bill's requirements for the P3 agreements prohibit MDOT from moving forward with the project unless certain processes are followed, studies completed, or the private partner agrees to certain conditions. If MDOT does not or cannot meet these requirements, then the project may have to be altered or canceled. Accordingly, the State would then need to explore other alternatives to address congestion in the Baltimore-Washington Metropolitan area, which could affect State finances.

If the project does move forward as currently proposed, the bill may affect State finances in various ways. Among other things, the bill ensures that the State is repaid for any initial expenditures made to plan the project, provides MDOT with additional special fund revenues to explore new transit solutions or improve existing transit solutions in the counties where the project's toll facilities are located, and requires MDTA and MDOT to conduct a monorail feasibility study.

Local Fiscal Effect: If the bill's contingency is met, and the project moves forward, revenues and expenditures for counties that contain project toll facilities increase to the extent that special funds intended for transit projects are provided to the counties. Any such impact cannot be predicted; as previously discussed, the project is in the planning stage and the ultimate disposition of the project has yet to be finalized, both under current law and under the bill.

Small Business Effect: To the extent that the bill significantly changes the way the project is implemented, or results in the cancellation of the project, small business contracts may be positively or negatively affected. For example, if the project is canceled, any small business contractors that otherwise would have been hired to work on the project would lose business.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Board of Public Works; Maryland Department of Transportation; Carroll, Harford, and Queen Anne's counties; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services

Fiscal Note History: First Reader - March 4, 2020
rh/lgc Third Reader - April 7, 2020
Revised - Amendment(s) - April 7, 2020

Analysis by: Richard L. Duncan

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