Department of Legislative Services

Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 843 (Senator Benson)
Budget and Taxation and Finance

I-495 and I-270 Public-Private Partnership - Partnership Agreement - Requirements (Maryland Department of Transportation Promises Act of 2021)

This emergency bill establishes various requirements for any public-private partnership (P3) agreement for the project to construct toll lanes on Interstate 495 (I-495) or Interstate 270 (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.

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 be affected, as discussed below.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Public-private Partnership Agreement Requirements

The Board of Public Works (BPW) may not approve a P3 agreement for the project to construct toll lanes on I-495 and I-270 unless the agreement:

- (1) requires 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; (2) authorizes the Maryland Department of Transportation (MDOT) to make those payments in scheduled fixed payments; and (3) requires the special fund to be budgeted in a specified manner;
- guarantees that any local, State, or regional transit system may use the toll lanes for buses and other mass transit vehicles without charge;
- requires that the American Legion Bridge have a separate pedestrian and bicycle lane (or lanes);
- prohibits 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;
- prohibits 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;
- requires 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);
- requires that all initial Transportation Trust Fund expenditures and Maryland Transportation Authority (MDTA) loans be repaid by vendors or tolls;
- prohibits BPW from approving any agreements that expend additional State funds beyond what is allocated in the *Consolidated Transportation Program* (CTP) as of October 1, 2021, and encourages that no additional State funds for the project be expended beyond that allocation;
- prohibits MDOT from submitting a contract to BPW for review until a final environmental impact statement that complies with the National Environmental Policy Act is available;
- requires any toll adjustments to be subject to public hearings in the county where the toll facility is located;
- requires the State to undertake efforts to engage with Virginia to conduct a transit study of the American Legion Bridge corridor; and
- requires 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 requirement discussed above. Through such agreements, MDOT may require confidentiality with regard to the data shared, as specified.

Special Fund Established

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

Current Law: 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 that results in the State exceeding its capital debt affordability guidelines.

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; the *CTP for fiscal 2021 through 2026* includes $40.1 million to continue planning for the new lanes on I-270 and I-495. Additionally, while the State has not yet selected a private partner for any aspect of the P3, a shortlist of qualified developers was announced in July 2020. MDOT and MDTA are currently reviewing proposals from three qualified firms for Phase 1 of the project. MDOT and MDTA plan to select a preferred developer and recommend a Phase 1 P3 agreement to BPW for review and approval in spring 2021.

As such, the bill's provisions related to the P3 agreement and the special fund likely affect State operations and finances in the short term (as MDOT makes its selection of a partner for the P3) and in future years (depending on if, when, and how the project is ultimately implemented). For example, the bill prohibits BPW approval for a P3 for the project unless certain processes are followed, studies are completed, or the private partner agrees to certain conditions.

While MDOT's current plan for the P3 agreement addresses some of the bill's requirements (including the transit study, monorail feasibility study, requirements for the American Legion Bridge, and a guarantee that transit vehicles can use the new toll lanes at no charge), it does not address all of the requirements. If MDOT does not or cannot meet all of the bill's remaining requirements, then the project may have to be altered, delayed, or canceled. Accordingly, State expenditures may then increase to maintain and/or upgrade the portions of I-270 and I-495 targeted by the proposed P3.

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 (1) the State is repaid for any initial expenditures made to plan the project and (2) at least 10% of the toll revenues are directed to a special fund to be used to explore new transit solutions or improve existing transit solutions in the counties where the project's toll facilities are located.

Local Fiscal Effect: MDOT has publicly indicated that it plans to enter into an MOU with local governments affected by the plan to provide toll revenues from the P3 for local transit improvements. It has further stated that the MOU would then become part of the P3 agreement submitted to BPW for approval. The bill ensures that the MOU provide at least 10% of the toll revenues after construction costs for local projects.

Conversely, to the extent that the bill changes, delays, or results in the cancellation of the P3 project, revenues for local projects may be delayed or do not materialize.

Small Business Effect: P3s are required to comply with the State's minority business enterprise preference requirements. To the extent that the bill significantly changes, delays, or results in the cancellation of the project, small and minority-owned business contracts are likely negatively affected. For example, if the project is canceled, any small and minority-owned business contractors that otherwise would have been hired to work on the project would lose business.

Additional Information

Prior Introductions: HB 1249 of 2020, as amended, passed the House, but no action was taken in the Senate.

Designated Cross File: HB 67 (Delegate Korman) - Environment and Transportation and Appropriations.

Information Source(s): Maryland Department of Transportation; P3 Marketing Corporation; Department of Commerce; Comptroller's Office; Board of Public Works; Frederick, Montgomery, and Prince George's counties; Department of Legislative Services

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