

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 705 (Delegate Ivey)
Environment and Transportation and
Appropriations

Transportation – I-270 and I-495 – Prohibition on Toll Lanes (Stop Unnecessary
Toll Lanes Act of 2021)

This bill prohibits the Maryland Transportation Authority (MDTA) or a private entity participating in a public-private partnership (P3) from imposing a toll for the use of Interstate 495 (I-495) or Interstate 270 (I-270). **The bill takes effect June 1, 2021.**

Fiscal Summary

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

Local Effect: Local government finances may be affected, as discussed below.

Small Business Effect: Meaningful.

Analysis

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, the Maryland Department of Transportation (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.

The Board of Public Works (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.

State Fiscal Effect: MDOT and MDTA are still in the planning stages of the proposed 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 *Consolidated Transportation Program (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.

Since the bill prohibits charging a toll for the use of I-270 or I-495, the project likely cannot move forward as currently proposed, and State finances and operations are likely to be affected in at least the following ways.

- The unspent portion of the \$40.1 million MDOT has programmed for the toll lane project planning activities is no longer required.

- The proposed traffic relief plan involves using toll lanes to, among other things, generate revenue to fund maintenance and improvements along the I-270 and I-495 corridors. In anticipation of the P3, the *CTP for 2021 through 2026* does not include funding for those projects. Without the traffic relief plan, MDOT must restore funding for this work, resulting in millions of dollars in increased expenditures annually. For example, MDOT advises that the replacement of the American Legion Bridge is one of the projects that has not been funded in the CTP due to the anticipated P3.
- MDOT will need to explore other alternatives to address traffic and congestion along the I-270 and I-495 corridors.

Local Fiscal Effect: Local revenues and expenditures could be affected to the extent that (1) the bill results in the cancellation of the proposed traffic relief plan and (2) the final P3 agreement that would otherwise be submitted to BPW for approval includes any benefit for local jurisdictions. For example, before the P3 is finalized, MDOT plans to negotiate a memorandum of understanding with the counties affected by the toll lanes and the private partner regarding support for local transit systems. However, as noted above, since the project is still in the planning stages, it is unclear whether any such requirement will be in the final P3 that would otherwise be submitted to and approved by BPW in the absence of the bill.

Small Business Effect: To the extent that the bill results in the cancellation of the proposed traffic relief plan, any small businesses that would have been involved in the design and/or construction of the project are negatively affected.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Transportation; Department of Legislative Services

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