HB 1249

Department of Legislative Services

Maryland General Assembly
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FISCAL NOTE

House Bill 1249 (Delegate La Vay, *et al.*)
Ways and Means

Public-Private Transportation Act of 2001

This bill authorizes State agencies and political subdivisions to enter into public-private partnerships to acquire, construct, or improve a transportation facility.

Fiscal Summary

State Effect: Transportation Trust Fund expenditures could decrease, depending on the type and number of public-private partnerships in which the State would participate. The net effect on revenue is unclear.

Local Effect: The impact would vary by jurisdiction and depend on the type and number of public-private partnerships in which local governments would participate, which cannot be reliably estimated at this time.

Small Business Effect: Potential meaningful. To the extent that public-private partnerships authorized under the bill involve small businesses or would generate additional work for small businesses, they would benefit.

Analysis

Bill Summary: The bill authorizes any State agency, county, municipal corporation, or other political subdivision with the appropriate jurisdiction to allow a person to acquire, construct, improve, or operate a transportation facility if: (1) there is a public need for the type of facility proposed, (2) the facility is compatible with local and State transportation plans, (3) the estimated cost is reasonable compared to similar facilities, and (4) the private operator's plans will result in a more timely or cost efficient operation, construction, or improvement. The public entity may charge a reasonable fee to recover costs of processing and evaluating requests, including fees charged by attorneys and other related consultants.

The operator may impose user fees or enter into service contracts related to the use of the transportation facility, but may not impose tolls or user fees on any existing interstate highway or any free road, bridge, tunnel, or overpass unless the road, bridge, tunnel or overpass is reconstructed to create more capacity. The operator can finance the facility in an amount and on terms and conditions at its determination, and may issue debt, equity, or other securities or obligations, enter into sale and leaseback transactions, and secure financing with a lien on any or all of its property including property interests in the facility.

Approval by the public entity is contingent upon the private operator entering into a comprehensive agreement. The bill stipulates certain requirements for those agreements, and requires that any earnings in excess of the negotiated maximum rate of return be distributed to the Transportation Trust Fund, the responsible public entity, the operator for debt reduction, or affected local jurisdictions. The public entity may take any action to solicit federal, State, or local assistance for qualifying facilities; if the entity is a State agency, any State or federal funds are subject to appropriations from the General Assembly. The public entity may determine that all or a portion of the costs of a facility should be funded by the proceeds of a local, State, or federal loan or grant.

Public entities can contract with an operator for transportation services in exchange for service payments and other appropriate considerations. The bill requires that the private operator seeking approval for a project notify each affected local jurisdiction and requires the jurisdiction to provide comments (within 60 days) to the responsible public entity and indicate whether the facility is compatible with the local comprehensive plan.

The bill provides for procedures that public entities must follow in the event of default by the operator and prohibits an entity from pledging its full faith and credit to secure any financing of the operator by the election to take over the facility. The Maryland Department of Transportation (MDOT) has exclusive jurisdiction to adjudicate all matters committed to its jurisdiction under the bill. The bill does not affect State or local sovereign immunity as it relates to transportation facilities.

Current Law: None applicable.

Background: Public-private partnerships have been used to finance over $5 billion of new highway projects in the United States and can be constructed in several ways. Recent examples of transportation partnerships include the Southern Connector in South

Carolina and the Pocahontas Parkway near Richmond in which nonprofit corporations participated in the development, financing, and ownership of toll facilities. The Dulles Greenway, a 14-mile limited-access freeway extension of the Dulles Toll Road, is the first private toll highway development in Virginia in 170 years.

In some cases, public-private partnerships can supplement shortfalls in state or local budgets for transportation projects and accelerate project completion. 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 inefficiency. The private partner also faces certain risks, such as public opposition, approvals- and permit-related setbacks, land acquisition obstacles, and liability.

The Maryland Transportation Authority (MdTA) manages, operates, and maintains the State's seven toll facilities, and finances new revenue-producing transportation projects. The MdTA also has the authority to issue bonds. The revenues are used to provide law enforcement at facilities under the MdTA's jurisdiction and also to finance capital projects for MDOT.

Toll revenues are estimated to reach $240,631,000 at the end of fiscal 2002. Expenditures, including debt service and capital and operating costs, are estimated to be $301,820,798 for that same period. The consolidated transportation program (CTP) for fiscal 2001-2006 totals approximately $9.5 billion, including $4.1 billion in State funds. Total TTF revenues for the six-year period are expected to be approximately $15.4 billion.

State Fiscal Effect: The impact of the bill on State revenues or expenditures is unclear. TTF expenditures could decrease if projects are implemented under public-private partnerships with fewer resources and if fewer bonds need to be issued. Foregone revenues would be experienced to the extent that the private partner receives transportation tolls or fees rather than the State and those fees exceed operational and construction costs.

MDOT advises that the bill would either have no impact or that the impact is unclear. The Mass Transit Administration advises that it has engaged in public-private partnerships in the past (e.g., construction of the Mid-Field Cargo Complex) without any adverse fiscal impact.

Local Fiscal Effect: The impact of the bill would vary by jurisdiction. Prince George's County advises that the bill could significantly reduce the need to issue bonds to build new roads, bridges, or mass transit facilities. Foregone revenues would be experienced to the extent that the private partner receives transportation tolls or fees rather than local jurisdictions and those fees exceed operational and construction costs.

Small Business Effect: If the bill generates an increased number of contracts for construction or repair of transportation facilities, small businesses involved in the construction trades could benefit substantially.

Additional Information

Prior Introductions: None.

Cross File: SB 784 (Senators Forehand and Ruben) – Finance and Budget and Taxation.

Information Source(s): Department of Transportation, Garrett County, Montgomery County, Prince George's County, *Innovative Finance Quarterly*, Department of Legislative Services

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Analysis by: Ann Marie Maloney

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510