Department of Legislative Services

Maryland General Assembly
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FISCAL NOTE

Senate Bill 740 (Senator Currie, *et al.*)
Budget and Taxation

Public-Private Transportation Act of 2002

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 (TTF) 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. However, it is unclear what procurement processes, including those that benefit minority business enterprises (MBEs), a private operator would be required to follow.

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. A transportation facility includes airport, highway, port, railroad, and transit facilities. 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. Public service companies are not considered a public entity under the bill.

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. The bill authorizes public entities to dedicate any property interest to the operator.

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 TTF, 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: State regulations establish procedures for public-private partnerships with businesses that can demonstrate the ability to finance, construct or operate transportation facilities (excluding highways.) In 1970, the General Assembly transferred exclusive authority for tolls on State-owned roads, bridges, and tunnels to the Maryland

Transportation Authority (MdTA), which may contract with a private entity to finance, construct, operate, and maintain a toll road. However, MdTA may not construct a toll facility in all counties of the Eastern Shore and Cecil County without the express consent of the majority of those counties.

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 MdTA manages, operates, and maintains the State’s seven toll facilities, and finances new revenue-producing transportation projects. It 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 $207.5 million at the end of fiscal 2003. Expenditures, including debt service and capital and operating costs, are estimated to be $349 million for that same period. The consolidated transportation program (CTP) for fiscal 2002-2007 totals approximately $9.1 billion including $4.8 billion in State funds. Total TTF revenues for the six-year period are expected to be approximately $16 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. MDOT advises that private operators would probably not receive federal funds for transportation projects they construct or finance, thus potentially increasing the amount of federal aid for other State projects. 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 Maryland Aviation 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. 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.

Prince George's County advises that it would enter into a public-private partnership for projects such as the extension of the Metro transit service only if it did not significantly increase the cost to the county compared to the current method. Garrett County indicated the bill would make it easier for the county to obtain access funding for construction of a maintenance and service facility for transit vehicles and also make it easier for its community development agency (a quasi-governmental entity) to develop agreements with nonprofit social groups to service and maintain vehicles.

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. However, it is unclear what procurement processes, including those that benefit MBEs, that a private operator would be required to follow.

Additional Information

Prior Introductions: An identical bill was introduced as HB 1249 and SB 784 in the 2001 session. The Ways and Means Committee gave HB 1249 an unfavorable report. SB 784 was jointly referred to the Budget and Taxation and Finance committees and later withdrawn.

Cross File: HB 1034 (Delegate La Vay, *et al.*) – Ways and Means.

Information Sources Department of Transportation, Garrett County, Montgomery County, Prince George's County, Office of the Attorney General, *Innovative Finance Quarterly*, Department of Legislative Services

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