HB 1162

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 1162 (Delegate Howard, *et al.*)
Environmental Matters

Maryland Transportation Authority - Transportation Public-Private Partnership Agreements

This bill establishes a Transportation Public-Private Partnership Program in the Maryland Transportation Authority (MdTA).

Fiscal Summary

State Effect: This bill largely codifies current practice within MdTA; however, certain provisions that expand eligible facilities for public-private partnerships and require prevailing wages could affect nonbudgeted revenues or expenditures. The net effect of these provisions on expenditures and revenues is unclear. Transportation Trust Fund (TTF) expenditures could decrease depending on the type and number of public-private partnerships in which the State would participate.

Local Effect: Minimal or none.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The stated purpose of the program is to develop agreements between private entities and MdTA or the Maryland Department of Transportation (MDOT) to acquire, construct, or improve transportation facilities, as well as to maintain and service new, expanded, or purchased transportation facilities. Transportation facilities include airport, highway, port, railroad, and transit facilities that are consistent with and eventually incorporated into the Consolidated Transportation Program (CTP) or the Maryland Transportation Plan.

A partnership agreement must: (1) prohibit a private entity from imposing tolls on an existing interstate highway or a free highway, bridge, tunnel, or overpass unless the highway, bridge, tunnel, or overpass is reconstructed to increase capacity; (2) pay the prevailing wage rate under State law; and (3) comply with all applicable federal, State, and local laws and regulations.

MdTA must establish procedures for the submittal, evaluation, and approval of solicited and unsolicited proposals to enter into agreements authorized by the bill. The procedures must prohibit submittal of an unsolicited proposal for a highway facility that is not part of a proposed project in CTP and must include provisions for participation by certified minority business enterprises (MBEs).

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). However, State law does not prohibit a private entity from owning, constructing, operating, or maintaining a highway. In 1970, the General Assembly transferred exclusive authority for tolls on State-owned roads, bridges, and tunnels to 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 any Eastern Shore county and Cecil County without the express consent of the majority of those counties.

MdTA has a public-private partnership program that applies to most transportation projects except highways. The program, which is authorized by regulations but is not in statute, provides for sole-source agreements and MBE participation, but does not expressly require prevailing wage payment. The program applies only to new transportation facilities or major rehabilitation or expansion of certain facilities and does not apply to maintenance and service.

A minority business enterprise is any private entity that is: (1) organized to engage in commercial transactions; (2) at least 51% owned and controlled by one or more individuals who are socially and economically disadvantaged; and (3) managed by one or more of the socially and economically disadvantaged individuals who own it. Until July 1, 2006, State agencies must try to set aside 25% of the total dollar value of their construction contracts with certified minority business enterprises. The goal does not apply to MDOT construction contracts under $50,000.

Prevailing Wage

Maryland's prevailing wage law applies to any public works contract when State funds are used to finance at least 50% of the construction costs and the project costs more than $500,000. A contractor under a public works contract is liable to the public body for liquidated damages of $20 for each laborer or other employee who is paid less than the prevailing wage rate.

By definition, prevailing wages are the hourly wage rates paid in the locality in which the construction work is to be performed. If 50% or more of all workers in a trade are paid exactly the same rate, that rate is considered the prevailing wage. If not, then 40% or more of the employees for each work classification must be paid the same rate in order for the rate to qualify as prevailing. If less than 40% receive the same rate, a weighted average is calculated and used as the prevailing wage. Prevailing wages are based on hourly salary levels, as well as employer benefit contributions. Baltimore and Allegany counties have their own prevailing wage laws.

The Davis-Bacon Act of 1931, as amended, requires that each federal or District of Columbia contract over $2,000 for the construction, alteration, or repair of public buildings or public works shall contain a prevailing wage clause. Under the Act, contractors or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character.

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 Interstate 895 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 sector inefficiency. The private partner also faces certain risks, such as public opposition, approvals- and permit-related setbacks, land acquisition obstacles, and liability.

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 MdTA's jurisdiction and to finance capital projects for MDOT. Toll revenues are estimated to reach $206.6 million at the end of fiscal 2004. Excluding reserve funds, MdTA's expenditures are expected to outstrip revenues by $134 million in fiscal 2004.

State Fiscal Effect: MDOT advises that the bill would not directly impact departmental finances but advises that privately constructed and operated toll facilities would be counted against its debt ceiling. 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.

The Department of Legislative Services observes that prevailing wages already apply to most State transportation projects due to federal law and, therefore, would not affect projects constructed as a result of a partnership between MDOT and a private entity. However, MdTA does not receive federal funds for its projects and is not subject to federal labor requirements. The MdTA advises that some but not all of its projects involve payment of the prevailing wage.

The impact of the prevailing wage law provision on the cost of transportation projects built or operated through a public-private partnership would also vary according to factors such as the type of workers and the current wages in the location of the facility. The wage for a toll attendant in Somerset County, for example, could be considerably less than the wages for one in Baltimore City.

The bill also expands the type of facilities for which MdTA can contract with a private entity to include maintenance and service, as well as existing projects if they are constructed to increase capacity. Accordingly, the fiscal effects of a private-partnership agreement, including the prevailing wage requirement, would apply to these types of projects to the extent an agreement is used.

Additional Comments: Operators of a transportation facility would be required to pay the prevailing wage to work performed in constructing or maintaining the facility. The fiscal impact of this provision on the private sector cannot be quantified; however, the private operator is likely to pass any additional costs to the consumer, which would be either the public entity that is contracting with the operator or public users of the facility.

Additional Information

Prior Introductions: None.

Cross File: Although marked as a cross file, SB 497 is not identical.

Information Sources: Department of Transportation; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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