HB 1555

Department of Legislative Services

Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1555 (Delegate Howard, *et al.*)
Ways and Means Budget and Taxation and Finance

Maryland Transportation Authority and Department of Transportation - Financing and Public Private Partnerships

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This bill requires the Maryland Transportation Authority (MdTA) to provide notice to specified legislative committees 45 days prior to issuing a public notice of procurement related to a public-private partnership to lease an existing or future revenue-producing highway, bridge, or tunnel. The bill also clarifies that the requirement for the Governor to submit a plan to repay the Transportation Trust Fund (TTF) the $314.9 million transferred to the general fund through Chapter 203 of 2003 (the Budget Reconciliation and Financing Act or BRFA) has been satisfied.

Fiscal Summary

State Effect: None. Notice could be provided with existing resources. Other changes do not substantially affect State operations or resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: MdTA has general supervision over all transportation facilities projects, including finance, construction, operation, repair, and maintenance. MdTA, its activities, and projects are exempt from taxation. MdTA has specified powers to carry out its mandate, including, but not limited to:

- acquisition and sale of land;

- establishment and operation of a police force;
- the ability to borrow money and issue revenue bonds;
- the power to fix, revise, charge, and collect rentals, rates, fees, tolls, and other charges and revenues on MdTA projects; and
- the ability to enter into contracts.

Background: Established in 1971 as an independent, nonbudgeted State agency, MdTA is responsible for the operation of the State's seven existing toll facilities. MdTA has assumed an expanded role in financing nontolled transportation facilities since the 1980s. MdTA has provided fund transfers and loans to the TTF and has assumed responsibility for building nontolled facilities that could not be financed through the TTF. MdTA has also served as the conduit through which debt backed by a number of revenue sources has been issued by several Maryland Department of Transportation modal administrations.

A 1996 Attorney General's decision ruled that MdTA has sufficient statutory authority to enter into public-private partnerships. By regulation, MdTA has the authority to enter into public-private partnerships to construct new airport, rail, port, and transit facilities and for major expansion and rehabilitation of such facilities. MdTA has entered into public-private partnerships, but advises that it has only done so in a limited number of cases and always in conjunction with another State agency.

MdTA has undertaken several public-private partnership projects using nontraditional financing mechanisms (sharing financial risk with private partners and providing a return on investment for the private partners) to finance transit-related projects such as port and airport support facilities. MdTA's ability to issue tax-exempt bonds makes it a good vehicle for such nontraditional financing mechanisms.

MdTA is currently using a "design-build" partnership, whereby MdTA does a portion of the design process, and a private entity finishes the design and builds the road, to build the planned express toll lanes on Interstate 95. The State Highway Administration has built other highways in Maryland using such an approach.

Chapter 203 of 2003 required the Governor to submit a plan to repay the TTF for the $314.9 million that was transferred from the TTF to the general fund in fiscal 2003 and 2004. The plan was due by December 1, 2003. The Governor and the Department of Budget and Management submitted a letter on December 31, 2003, which committed to repaying the full $314.9 million within six years, but the proposal outlined in the letter would have repaid approximately $150 million, not the full amount.

To ensure repayment of the full amount, Chapter 430 of 2004 (BFRA of 2004) contained provisions requiring the appropriation of unallocated funds to be applied toward repayment. Accordingly, a $50 million transfer from the general fund to the TTF was included in the fiscal 2006 budget bill. However, Chapter 472 of 2005 repealed that requirement and instead requires the Governor to transfer a total of $264.9 million (the remaining balance due) to MdTA to help finance the Intercounty Connector (ICC) from the general fund, beginning in fiscal 2007.

State Fiscal Effect: MdTA advises that providing notice to the specified committees would increase staff expenditures. The exact amount of staff expenditures would depend on the number of agreements that MdTA entered into, however, MdTA estimates that it could be as much as $60,000 annually. Legislative Services advises that providing notice could be handled with existing resources.

MdTA also advises that requiring such notice could delay implementation of projects. Delaying projects would impact MdTA finances; however, the magnitude of the effect would be dependent on the types of agreements that MdTA chose to enter into in the future, and cannot be reliably estimated at this time.

Legislative Services advises that the bill requires that MdTA give notice for review and comment, not seek approval, from the specified committees. Legislative Services further advises that there is likely significant preparatory time involved in issuing a notice of procurement and that MdTA would be aware of the intent to issue a procurement notice at least 30 to 45 days in advance. Therefore, any delay involved by the required notice would be minimal.

The clarifying language would not have any fiscal impact as it relates to existing repayment provisions.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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