

Department of Legislative Services  
Maryland General Assembly  
2007 Session

FISCAL AND POLICY NOTE

House Bill 662

(Delegate G. Clagett, *et al.*)

Environmental Matters

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Transportation Facilities - Public-Private Partnerships

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This bill requires the Maryland Department of Transportation (MDOT) to establish, by regulation, a Public-Private Partnership (P3) Program for transportation facilities under the jurisdiction of the Maryland Transportation Authority (MdTA).

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Fiscal Summary

**State Effect:** This bill generally codifies current practice within MdTA, although provisions that prohibit MdTA from entering into certain types of agreements could affect nonbudgeted revenues or expenditures. The net effect of these provisions on nonbudgeted expenditures and revenues is unclear.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** The regulations must authorize agreements between private entities and MdTA to acquire, construct, or improve transportation facilities. The bill also specifies that MdTA is required to maintain and operate new, expanded, or purchased transportation facilities. Transportation facilities must be 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 or user fees 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.

The regulations must establish procedures for the submission, evaluation, and approval of solicited and unsolicited proposals to enter into agreements authorized by the bill. The regulations must prohibit submission of an unsolicited proposal for a highway facility that is not part of a proposed project in the CTP.

To the extent feasible, the regulations must be consistent with the policies and requirements enacted by Virginia under its Public-Private Transportation Act.

**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.

A State agency, including MdTA, must get the approval of the majority of affected governments to construct a toll road, toll highway, or toll bridge in several counties.

**Background:** Established in 1971 as an independent, nonbudgeted State agency, MdTA manages, operates, and maintains the State's seven toll facilities (four bridges, two tunnels, and one highway) and provides law enforcement for these facilities, as well as for Baltimore/Washington International Thurgood Marshall Airport and the Port of Baltimore. Toll revenues and bonds are used to finance these projects.

MdTA has assumed an expanded role in financing nontolled transportation facilities since the 1980s. MdTA has provided fund transfers and loans to the Transportation Trust Fund (TTF) and has assumed responsibility for building nontolled facilities that could not be financed through 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.

P3s have been used to finance billions of dollars worth of new highway projects in the United States and can take several forms. A 2005 report prepared for MdTA lists billions of dollars for 2004 alone, and there have been large projects since then. For example, in 2006, Indiana leased a toll road to a private consortium in a 75-year lease for \$3.8 billion. Virginia has completed three projects: Route 895; the Dulles Greenway – the first private toll highway development in Virginia in 170 years; and Route 288.

In some cases, P3s can supplement shortfalls in state or local budgets for transportation projects and accelerate project completion. In addition, a U.S. Department of Transportation report from 2004 states that such partnerships can save from 6% to 40% of the cost of construction. 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, approval and permit-related setbacks, land acquisition obstacles, and liability.

A 1996 Attorney General's decision ruled that MdTA has sufficient statutory authority to enter into P3s. By regulation, MdTA has the authority to enter into P3s to construct new airport, rail, port, and transit facilities and for major expansion and rehabilitation of such facilities. However, MdTA regulations prohibit MdTA from entering into unsolicited P3s for highway projects.

MdTA and MDOT have broadly defined P3 arrangements to include transit-oriented development, design-build contracts, and other relationships with the private sector, and MdTA has undertaken several P3 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 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 (SHA) has built other highways in Maryland using such an approach. In addition, in the fall of 2006, MdTA issued a request for expressions of interest for the Corridor Cities Transitway.

**State Fiscal Effect:** Although the bill largely codifies existing practice, nonbudgeted expenditures could increase due to the new requirement that MdTA consider unsolicited

proposals for highway projects. Since the unsolicited proposals must concern projects already in the CTP, whether any additional personnel would be required is unclear.

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. Although MdTA does not receive federal funds for its projects and is not subject to federal labor requirements, MdTA advises that all its projects pay the prevailing wage. Therefore, there would be no fiscal impact due to this provision.

Under current regulations, MdTA has the authority to solicit proposals for and enter into agreements to operate a new transportation facility or project. Under the bill, MdTA would no longer be able to solicit or enter into projects where a private partner would operate newly constructed or expanded facilities. This would restrict the type of projects into which MdTA could enter. Accordingly, nonbudgeted revenues and expenditures could be affected; however, the impact would depend on the types of projects that MdTA would otherwise enter into and the terms of any such contracts, which cannot be reliably estimated at this time.

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### **Additional Information**

**Prior Introductions:** A similar bill, HB 1469 of 2006, received an unfavorable report from the House Environmental Matters Committee. Another similar bill, HB 1162 of 2003, was heard by the Environmental Matters Committee, but no further action was taken. A similar bill as amended, SB 497 of 2003, passed the Senate and was also heard by the Environmental Matters Committee, where no further action was taken.

**Cross File:** None.

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

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