HB 227

Department of Legislative Services

Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

House Bill 227 (Delegate Hixson, *et al.*)
Ways and Means Budget and Taxation

Maryland Transportation Authority - Public-Private Partnerships

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This bill defines a public-private partnership (P3) arrangement and requires the Maryland Transportation Authority (MdTA) to provide certain information to specified legislative committees at least 45 days prior to entering into a P3 arrangement or issuing a "public notice of procurement."

Fiscal Summary

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: A P3 arrangement is a lease agreement between MdTA and a private entity where the private entity assumes responsibility for operating and maintaining an existing or future revenue-producing highway, bridge, tunnel, or transit facility.

MdTA must provide a description of the proposed lease agreement and a financing plan to specified legislative committees, for their review and comment, and to the Department of Legislative Services (DLS) at least 45 days prior to entering into a P3 arrangement. The information provided must include:

- the length of the proposed lease;

- the scope of any toll-setting authority to be granted to the private partner;
- the scope of payments to MdTA;
- a cost-benefit analysis of the proposed P3 arrangement; and
- requirements pertaining to the ongoing operation and maintenance of the facility and contract oversight.

At least 45 days prior to issuing a notice of procurement related to a P3, MdTA must also provide to specified legislative committees, for their review and comment, and DLS a summary of the proposed procurement document to be used to solicit proposals. A public notice of procurement includes a request for proposals issued by MdTA.

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 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 (MDOT) 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 undertakes 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. In addition, in the fall of 2006, MdTA issued a request for expressions of interest for the Corridor Cities Transitway.

State Fiscal Effect: MdTA advises that providing notice to the specified committees would increase staff expenditures. The exact increase would depend on the number of agreements that MdTA entered into. Legislative Services advises that providing notice could be handled with existing resources.

Providing notice to committees on P3 projects would not significantly delay those projects. DLS 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 45 days in advance. In addition, 45 days prior to entering into a P3 arrangement, MdTA would at least have draft versions of the lease and its scope, a detailed financing plan, and a cost-benefit analysis.

Additional Information

Prior Introductions: A similar bill, HB 1555 of 2006, passed the House with amendments but no further action was taken.

Cross File: None.

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

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