Department of Legislative Services

Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 560 (The Speaker, *et al.*) (By Request - Administration)

Environmental Matters and Appropriations | Budget and Taxation

Public-Private Partnerships

This Administration bill establishes a State policy on the use of public-private partnerships (P3s) and expressly authorizes specified State agencies to enter into P3s. The bill establishes a process and associated reporting requirements for State oversight of P3s and institutes a process for both solicited and unsolicited P3 proposals that must be followed before the Board of Public Works (BPW) may approve a P3 agreement.

The bill takes effect July 1, 2013, is intended to be prospective only, and applies only to P3s established on or after that date; provisions related to the application of the State's Minority Business Enterprise (MBE) program terminate June 30, 2016.

Fiscal Summary

State Effect: Potential substantial increase in the cost of P3 projects, to the extent that provisions related to prevailing wages, living wages, and MBE participation apply to projects that otherwise would not be considered State or public works projects. The affected reporting and oversight agencies can implement the bill's provisions with existing budgeted resources. The consolidated and enhanced reporting and oversight provisions of the bill should help facilitate P3 projects that are deemed to be in the best interest of the State. To the extent that P3s are employed, future growth in State debt may be mitigated.

Local Effect: The local effect of P3s is project-specific based on the local jurisdiction in which a P3 is located and may increase local tax revenues and provide economic revitalization impacts that are difficult to quantify. Any increased tax revenues may be offset by any tax credits or tax increment financing that local jurisdictions provide to a project.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services (DLS) concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: The bill explicitly excludes P3s from most provisions of State procurement law and instead establishes specific processes and reporting requirements for P3s. However, P3s are subject to provisions of procurement law related to collusion, falsification of material facts, policies and procedures for exempt units, nondiscrimination, security on construction contracts, retainage, and prevailing and living wage requirements. They are also subject to the State's MBE program for three years (through June 30, 2016). The bill is not intended to affect or alter any pending legislation and does not apply to any existing procurement, lease, sale, or development agreement.

A "public-private partnership" is defined as a method for delivering public infrastructure assets using a long-term, performance-based agreement between specified State "reporting" agencies and a private entity where appropriate risks and benefits can be allocated in a cost-effective manner between the contract partners, in which:

- a private entity performs functions normally undertaken by the government, but the reporting agency remains ultimately accountable for the public infrastructure asset and its public function; and

- the State may retain ownership of the public infrastructure asset and the private entity may be given additional decisionmaking rights in determining how the asset is financed, developed, constructed, operated, and maintained over its life cycle.

A "public infrastructure asset" is a capital facility or structure, including systems and equipment related to the facility or structure intended for public use.

Only reporting agencies identified in the bill may establish a P3. Reporting agencies include the Department of General Services (DGS), which oversees building purchases and leases for most of State government, the Maryland Department of Transportation (MDOT), the Maryland Transportation Authority (MDTA), and State higher education institutions. However, in addition to existing exclusions, P3s subject to the bill do not include agreements entered into by St. Mary's College of Maryland (SMCM), Morgan State University (MSU), and Baltimore City Community College (BCCC) in which State funds are not used to fund or finance any portion of the project. Specified revenue-producing transportation facilities are also not considered P3s.

The bill establishes the public policy of the State to utilize P3s, if appropriate, for (1) developing and strengthening the State's public infrastructure assets; (2) apportioning between the public sector and the private sector the risks involved in the development and strengthening of public infrastructure assets; (3) fostering the creation of new jobs; and (4) promoting the State's socioeconomic development and competitiveness. The public policy also asserts that private entities that enter into P3s must comply with the provisions of the Labor and Employment Article and the federal Fair Labor Standards Act. Also, the bill clarifies that, to the extent that statutory provisions relating to high-performance buildings and environmental protection apply to a P3 project, the P3 project must comply with those provisions.

BPW must approve all P3 agreements, subject to processes established in the bill; however, BPW may not approve a P3 partnership that results in the State exceeding its capital debt affordability guidelines. Affected State employees retain all protections in effect at the time the P3 agreement is approved by BPW.

Reporting Agencies

The bill explicitly states that reporting agencies may establish P3s in connection with any public infrastructure asset for which they are responsible, and it authorizes them to establish specific functions within their agencies dedicated to P3s. P3 agreements may include provisions that are necessary to develop and strengthen a public infrastructure asset. The bill further requires reporting agencies to adopt regulations and establish processes for P3s, which must allow for a 45-day review of the regulations by specified legislative committees.

The bill clarifies that all MDOT modes are authorized to enter into P3s, with MDOT serving as their reporting agency; MDTA is a separate reporting agency. Reporting and oversight requirements for transportation-related P3s are maintained but incorporated into the requirements for all P3s.

Procurement and Oversight of Solicited P3 Proposals

The bill makes the following additional changes to existing procurement, reporting, and oversight requirements related to solicited P3s:

- changes the definition of a "public notice of solicitation" for P3s to include a request for qualifications (RFQ) or any combination of an RFQ, a request for expressions of interest, or a request for proposals; it excludes a memorandum of understanding, an interim development agreement, a letter of intent, or a preliminary development plan from the definition of public notice of solicitation;

- requires presolicitation reports submitted for review and proposed and final P3 agreements to contain specified information but withhold a private entity's proprietary information, including confidential commercial and financial information and any trade secrets;

- adds the State Comptroller to the list of entities who receive copies of presolicitation reports, specifies what information must be included in those reports, and requires that they be posted online and in the *Maryland Register;*

- authorizes the budget committees of the General Assembly to request an additional 15 days beyond the 45-day review period to examine presolicitation reports for P3 projects that have a total value greater than $500.0 million;

- requires reporting agencies to determine, for each private entity that responds to a solicitation, whether the entity (1) has the capacity in all respects to perform fully the requirements of the P3 and (2) possesses the integrity and reliability that will ensure good faith performance – this extends to subentities or partners owning at least 20% of the entity involved in the submission;

- authorizes reporting agencies to engage in discussions with qualified bidders to (1) obtain comments and make revisions to solicitation documents; (2) obtain the best value for the State; and (3) ensure full understanding of the solicitation and the bidders' proposals;

- authorizes reporting agencies to reimburse private entities for the costs incurred to develop an unsuccessful response to a public notice of solicitation for a P3 – the regulations adopted by reporting agencies must provide for the reimbursement based on the dollar value of the project and specify a maximum dollar amount that may be paid; and

- requires concurrent, instead of sequential, 30-day reviews of P3 agreements by the Comptroller, State Treasurer (and analysis of their impact on the State's capital debt affordability limits), and the budget committees of the General Assembly (and DLS) before BPW may approve a P3.

Unsolicited P3 Proposals

The bill establishes procedures and requirements for reporting agencies to consider unsolicited proposals for P3s. In particular, a reporting agency:

- may require proposal fees for unsolicited agreements, including higher fees for proposals that do not address a project already in the State's *Capital Improvement Program (CIP)* or *Consolidated Transportation Program (CTP)*;

- is required to conduct a competitive procurement process if it is determined that an unsolicited proposal meets a need or is advantageous to the agency; and

- may allow private entities that submit an unsolicited proposal to participate in the resulting competitive procurement, exempting them from statutory ethics provisions that would otherwise prevent them from participating.

P3 Agreements

P3 agreements must be posted online during the review period and after final BPW approval.

BPW may not approve a P3 until, if permissible, reasonable and appropriate MBE participation goals and procedures have been established for the project.

The bill lists a number of contract provisions that must be included in all P3 agreements, including establishing a method for future increases in tolls, fees, and other charges related to the asset; minimum quality standards; oversight and remedies for default; and allowing for State inspection of facilities and audits.

The bill prohibits P3 agreements from extending beyond 50 years unless the reporting agency provides justification and receives BPW approval of an exemption.

The bill prohibits the use of noncompete agreements for P3 projects involving road, highway, or bridge assets, but it allows noncompete agreements for other types of projects. Compensation may be provided to the private entity if there is a documented, direct revenue loss from a project that the State undertakes. However, compensation may not be provided for projects already in the State's planning documents at the time the agreement was executed, safety initiatives, infrastructure improvements with minimal capacity increases, or those involving a different mode of transportation.

Current Law:

Framework for P3s

Chapters 640 and 641 of 2010 (SB 979/HB 1370) were the State's first attempt at a comprehensive statutory framework for both transportation and nontransportation P3s. Chapters 640 and 641 slightly modified the definition of P3s, created separate titles in the

State Finance and Procurement and Transportation articles for P3s, created additional notification requirements for all State agencies, required an analysis of the project's impact on State debt, and established the Joint Legislative and Executive Commission on Oversight of Public-Private Partnerships. They also established six reporting agencies authorized to enter into and report on P3s, which were DGS, MDOT, the University System of Maryland (USM), SMCM, MSU, and BCCC. DGS was designated as the reporting agency for P3 projects entered into by all State agencies that are not themselves reporting agencies.

Chapters 640 and 641 defined a "public-private partnership" as a sale or lease agreement between a unit of State government or MDTA and a private entity under which (1) the private entity assumes control of the operation and maintenance of an existing State facility or (2) the private entity constructs, reconstructs, finances, or operates a State facility or a facility for State use and will collect fees, charges, rents, or tolls for the use of the facility. A "public-private partnership" does not include (1) a short-term operating space lease entered into in the ordinary course of business by a unit of State government or MDTA and a private entity and approved in accordance with provisions concerning the transfer of State real or personal property in the State Finance and Procurement Article; (2) a procurement governed by specified general procurement provisions in the State Finance and Procurement Article; or (3) P3 agreements entered into by USM where no State funds are used to fund or finance any portion of a capital project.

Chapters 640 and 641 established several new reporting requirements for State entities involved with P3s, including:

- By January 1 annually, each reporting agency must submit (1) a report concerning each P3 under consideration at that time that has not been previously reviewed or approved by the General Assembly to specified legislative committees and (2) a status report concerning each existing P3 in which the reporting agency is involved to specified legislative committees.

- Also by January 1 annually, MDTA and each unit of State government (including the Maryland Economic Development Corporation (MEDCO)) that provides conduit financing for a P3 must submit a report concerning each P3 for which MDTA or the unit is providing conduit financing to specified legislative committees for their review and comment.

- Reporting agencies must submit a presolicitation report concerning a proposed P3 to the State Treasurer and specified legislative committees, for their review and comment, and to DLS 45 days prior to issuing a public notice of solicitation for a P3. Reports on P3s involving transportation facilities projects, as defined in

Section 4-101 of the Transportation Article only need to be submitted to specified legislative committees and DLS.

- The State Treasurer has to analyze the impact of each proposed P3 agreement, except for those P3s involving transportation facilities projects, as defined in Section 4-101 of the Transportation Article, on the State's capital debt affordability limits and submit the analysis within a specified time period to specified legislative committees for their review and comment and to DLS.

- BPW is prohibited from approving specified P3 agreements until after specified legislative committees and the Treasurer have had 30 days to review and comment on the proposed agreement.

- The Capital Debt Affordability Committee is required to include in its annual report an analysis of the aggregate impact of P3 agreements on the total amount of new State debt that prudently may be authorized for the next fiscal year.

Minority Business Enterprise Program

The State's MBE program, which is scheduled to terminate July 1, 2016, requires that a statewide goal for MBE contract participation be established biennially through the regulatory process under the Administrative Procedure Act. The biennial statewide MBE goal is established by the Special Secretary for the Governor's Office of Minority Affairs (GOMA), in consultation with the Secretary of Transportation and the Attorney General. In a year in which there is a delay in establishing the overall goal, the previous year's goal applies. The Special Secretary is also required to establish biennial guidelines for State procurement units to consider in deciding whether to establish subgoals for different minority groups recognized in statute. In a year in which there is a delay in issuing the guidelines, the previous year's guidelines apply.

Prior to the enactment of Chapters 252 and 253 of 2011 (HB 456/SB 120) and Chapter 154 of 2012 (HB 1370), State law established a goal that at least 25% of the total dollar value of each agency's procurement contracts be awarded to MBEs, including subgoals of 7% for African American-owned businesses and 10% for woman-owned businesses. As of January 2013, a new statewide goal had not been issued by GOMA, so the 25% statewide goal remains in effect. GOMA issued subgoal guidelines in July 2011, which are still in effect. The guidelines state that subgoals may be used only when the overall MBE goal for a contract is greater than or equal to the sum of all recommended subgoals for the appropriate industry, plus two percentage points.

Prevailing Wage

Contractors working on eligible public works projects must pay their employees the prevailing wage rate. Eligible public works projects are those valued at $500,000 or more and carried out by:

- the State; or
- a political subdivision, agency, person, or entity for which at least 50% of the project cost is paid for by State funds.

Public works are structures or works, including a bridge, building, ditch, road, alley, waterwork, or sewage disposal plant, that are constructed for public use or benefit or paid for entirely or in part by public money. The State prevailing wage rate does not apply to any part of a public works project funded with federal funds for which the contractor must pay the prevailing wage rate determined by the federal government.

Prevailing wages are wages paid to at least 50% of workers in a given locality who perform the same or similar work on projects that resemble the proposed public works project. If fewer than 50% of workers in a job category earn the same wage, the prevailing wage is the rate paid to at least 40% of those workers. If fewer than 40% receive the same wage rate, the prevailing wage is calculated using a weighted average of local pay rates. The State Commissioner of Labor and Industry is responsible for determining prevailing wages for each public works project and job category, subject to the advice and recommendations of a six-member advisory council appointed by the Governor.

USM, MSU, SMCM, and the Maryland Stadium Authority are all exempt from the prevailing wage law.

Living Wage

Chapter 284 of 2007 (HB 430) made Maryland the first state to require State service contractors to pay their employees a "living wage." For fiscal 2008, the living wage was set at $11.30 in Montgomery, Prince George's, Howard, Anne Arundel, and Baltimore counties and Baltimore City (Tier 1). It was set at $8.50 for all other areas of the State (Tier 2). The living wage rates are adjusted annually for inflation by the Commissioner of Labor and Industry. The commissioner approved inflation-based increases to both the Tier 1 and Tier 2 living wage rates for fiscal 2013. Effective September 28, 2012, the Tier 1 living wage is $12.91, and the Tier 2 wage is $9.70. Montgomery and Prince George's counties and Baltimore City have local living wage ordinances that apply to their procurement of services.

The higher living wage rate (Tier 1) applies to contracts in which at least 50% of the contract services will be performed in locations subject to the higher rate, as determined by the State agency responsible for the contract. The lower living wage rate (Tier 2) applies to all other contracts. State contractors or subcontractors with a State contract for services valued at $100,000 or more must pay the living wage to employees who spend at least half their time during any work week working on the State contract. However, the living wage requirement does not apply to employees who are younger than age 18 or who work full time for less than 13 consecutive weeks for the duration of the contract. Employers who provide health insurance to workers may reduce wages by all or part of the hourly cost of the employer's share of the premium for each employee. The commissioner may allow an employer who contributes to its employees' tax-deferred retirement savings accounts to reduce the living wage rate by the hourly cost of the employer's contribution, up to 50 cents per hour.

State contractors are not required to pay a living wage if doing so would conflict with a federal requirement or if they are:

- providing emergency services to prevent or respond to an imminent threat to public health or safety;
- a public service company;
- a nonprofit organization;
- another State agency;
- a county government (including Baltimore City); or
- a firm with 10 or fewer employees that has a State contract valued at less than $500,000.

High-performance Buildings

Chapter 124 of 2008 (SB 208) required most new or renovated State buildings and new school buildings to be constructed as high-performance buildings, subject to waiver processes established by the Department of Budget and Management (DBM), DGS, and BPW. Between fiscal 2010 and 2014, the State funds 50% of the local share of increased school construction costs associated with high-performance buildings. Chapters 527 and 528 of 2010 (SB 234/HB 1044) added new community college capital projects that receive State funds to the requirement.

Chapter 124 defines a high-performance building as one that:

- meets or exceeds the U.S. Green Building Council's Leadership in Energy and Environmental Design or LEED criteria for a silver rating; or

- achieves a comparable numeric rating according to a nationally recognized, accepted, and appropriate rating system, guideline, or standard approved by DBM and DGS.

Only new or renovated buildings that are at least 7,500 square feet and are built or renovated entirely with State funds, or in the case of public schools are new schools, and in the case of community colleges are projects that receive any State funds, are subject to the high-performance requirement. Additionally, building renovations must include the replacement of heating, ventilation, air conditioning, electrical, and plumbing systems and must retain the building shell. Unoccupied buildings are exempt from the high-performance mandate, including warehouses, garages, maintenance facilities, transmitter buildings, and pumping stations.

For State buildings and community colleges, the waiver process must include a review by the Maryland Green Building Council and approval by DGS, DBM, and MDOT.

Background: Across the nation, there is growing interest in utilizing private-sector financing as a means to maintain and expand capital infrastructure investment. In Maryland, P3 agreements have primarily been utilized to finance transportation infrastructure. More recently, however, P3s have also facilitated the proposed multi-year phased redevelopment of the State Center complex in Baltimore City.

P3s offer opportunities to share resources and project risks with the private sector and access private-sector financial markets. However, P3s also involve significant fiscal considerations, including but not limited to (1) the disposition of State assets; (2) assignment of future revenues to private-sector entities that would otherwise accrue to the State; and (3) the execution of capital and operating leases that obligate the State to long-term general and special fund budget commitments.

P3s in Maryland

Over the last several years, numerous attempts have been made in Maryland to provide sufficient legislative oversight of P3s. A 1996 opinion by the Attorney General determined that the statutory authority that created MDTA also granted it the authority to enter into P3s for toll highways. In 1997, MDTA established by regulation a Transportation Public-Private Partnership Program for nonhighway projects, under the statutory authority of Sections 4-205 and 4-312 of the Transportation Article.

Chapter 430 of 2004 (SB 508) implicitly acknowledged the legitimacy of MDTA's authority to enter into transportation P3s by addressing oversight and reporting requirements for contracts to acquire or construct new transportation facilities projects (Section 4-406 of the Transportation Article). Chapter 430 also required MDTA to provide 45-day notice to certain legislative committees before entering into any contract or agreement to acquire or construct a revenue-producing transportation facility. Chapters 471 and 472 of 2005 (HB 1352/SB 255) slightly modified the information that MDTA must provide before entering into a contract to include additional information on revenues and bond financing.

Chapter 383 of 2007 (HB 227) addressed P3s more directly and created a statutory definition of transportation P3s as a "lease agreement between MDTA and a private entity for the operation and maintenance of an existing or future toll or transit facility." Chapter 383 also created notification requirements for transportation P3s to include 45-day review and comment by certain legislative committees before issuing a solicitation for a P3 project and before entering into a P3. Information required to be submitted included a description of the proposed lease agreement and finance plan, including information on toll-setting authority, a cost-benefit analysis for the project, and provisions relating to contract oversight.

In 2008, when MDOT announced that it was considering a P3 for Seagirt Marine Terminal, DLS determined that the then-current definition and oversight of P3s excluded port projects, and, therefore, no legislative notification of the project was required. To address this, the legislature adopted several notification provisions specific to the Seagirt project through its annual budget process. Although MDOT had flexibility to pursue and negotiate the project on its own, periodic briefings to the budget committees were required as well as reports at key points in the process. Additionally, the draft agreement was provided to the budget committees for review and comment prior to its signing. Similarly, throughout 2008 and 2009, when DGS was developing the State Center agreement, there was no statutory requirement for legislative notice or oversight of the process. Therefore, the legislature addressed this through various provisions in the operating and capital budget bills to provide notification for the State Center project.

P3 Commission

To address some of these issues, including the definition of a P3, the review process for P3 projects, and the lack of legislative oversight for nontransportation projects, Chapters 640 and 641 of 2010 (SB 979/HB 1370) were enacted, creating the first statewide statutory framework for P3s and creating the Joint Legislative and Executive Commission on Oversight of Public-Private Partnerships to evaluate the State's framework and oversight of P3s. The commission's charge included assessing the oversight, best practices, and approval processes for P3s in other states; evaluating the statutory definitions of "public-private partnership" and "public notice of solicitation"; making recommendations concerning the appropriate manner of conducting legislative monitoring and oversight of P3s; and making recommendations concerning broad policy parameters within which P3s should be negotiated.

The commission submitted its final report in January 2012. It recommended revising several statutory definitions, creating a statement of public policy for the use of P3s, streamlining the legislative oversight process, and clarifying legislative oversight reporting requirements. It also recommended a number of contract provisions that should be included in all P3 agreements, and establishing a set of parameters within which P3s must be negotiated. Legislation was introduced in the 2012 session by the Administration (SB 358/HB 576) primarily based on the findings of the commission. The legislation was considered by both houses and heavily amended but did not receive final approval. This bill incorporates many of those amendments.

Conduit Financing for P3s

MEDCO is a nonbudgeted entity that allows the State to own or develop property for economic development purposes. MEDCO purchases or develops property that is leased to others under favorable terms. MEDCO also makes direct loans to companies throughout the State to maintain or develop facilities, and it often serves as the conduit for loans administered by the Department of Business and Economic Development. MEDCO has provided conduit financing for one P3 project to date. In January 2013, MEDCO issued $248.7 million in revenue bonds to help finance the expansion of the Seagirt Marine Terminal.

Maryland's Transportation P3 Program

Maryland's Transportation P3 program was established in 1997. The P3 program focuses on nonhighway facilities – such as transit-oriented development projects, airport, and port facilities – and allows qualified private entities to submit unsolicited proposals to acquire, finance, construct, and/or operate new transportation facilities or undertake major rehabilitation of existing transportation facilities.

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 projects, including port and airport support facilities. MDTA has traditionally focused on using design-build partnerships, whereby MDTA initiates the design process and a private entity completes design and construction. This approach is being used to build the express toll lanes on Interstate 95 and the InterCounty Connector.

In January 2010, the Maryland Port Administration executed a 50-year lease agreement with Ports America Chesapeake for the 200-acre Seagirt Marine Terminal. In return, Ports America Chesapeake agreed to construct a 50-foot berth for the Port of Baltimore that will accommodate larger vessels and may create new business opportunities. This P3 project is expected to produce 5,700 new jobs and generate $15.7 million per year in new tax revenue. The total investment and revenue to the State may exceed $1.3 billion over the life of the agreement.

In February 2012, MDTA provided notice to the legislature that it had reached agreement with Areas USA to finance, redevelop, operate, and maintain the two travel plazas that MDTA owns along Interstate 95. In return for the demolition and reconstruction of the two travel plazas, at an estimated cost of $56 million, Areas USA will lease, operate, and maintain the facilities for the next 35 years. A revenue-sharing contract provides annual payments to MDTA over the life of the agreement. The revenue-sharing agreement provides MDTA a greater percentage of gross sales as sales increase as well as a $3 million upfront payment. The total investment and revenue to the State may exceed $600 million over the life of the agreement. This agreement will not be subject to the bill's requirements since it was reached prior to July 1, 2013.

State Center

The State Center P3, which is currently inactive after a Baltimore City Circuit Court ruling voided its contracts, proposed a major multi-phase redevelopment of several State office buildings and surface parking lots in Baltimore City into a mixed-use transit-oriented development including retail, housing, and office space. The buildings themselves have not been properly maintained and are near the end of their useful life. The total cost of the project was originally estimated to be $1.5 billion, and it was to be funded with a variety of private debt and equity, tax credits, tax increment financing, and State support. The State was to be the major anchor tenant for the office space and fund construction of a $35 million parking garage. In 2009, the State executed a master development agreement with State Center LLC, a consortium of private entities headed by Ekistics LLC, and in 2010, BPW approved the ground and occupancy leases for the first phase of the development.

In December 2010, several downtown property owners filed a lawsuit alleging that the State did not comply with competitive bidding requirements and procedures. Since that lawsuit was filed, work on State Center largely came to a halt pending the outcome of the litigation. In January 2013, the Baltimore City Circuit Court ruled that the State Center contracts were void because the State did not follow State procurement law in soliciting the project. In February 2013, the State filed an appeal, seeking an expedited decision.

State Fiscal Effect: Several provisions have the potential to increase the cost of P3 projects. Prior academic and DLS research on the fiscal effects of prevailing wages, living wages, and high-performance buildings indicates that:

- prevailing wages can increase the cost of a public works project by between 2% and 5%, although that estimate is unreliable following the virtual collapse of the commercial construction industry during the most recent recession;
- living wages can increase the total cost of a service contract by between 7% and 19%;
- the cost of constructing a high-performance building is between 2% and 5% higher than the cost of constructing a standard building, but the increased construction cost is recovered over time due to comparatively lower utility costs;
- MBE compliance may increase State procurement costs to the extent that it restricts competition, but the effect on total procurement expenditures cannot be quantified.

DLS advises that the bill's provisions requiring P3 projects to comply with high-performance building requirements, environmental protection provisions, and the Labor and Employment Article do not increase costs for P3 projects. The high-performance and environmental protection provisions apply only to the extent that the projects are considered State buildings, in which case those provisions would likely apply anyway. The Labor and Employment Article generally covers workplace safety and wage payment requirements, which generally apply to all employers in the State, regardless of their public or private status.

However, the prevailing wage, living wage, and MBE provisions have the potential to increase project costs because they apply to P3 projects that otherwise would not be deemed to be State or public works projects. To the extent that these provisions apply in circumstances when, in the absence of the bill, they otherwise would not apply, the cost of P3 projects may increase substantially, as summarized above. Their effect on total costs will vary by project.

It is estimated that, when fully implemented, P3s may comprise at least 2% and up to 6% of the CIP and as much as 10% of the CTP. To the extent that P3s do not require the issuance of State debt to construct the affected facilities, and that any leases associated with P3s are not considered capital leases, P3s may mitigate long-term growth in State debt.

Additional Information

Prior Introductions: SB 358 of 2012, a similar bill, passed both the Senate and the House with amendments, but the differences were not reconciled. Its cross file, HB 576, was amended in the House and heard by the Senate Budget and Taxation Committee, but no further action was taken on the bill.

Cross File: SB 538 (The President, *et al.*) (By Request - Administration) - Budget and Taxation.

Information Source(s): Maryland Stadium Authority, Department of General Services, Baltimore City Community College, Comptroller's Office, Maryland Department of Transportation, Department of Business and Economic Development, Board of Public Works, Morgan State University, Department of Budget and Management, Department of Legislative Services

Fiscal Note History: First Reader - February 14, 2013
ns/rhh Revised - House Third Reader - March 25, 2013
Revised - Enrolled Bill - May 13, 2013

Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Public/Private Partnerships

BILL NUMBER: SB 538 / HB560

PREPARED BY: Lt Governor Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

_X_ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

__ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS