HB 760

Department of Legislative Services

Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 760 (Delegate Fisher, *et al.*)
Ways and Means

Maryland Transportation Authority - Privatization of the Intercounty Connector and the I-95 Express Toll Lanes

This bill requires the Maryland Transportation Authority (MDTA), in consultation with the Secretary of Transportation, to initiate the process to issue a request for proposals (RFP) to privatize the Intercounty Connector (ICC) and Interstate 95 (I-95) express toll lanes (ETLs) by December 31, 2013. The RFP must give the successful bidder the right to collect toll revenue from the use of the facilities in exchange for a lump sum or annual fixed-period payment to the State. The RFP must be issued in accordance with requirements of the State Finance and Procurement Article. Funding to pay the costs of issuing the RFP must be as provided in the State budget.

The bill takes effect June 1, 2013.

Fiscal Summary

State Effect: MDTA nonbudgeted expenditures increase by $1.5 million in FY 2014 and by $1.5 million in FY 2015 to conduct assessments and develop an RFP. MDTA nonbudgeted expenditures and revenues are affected in FY 2016 and future years to the extent the facilities are privatized; however, any impact cannot be reliably estimated at this time. Even though the bill takes effect June 1, 2013, it is assumed that State finances are not affected in FY 2013.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
NonBud Rev.	$0	$0	-	-	-
NonBud Exp.	$1,500,000	$1,500,000	-	-	-
Net Effect	($1,500,000)	($1,500,000)	$0	$0	$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill is not expected to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Current Law: Consistent with provisions in the State Finance and Procurement Article, the Secretary of Transportation may contract with any person to provide services, supplies, construction, and maintenance for the Maryland Department of Transportation or for any transportation-related purpose.

Chapters 640 and 641 of 2010 (SB 979/HB1370) defined a "public-private partnership" (P3) 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 the University System of Maryand, where no State funds are used to fund or finance any portion of a capital project.

Background:

MDTA

Since 1971, MDTA has been responsible for constructing, managing, operating, and improving the State's toll facilities and for financing new revenue-producing transportation projects. MDTA is governed by nine individuals appointed by the Governor, with the advice and consent of the Senate. The Secretary of Transportation serves as MDTA's chairman. MDTA transportation facilities projects include:

- bridges and tunnels (*e.g.*, Susquehanna River Bridge; Harry W. Nice Memorial Potomac River Bridge; William Preston Lane, Jr. Memorial Chesapeake Bay Bridge and parallel Chesapeake Bay Bridge; Baltimore Harbor Tunnel; Fort McHenry Tunnel; and Francis Scott Key Bridge);
- roadways (*e.g.*, ICC roadway and John F. Kennedy Memorial Highway);
- vehicle parking facilities located in priority funding areas;

- other projects that MDTA authorizes to be acquired or constructed; and
- any authorized additions or improvements to MDTA projects.

MDTA has the authority to set tolls on transportation facilities projects under its supervision. Tolls must provide funds that, when combined with bond proceeds and other available revenues, are sufficient to pay maintenance, repair, and operating costs for transportation facilities projects that are not otherwise paid for; pay the interest and principal of any outstanding bond issues; create reasonable reserves for these purposes; and provide funds for the cost of replacements, renewals, and improvements. Toll revenues are deposited into the Transportation Authority Fund, which is wholly separate from the Transportation Trust Fund.

Intercounty Connector

The ICC is a planned 18.8-mile tolled highway extending from the I-270/I-370 corridor in Montgomery County to the I-95/US 1 corridor in Prince George's County. The first 5.65-mile tolled segment of the ICC, from I-370 at Shady Grove to MD 97/Georgia Avenue in Rockville/Olney, opened in February 2011. A second segment of the ICC, from Georgia Avenue to I-95 (Exit 31) at Laurel, opened in November 2011. The final segment of the ICC, from I-95 eastbound to US 1, is tentatively scheduled to open in spring 2014. MDTA will own, operate, and maintain the roadway once construction is complete. ICC construction is managed by the State Highway Administration and has been underway since 2007.

The ICC's total estimated construction cost is $2.4 billion and there is approximately $2.0 billion in debt outstanding. MDTA used a variety of financing mechanisms to fund ICC construction, including toll revenue bonds, a federal loan under the Transportation Infrastructure and Finance and Innovation Act, grant anticipation revenue vehicle bonds, federal Build American bonds, and State general obligation bonds. Each of these financing mechanisms is governed by legal agreements with bond holders and/or the federal government.

I-95 Express Toll Lanes

In May 2005, MDTA started construction of ETLs on an eight-mile segment of I-95 north of Baltimore City. ETLs utilize variable priced tolling to manage highway traffic flow, and toll collection occurs electronically at highway speeds using E-ZPass technology and overhead gantries. The project is currently under construction and involves making highway improvements, reconstructing bridges and interchanges, and adding ETLs. When the project is completed in fiscal 2015, there will be two ETLs and four general purpose lanes in each direction on this segment of road. Drivers will have the choice to either use the general purpose lanes at no cost or pay a toll to use the ETLs.

The toll for using the ETLs will vary depending on the time of day and amount of traffic on the road.

The I-95 ETLs project’s total estimated construction cost is $1.1 billion and financing includes a mix of cash, toll revenue bonds, and federal Build America bonds. Like the ICC, each of the financing mechanisms MDTA used to generate revenue is governed by legal agreements with bond holders and/or the federal government.

Public-private Partnership Agreements

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.

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 ETLs and ICC.

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 accommodates larger vessels and may create new business opportunities.

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 I-95. In return for the demolition and reconstruction of the 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.

State Fiscal Effect: MDTA nonbudgeted expenditures increase by $1.5 million in fiscal 2014 to conduct legal, tax, and financial assessments and by $1.5 million in fiscal 2015 to develop an RFP to privatize the ICC and I-95 ETLs. This estimate is based on similar costs associated with privatization of the two MDTA travel plazas.

It is assumed that developing and implementing an RFP for these purposes requires at least two years, and any decision on privatization occurs no sooner than fiscal 2016. Therefore, to the extent the RFP process results in privatization of either or both facilities, MDTA nonbudgeted expenditures and revenues are affected in fiscal 2016 and future years due to a private operator assuming control. However, any impact cannot be reliably estimated and would depend on the terms of the final privatization agreement.

Any changes to MDTA's authority to raise the revenues necessary to meet its obligations under its trust agreement may (1) cause MDTA to default under its trust agreement; and/or (2) be seen as a breach of contract and prompt costly litigation. Also, removing the ICC and I-95 ETLs as pledged revenue facilities will likely have a negative impact on MDTA's bond credit rating. To the extent this occurs, MDTA nonbudgeted expenditures increase potentially significantly in future years due to increased debt service costs.

To avoid these costs, MDTA may be required to amend its trust agreement with bondholders. To the extent the bill results in an amendment to the trust agreement, MDTA nonbudgeted expenditures increase potentially significantly. MDTA advises that amending the trust agreement may require the approval of at least a majority of existing bondholders, or refunding some or all of its current outstanding debt, both of which are anticipated to increase overall costs.

Additional Information

Prior Introductions: HB 1232 of 2012 received a hearing in the House Ways and Means Committee, but no further action was taken.

Cross File: None.

Information Source(s): Board of Public Works, Department of Budget and Management, Department of General Services, Maryland Transportation Authority, Maryland Department of Transportation, Department of Legislative Services

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ncs/lgc

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