

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1556 (Delegate Valentino-Smith, *et al.*)
Environment and Transportation

Public-Private Partnerships - Public Notice of Solicitations and Approval of
Agreements

This bill bars specified agencies from issuing a solicitation for a public-private partnership (P3), and the Board of Public Works (BPW) from approving a P3 agreement from those same agencies, unless specified public notice and hearing requirements have been met. Also, the bill prohibits BPW from approving P3 agreements submitted by specified agencies that involve foreign investment, subject to specified conditions.

Fiscal Summary

State Effect: General fund, special fund, and nonbudgeted expenditures may increase, potentially significantly, to meet the public notification requirements for P3 agreements being submitted for approval by BPW. A reliable estimate is not feasible, but the cost to do so may exceed \$1.0 million in some circumstances. The number of agreements affected by the bill on an annual basis is expected to be minimal and likely none in some years. BPW and the Department of Budget and Management (DBM) can handle the bill's other requirements with existing resources. No effect on revenues.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The Department of General Services (DGS), Maryland Department of Transportation (MDOT), and the Maryland Transportation Authority (MDTA) may not issue a public notice of solicitation for a P3 unless they provide at least 45 days' notice and

an opportunity to submit written comments within that period to each county and municipality in which the proposed project would be located.

BPW may not approve a P3 agreement submitted by DGS, MDOT, or MDTA unless they have, within 60 days before submission of the agreement to BPW, provided notice to each county, municipality, and land owner within a 25-mile radius of the proposed project and held at least two public hearings regarding the proposed agreement.

BPW may not approve a P3 agreement submitted by DGS, MDOT, or MDTA if it involves foreign investment unless:

- the P3 involves less than 25% investment from a foreign government, entity, or subsidiary;
- the proposed agreement expressly states the type and amount of foreign investment that will be used for the project; and
- DBM, in coordination with other agencies, has analyzed the impact that the foreign investment may have on the economic and security interests of the State.

Current Law: Chapter 5 of 2013 established a new framework for the development and oversight of P3s. It defined “public-private partnership” 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 decision making 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 by Chapter 5 may establish a P3. Reporting agencies include DGS, which oversees building purchases and leases for most of State government; MDOT; MDTA; and specified State higher education institutions. However, P3s do not include agreements entered into by the University System of Maryland, St. Mary’s College of Maryland, Morgan State University, and Baltimore City Community College 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.

Background: In September 2017, the Governor announced plans to add four new lanes to I-270 in Montgomery County, the Capital Beltway (I-495), and the Baltimore-Washington Parkway (MD 295), with the first two projects expected to be completed using P3s. The combined cost of all three projects is estimated to be \$9 billion, with the I-270 and I-495 projects seeking private developers to design, build, finance, operate, and maintain the new (toll) lanes on both roads. The MD 295 project is not expected to involve a P3 but instead would be carried out by MDTA following the transfer of ownership of the parkway from the U.S. Department of the Interior to the State.

State Fiscal Effect: Only a handful of P3 projects have been initiated under the new procedures established by Chapter 5. Any public notification requirements related to new solicitations for P3 projects by DGS, MDOT, and MDTA can be met with existing budgeted resources as they only entail notifying counties and municipalities. However, the public notification requirements for agreements being submitted to BPW require notification of all land owners within a 25-mile radius of the project. For large road projects like the Governor's planned toll road projects, or for projects in densely populated areas of the State like the Capital Region or Baltimore City, that could entail mailings to hundreds of thousands residents. Therefore, postage costs necessary to meet those notification requirements approach or even exceed \$1.0 million in some circumstances. Any future costs are limited by the small number of P3 projects initiated by the State in a given year, which may be none in some years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Carroll, Harford, Montgomery, Queen Anne's, and St. Mary's counties; Maryland Association of Counties; Department of Budget and Management; Department of General Services; Board of Public Works; Maryland Department of Transportation; Department of Legislative Services

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