SB 1236

Department of Legislative Services

Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1236 (Chair, PSTE Subcommittee, Budget and Taxation Comm)

Budget and Taxation

Public-Private Partnerships - Transportation Facility Projects - Environmental Impact Statement

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This bill requires that a reporting agency for a transportation facilities project submit a draft environmental impact statement (EIS) that complies with the National Environmental Policy Act (NEPA) to specified agencies and the budget committees at least 45 days before requesting that the Board of Public (BPW) designate the project as a public-private partnership (P3). **The bill takes effect June 1, 2018.**

Fiscal Summary

State Effect: As the bill pertains only to transportation facilities, it is assumed that, under NEPA, a full EIS must already be completed for any affected projects. The effect on the amount of State expenditures for affected transportation projects is likely minimal, but the timing for such expenditures is accelerated. Further, potential P3s may be delayed to the extent that an EIS must be completed prior to public notices of solicitation being issued instead of concurrently with the P3 selection process. Any such impacts cannot be reliably quantified. No effect on revenues.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The EIS must be provided to the:

- Comptroller;
- State Treasurer;
- budget committees of the Maryland General Assembly; and
- Department of Legislative Services (DLS).

Current Law:

Public-private Partnerships

Chapter 5 of 2013 established a new framework for the approval and oversight of P3s in the State. It defined a “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 specified “reporting agencies” may establish a P3. Reporting agencies include the Department of General Services, which oversees building purchases and leases for most of State government, the Maryland Department of Transportation, the Maryland Transportation Authority (MDTA), and State higher education institutions. However, in addition to existing exclusions, P3s do not include agreements entered into by 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.

Chapter 5 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.

BPW must approve all P3 agreements, but a reporting agency may not issue a public notice of solicitation or request that BPW designate a project as a P3 until the Comptroller, Treasurer, budget committees, and DLS have had at least 45 days to review and comment on a presolicitation report that contains specified information. There is no requirement that the presolicitation report include an EIS.

Reporting agencies may establish P3s in connection with any public infrastructure asset for which they are responsible, and they may 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.

Environmental Impact Studies

For major transportation projects, NEPA requires a range of alternatives to be considered and the environmental impacts of each alternative to be analyzed. This type of study is required prior to the commitment of federal funds to any major project or prior to any action taken by a federal agency that might cause a significant impact on the environment. Some of the basic steps in this process include a public scoping process, data collection, analysis of policy alternatives, and preparation of draft and final documents. The process involves numerous federal, state, and local partners; can take several years; and costs millions of dollars.

NEPA is triggered when a project requires federal action, including approval of funding, joint and multiple use permits, changes in access control, and more. According to federal regulations, there are three classes of actions that have different levels of documentation required under NEPA. Class I actions require a full EIS; these include construction of new highways, fixed rail transit facilities, and other similar projects. Class II actions do not have a significant environmental effect and, therefore, do not require an EIS or environmental assessment; they include (1) actions that do not involve or lead to construction; (2) installation of noise barriers; (3) specified emergency repairs; (4) and other specified actions. Class III actions are those in which the significance of the environmental impact is not clearly established and, therefore, require the preparation of an environmental assessment, which is a less rigorous analysis than an EIS.

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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office; Maryland Department of Transportation; Department of Legislative Services

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