SB 788

Department of Legislative Services

Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 788 (Senator Rosapepe, *et al.*)
Education, Health, and Environmental Affairs

Transportation Climate Accountability Act of 2019

This bill requires the Maryland Department of the Environment (MDE), in conjunction with other specified agencies, to conduct a comprehensive study regarding the environmental impact of each public-private partnership (P3) project. A presolicitation report for a P3 may not be submitted until MDE's study has been submitted. The bill also requires a study to be completed for any project involving toll lanes on I-495 or I-270 if its presolicitation report was submitted before the bill's effective date. The private entity must reimburse the State for the cost of the required study. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: *Under one set of assumptions*, general fund expenditures increase by as much as $5.0 million in FY 2020 for MDE to conduct the required study for the traffic relief plan. General fund revenues increase by the same amount, likely in FY 2021, as MDE is reimbursed. Delays in future P3 projects may effect overall project costs.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
GF Revenue	$0	$5,000,000	$0	$0	$0
GF Expenditure	$5,000,000	$0	$0	$0	$0
Net Effect	($5,000,000)	$5,000,000	$0	$0	$0

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

Local Effect: The bill does not directly affect local operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Environmental Study Required for Public-private Partnership Projects

MDE must conduct a comprehensive environmental impact study for each P3 project in conjunction with the reporting agency that established the P3. A reporting agency may not submit a presolicitation report for a P3 that requires an environmental impact statement until MDE's study for the project is submitted.

The study must inventory and estimate the project's impact on air and water pollution during the project's construction phase and at three, six, and nine years after its completion. In conducting the study, MDE must:

- analyze the project's impact on the State's ability to comply with the goals, policies, and requirements of (1) the Greenhouse Gas Emissions Reduction Act; (2) the Maryland Healthy Air Act; and (3) the federal Clean Water Act (CWA);
- if the study finds the project negatively impacts the goals, policies, and requirements of the State and federal acts listed above, recommend alterations or alternative to the project;
- consider the potential (1) impact of electric vehicles and autonomous vehicles on projected air emissions; (2) costs and benefits of including electric vehicle infrastructure in the project to mitigate pollution; and (3) environmental impact on low-income communities and State-identified environmental justice communities with existing environmental issues; and
- review the potential increase in greenhouse gas emissions, air pollution, and Chesapeake Bay degradation as a result of (1) road construction and maintenance; (2) the net congestion effect of the project; (3) the additional traffic generated directly by the project; and (4) the additional traffic added to arterial roads along the project corridor.

If any of the study requirements duplicate an aspect of a study required by the National Environmental Policy Act (NEPA) or another provision of law, MDE may summarize the findings of those studies instead of performing duplicative work.

Each study must be submitted to the Comptroller; the State Treasurer; the Maryland Climate Commission; the Department of Legislative Services (DLS); the House Environmental Matters Committee; and the Senate Education, Health, and Environmental Affairs Committee. Each study must also be posted to a publicly accessible web page on MDE's website and the reporting agency's website.

Environmental Study Required for Existing Public-private Partnership Projects

MDE and the reporting agency must conduct the environmental study established by the bill for any P3 whose presolicitation report was submitted before July 1, 2019, and whose project plan includes the addition of toll lanes on I-495 or I-270. The study must be completed and submitted within six months after the draft environmental impact statement (EIS) is adopted in accordance with NEPA. The private entity involved in the P3 must reimburse MDE for the costs associated with the study.

Public-private Partnership Agreements

Further, whenever applicable, a P3 agreement must include a provision that requires the private entity to reimburse the State for the costs associated with an environmental study.

Current Law/Background:

Environmental Impact Statements

For major transportation projects, NEPA requires a range of alternatives to be considered and the environmental impacts of each alternative to be analyzed. This EIS 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.

Maryland's Healthy Air Act and Greenhouse Gas Emissions Reduction Act

The Healthy Air Act of 2006 established emission limits for nitrogen oxides, sulfur dioxide, and mercury from specified electric generating facilities in the State. The Act also addressed carbon dioxide (CO_2) emissions by requiring the Governor to include the State in the Regional Greenhouse Gas Initiative (RGGI). In 2007, Maryland joined RGGI, a cap-and-trade program established in conjunction with eight other northeastern and mid-Atlantic states. Each state limits CO_2 emissions from electric power plants, issues CO_2 allowances, and establishes participation in CO_2 allowance auctions. In August 2017, the participating states agreed to further reduce the program's carbon pollution cap.

The Greenhouse Gas Reduction Act, originally enacted in 2009 and made permanent and expanded in 2016, was enacted in light of Maryland's particular vulnerability to the impacts of climate change. Under the Act, the State must develop plans, adopt regulations, and implement programs to reduce greenhouse gas (GHG) emissions by 25% from 2006 levels by 2020, and must further reduce GHG emissions by 40% from 2006 levels by 2030;

the 2030 reduction requirement terminates December 31, 2023. A draft plan to reach the 2030 requirement is expected to be released by MDE in 2018. In addition, by October 1, 2022, MDE must report on the progress toward achieving the 2030 reductions as well as the reductions needed by 2050 to avoid the most dangerous impacts of climate change, as specified.

Federal Clean Water Act

CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. Under CWA, the U.S. Environmental Protection Agency (EPA) has implemented pollution control programs such as setting wastewater standards for industry. EPA has also developed national water quality criteria recommendations for pollutants in surface waters.

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 (MDOT), the Maryland Transportation Authority (MDTA), and State higher education institutions.

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.

The Board of Public Works (BPW) must approve all P3 agreements, subject to specified processes; however, BPW may not approve a P3 partnership that results in the State exceeding its capital debt affordability guidelines.

Traffic Relief Plan

In September 2017, the Governor announced plans to add four new lanes to I-270, 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.

The *Consolidated Transportation Program* for fiscal 2019 through 2024 includes $129.5 million to continue planning for the new lanes on I-270 and I-495. MDOT advises that one of the goals of the I-270 and I-495 project is that there will be no net cost to the State. To that end, MDOT advises that, in time, it will be repaid for these and other project development costs by the P3 partners.

On December 12, 2018, MDOT and MDTA delivered a presolicitation report for the I-495 and I-270 toll lanes that did not include a NEPA study. MDOT advises that the plans for both projects are structured to proceed simultaneously with the environmental and solicitation processes so that any issues identified in the federal approval process can inform the project design. MDOT also advises that federal regulations allow it to work with a developer prior to approval of the NEPA analysis. On January 17, 2019, the budget committees requested a 15-day extension to complete their review and comment, as allowed under current law. Furthermore, on January 18, 2019, the budget committees requested that MDOT and MDTA withdraw the presolicitation report and resubmit it once the draft environmental impact statement is available.

Presolicitation Reports

A reporting agency may not solicit a P3 until a presolicitation report about the project is submitted to the Comptroller, State Treasurer, the budget committees of the Maryland General Assembly, and DLS. The budget committees have 45 days to review and comment on the report, but if the project is valued at more than $500.0 million, they may request an additional 15 days to review and comment on the report.

The presolicitation report must, among other requirements, (1) state the specific policy, operational, and financial reasons for the P3; (2) identify the anticipated value and environmental implications of the P3; and (3) evaluate the risks and benefits of the P3. After the period of review has ended, and before the reporting agency issues a public notice of solicitation, BPW must officially designate the proposed asset as a P3 and approve the solicitation method.

State Fiscal Effect:

Environmental Studies – Maryland Department of the Environment

Due to the infrequent nature of P3s in the State (there have only been two since 2013 – the Purple Line and the Traffic Relief Plan) and MDE's lack of expertise with transportation-related environmental impact studies, MDE plans to conduct any P3 study conducted pursuant to the bill using contractual and consulting assistance in collaboration with MDOT and MDTA. At this time, the only P3 that requires a study is the Traffic Relief Plan. This P3 involves the establishment of toll lanes on I-495 and I-270, and the bill explicitly requires the study to be done for such a project, even if its presolicitation report was submitted before the bill's July 1, 2019 effective date.

Although the precise cost of any study conducted by MDE is likely to vary depending on numerous factors, (including the scope of the project and whether other similar studies have been conducted that may be summarized by MDE), the total cost for MDE to perform any study is likely to range from $5 million to $20 million. These potential costs are based on information provided by MDOT – specifically, this range represents costs experienced by MDOT in recent years for NEPA-required environmental studies for various transportation projects in the State.

The bill requires the traffic relief plan study to be conducted after the completion of the NEPA-required draft EIS and, therefore, MDE's consultants may be able to summarize some of the EIS for certain portions of the study required by the bill. Even so, because of the large scope of the project, the total cost is likely to be significant. Although MDE may be able to leverage certain special funds for the project, for purposes of this analysis, it is assumed that the study is paid for using general funds. It is further assumed that the study takes place and is fully paid for in fiscal 2020 – although some or all of the costs may take place in future years depending on when the draft EIS is finalized.

Therefore, general fund expenditures increase by as much as $5.0 million in fiscal 2020 for MDE to complete the required study for the Traffic Relief Plan. Because the bill requires the private entity selected for the P3 to reimburse the State, general fund revenues increase by the same amount. The reimbursement is most likely to occur in fiscal 2021, after a

private entity is selected for the P3, but (1) could occur in a different fiscal year depending on the timing of the P3 agreement or (2) may never occur if the project is ultimately abandoned.

General fund expenditures and revenues may increase in future years for MDE to conduct environmental studies for other P3s; however, since there are no other P3s currently being planned, any such impact cannot be predicted.

Potential Costs Related to the Delay of Projects

P3 projects in future years are likely to be delayed due to the additional environmental study requirements established by the bill; however, any such impact cannot be reliably predicted and is not included in this analysis.

As noted by MDOT, delays in the completion of construction projects typically result in higher costs due to inflation and extended payment windows, but several factors may mitigate any such effects. For example, a project delay does not necessarily increase the length of the construction phase for a project, only its start date. Additionally, completion of the NEPA process and an additional environmental study prior to project design may reduce spending on design by eliminating the need for redesigns. Therefore, the net fiscal effect of any delay in future year project commencement and completion cannot be reliably estimated.

Additional Information

Prior Introductions: None.

Cross File: HB 695 (Delegate Stewart, *et al.*) - Environment and Transportation and Appropriations.

Information Source(s): Maryland Department of the Environment; Maryland Department of Transportation; Comptroller's Office; Department of General Services; Board of Public Works; U.S. Environmental Protection Agency; Department of Legislative Services

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