Department of Legislative Services

Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1220 (Delegate Barve, *et al.*)

Environment and Transportation and Appropriations | Budget and Taxation

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Public–Private Partnerships – Highway and Bridge Toll Facilities – Rates (No Lexus Lane Act)

This bill prohibits a public-private partnership (P3) agreement for a project involving road, highway, or bridge assets from authorizing the establishment or alteration of toll rates, a range of toll rates, a formula or algorithm for toll rates, or any late payment fees unless they are approved by the Board of Public Works (BPW). **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: The bill's provisions are already reflected in current law; therefore, the bill has no practical effect on State governmental finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: 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, 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.

State law requires that, whenever applicable, a P3 agreement include, among other items, the methods and terms for setting and adjusting tolls, fares, fees, and other charges related to the public infrastructure asset. 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.

Background:

Governor's Traffic Relief Plan

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. In June 2019, BPW voted to designate the I-270 and I-495 projects as eligible for a P3 and approved the proposed competitive solicitation method for selecting a developer for each phase of the plan. On January 8, 2020, BPW approved the plan with amendments – the preliminary solicitation schedule for Phase 1 anticipates execution of the P3 agreement in May 2021.

The *Consolidated Transportation Program* (CTP) for fiscal 2020 through 2025 includes $95.8 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. The CTP also includes $25,000 for planning of the MD 295 project.

Toll Rates

Variable tolling adjusts toll rates based on real-time demand for toll lanes. It relies on electronic tolling services (*e.g.*, E-ZPass) to assess traffic patterns and adjust toll rates in real-time depending on usage levels of a toll road. **Exhibit 1** shows peak variable toll rates for comparable roads in Maryland, Virginia, and California**.**

Exhibit 1
Approximate Peak Toll Rates for Comparable Toll Roads

Project	Approximate Peak Toll Rate*
Maryland ICC/Rt. 200	$0.22
Virginia I-495 Express	$1.25
Virginia Dulles Greenway	$0.43
California I-15	$1.00
California SR-91	$0.90 (PM) $0.50 (AM)
California Rt. 73	$0.44
California Rt. 261	$0.30
California Rt. 241	$0.44

ICC: Intercounty Connector

*Reflects the rate for two-axle vehicles, per mile.

Note: All rates shown are for electronic tolling and do not reflect possible video tolling rates, which are generally higher, for vehicles without valid electronic tolling transponders.

Source: Maryland Department of Transportation

According to MDOT, variable tolling is used as a congestion management tool. When congestion is high, toll rates increase so that fewer people choose the express lanes, thereby maintaining the free flow of traffic in those lanes.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Transportation; Board of Public Works; Department of Legislative Services

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