HB 485

Department of Legislative Services

Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 485 (Delegate Solomon)

Environment and Transportation and Appropriations | Education, Health, and Environmental Affairs and Budget and Taxation

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Public-Private Partnerships and the Collection of Video Tolls

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This emergency bill establishes the Public-Private Partnership Oversight Review Board, alters the review and approval process for public-private partnerships (P3s) valued at more than $500 million, and expands the requirements for all P3 agreements. It also requires the Maryland Department of Transportation (MDOT) to complete a traffic analysis prior to submitting a P3 agreement for the proposed expansion of Interstate 495 and Interstate 270 (I-495/I-270). The bill extends by three years the authorization in Chapter 547 of 2018 for the Maryland Transportation Authority (MDTA) to recall unpaid video tolls from the Central Collection Unit (CCU) and to waive a portion of the unpaid toll or civil penalty under specified circumstances. It also specifies that P3 agreements for roads or bridges may not include a noncompete clause that would inhibit *any* transit or road maintenance projects (instead of only State-funded transit projects).

Fiscal Summary

State Effect: Likely no effect in FY 2021. General fund expenditures increase by $238,400, and Transportation Trust Fund (TTF) expenditures increase by *at least* $75,000, in FY 2022 to staff the board and conduct the traffic analysis, respectively; out-years reflect ongoing staffing costs. General fund expenditures increase further beginning as early as FY 2022 to conduct independent credit assessments and risk analyses when needed. Other effects – due to extension of the termination date of Chapter 547 – continue through most of FY 2024, as discussed below. The bill may negatively affect the viability and financing of P3 projects by delaying their approval and redirecting revenues away from bondholders.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	$0	$0	$0	$0	$0
GF Expenditure	0	238,400	229,500	231,900	234,800
SF Expenditure	0	75,000	0	0	0
Net Effect	$0	($313,400)	($229,500)	($231,900)	($234,800)

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

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

Small Business Effect: Minimal.

Analysis

Bill Summary:

Public-Private Partnership Oversight Review Board

The board is required to:

- review P3 presolicitation reports;
- make recommendations regarding the designation of a public infrastructure asset as a P3;
- consult with a reporting agency in reviewing an unsolicited P3 proposal (which a reporting agency must submit to the board for its review);
- review best practices regarding P3s; and
- monitor the implementation and operation of existing P3s.

The board is staffed by the Department of Legislative Services (DLS) and may request technical assistance from the Treasurer, the Comptroller, or other appropriate agency.

Approval Process for P3s Valued at More Than $500 Million

The procedures described below apply only to P3 projects (or proposed projects) with a value that exceeds $500 million. For the purpose of determining the total value of a project that will be developed in phases, the total value is equal to the sum of the total value of each phase of the project.

A reporting agency must submit a presolicitation report for a transportation facilities P3 project to the P3 Oversight Review Board that must include separate reports for each contract under the P3. Within 60 days of receiving the report, the P3 Oversight Review Board must report and make recommendations to the Board of Public Works (BPW) and the budget committees of the General Assembly. (For purposes of P3s, "budget committees" is redefined to include the House Environment and Transportation Committee rather than the House Committee on Ways and Means.) The budget committees, in consultation with the appropriate policy committees, have 60 days to review and comment on the board's report and recommendations before BPW may designate the project as a P3.

A copy of a proposed P3 agreement must be submitted to the Legislative Policy Committee (LPC) and the P3 Oversight Review Board in addition to other entities in current law. BPW may not approve the agreement until (1) either the budget committees or LPC, depending on the timing, have reviewed and commented on the agreement; (2) independent assessments of the impact on the State's credit rating are completed for each contract in the agreement by a financial advisor chosen by the State Treasurer; and (3) a risk analysis with specified items is completed for each contract by a financial advisor chosen by the State Treasurer.

Requirements for All P3 Agreements

If a reporting agency has determined that a P3 project will be developed in separate phases, it must submit for approval separate presolicitation reports for each phase of the project.

A proposed P3 agreement must include financial information regarding each contractor and any subcontractor that will provide products or services under the agreement.

For projects that require the State or a successor agency to take over operations and maintenance of the project at a future date, the terms must specify that all toll revenue or other charges be assigned to the State or a successor agency. In addition, the terms of the P3 must require the reimbursement of the State for advanced project expenses, as specified.

I-495/I-270 Traffic Analysis

Prior to submitting a P3 agreement for the expansion of I-495/I-270 to BPW, MDOT must complete and submit to BPW a traffic analysis on the impact of the COVID-19 pandemic and resulting increases in telework throughout the region on the traffic patterns and volume on the two interstate highways.

Current Law: Chapter 5 of 2013 established a new framework for the approval and oversight of P3s. Chapter 5 defined a P3 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.

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 (for transportation facilities projects, the presolicitation report is submitted only to the budget committees and DLS).

Once a P3 agreement is formed, BPW may not approve the agreement until (1) a copy of the agreement is submitted simultaneously to the Comptroller, Treasurer, budget committees, and DLS; (2) the Treasurer, with the Comptroller, analyzes the agreement’s effect on the State’s capital debt affordability limits and submits the analysis to the budget committees and DLS; and (3) the budget committees have reviewed and commented on the agreement within 30 days.

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.

P3 agreements involving road, highway, or bridge assets may not include a noncompete clause that inhibits the planning, construction, or implementation of State-funded transit projects.

Toll Violations and Chapter 547 of 2018

A motor vehicle incurs a video toll when the vehicle passes through an MDTA toll facility (such as the Chesapeake Bay Bridge or Intercounty Connector) but does not pay the toll using cash or an E-ZPass. MDTA is required to send the registered owner of a motor vehicle that has incurred a video toll a notice of toll due. The owner then has 30 days to pay the toll amount. An owner who fails to pay the amount due is subject to a civil citation and civil penalty. The civil penalty amount is set by regulation and is currently $25. (MDTA reduced the civil penalty amount from $50 to $25 effective July 1, 2020.)

A person who receives an MDTA citation for failure to pay a toll (a toll violation) must either pay the toll and penalty in the allotted timeframe or elect to go to court. If a person fails to elect to stand trial or pay the prescribed video toll and civil penalty, is adjudicated to be liable after trial, or fails to appear at a trial after having elected to stand trial, MDTA may (1) collect the video toll and the civil penalty by any means of collection as provided by law and (2) notify the Motor Vehicle Administration. MDTA may waive any portion of a video toll due or civil penalty assessed for a toll violation until the debt is referred to CCU.

Chapter 547 of 2018 expressly authorizes MDTA to recall a delinquent account from CCU if (1) the account exceeds $300 in unpaid video tolls and associated civil penalties; (2) the video tolls in question were assessed within a 30-day period; and (3) mitigating factors exist with respect to the tolls and penalties, as determined by MDTA. Prior to the enactment of Chapter 547, MDTA could only recall an account from CCU if there was an error with the toll violation that was MDTA's fault. Chapter 547 also authorizes MDTA to waive any portion of unpaid tolls or penalties that are recalled from CCU. Chapter 547 is set to terminate May 31, 2021; the bill extends the termination date to May 31, 2024.

State Fiscal Effect:

Public-Private Partnership Oversight Review Board

There is currently one major P3 project being carried out (the Purple Line) and another in the solicitation/procurement process (the expansion of I-495/I-270). Each project is extremely complex in design and operation and expected to cost billions of dollars. As the bill requires the P3 Oversight Review Board to monitor the implementation and operation of existing P3 projects on an ongoing basis, and board activities may often overlap with the legislative session when DLS staff are fully committed, DLS requires additional staff and consulting support to staff the board. Although the bill is an emergency measure, it is assumed that staffing costs begin July 1, 2021.

Therefore, general fund expenditures increase by $238,367 in fiscal 2022, which accounts for a start-up delay until July 1, 2021. This estimate reflects the cost of hiring one analyst to staff the board on a full-time basis and contracting with a consultant with expertise in the operation and financing of P3 projects. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses, including consulting fees.

Position	1.0
Salary and Fringe Benefits	$82,622
Consulting Fees	150,000
Operating Expenses	5,745
Total FY 2022 DLS Expenditures	**$238,367**

Future year expenditures reflect a salary with annual increases and employee turnover and ongoing operating expenses.

Independent Credit Rating Assessments and Risk Analyses

The bill requires the State Treasurer to select a financial advisor to conduct specified risk and credit analyses, so it is assumed that the State Treasurer, rather than a reporting agency or a private partner, must also pay for the analyses to be done. The State Treasurer's Office (STO) indicates that the cost of a single such analysis likely ranges from $79,000 to $195,000. No expenditures are anticipated to be needed in fiscal 2021; a reliable estimate for future years is not feasible because the bill requires two separate analyses for *each* contract and it is not known how many different contracts will result from the I-495/I-270 P3 project or other proposed projects.

STO also advises that the 30-day timeframe (in current law) for completion of an independent assessment likely limits the depth and scope of any such review.

I-495/I-270 Traffic Analysis

MDOT advises that a traffic analysis that examines only traffic volume on and around the two highways costs approximately $75,000. The cost of the study increases if it involves any simulations of future demand, purchasing historic traffic data, and other possible features of the analysis. Accordingly, TTF expenditures increase by at least $75,000 in fiscal 2022. Completion of the study likely delays and/or negatively affects the viability of the project.

P3 Project Viability and Delays

Several provisions in the bill have the likely effect of delaying or extending the approval process for future P3 projects and/or making them less viable. Additional reviews by the oversight board likely extend the timeline for proposed projects. Also, the provision that requires, when the State or a successor agency takes over a project, that revenues be assigned to the State or the successor agency may dissuade investors in P3 projects to the extent that they view that provision as potentially denying them a return on their investment. To the extent that project delays or reduced investor interest in a P3 increase the costs associated with major construction projects, those provisions may negatively affect the financing of P3 projects.

Video Tolls and Penalties

The effects on nonbudgeted revenues, special fund revenues and expenditures, and general fund revenues that have resulted from the implementation of Chapter 547 continue through most of fiscal 2024 due to the extension of the termination date. A precise estimate of the effects of Chapter 547 – which continue under the bill – cannot be reliably estimated, as the effects depend on (1) how many future accounts involve or will involve mitigating factors that make them eligible for recall and (2) how much of the debt that is recalled and collected or waived under Chapter 547 would have been collected by CCU in the absence of the Act. However, the general effects – which continue under the bill – are summarized below.

- MDTA nonbudgeted revenues decrease to the extent that MDTA recalls and waives some or all of a customer's outstanding tolls and penalties from CCU but increase to the extent that doing so allows the collection of toll and penalty revenues that would not have otherwise been collected. It is unclear whether the overall effect is a net increase or decrease in revenues.
- CCU special fund revenues decrease to the extent that debt is recalled by MDTA and, therefore, not collected by CCU. Special fund expenditures decrease correspondingly as CCU spends less time and fewer of its resources attempting to collect the recalled debt.
- General fund revenues also decrease (likely minimally) to the extent that debt is recalled and collected by MDTA instead of CCU, because CCU reverts a portion of the 17% fee it collects on outstanding debt back to the general fund. For the debt that is recalled and collected by MDTA, this general fund revenue is lost.

For context, MDTA advises that during the first 13 months that Chapter 547 was in effect (1 month in fiscal 2018 and all of fiscal 2019), MDTA recalled from CCU about $6.5 million in outstanding toll violation debt. Of that total, approximately $1.0 million was collected, approximately $5.4 million was waived, and approximately $90,000 is still outstanding. Data for fiscal 2020 is not instructive because MDTA temporarily stopped collections of toll violations due to the COVID-19 pandemic.

Additional Information

Prior Introductions: HB 1424 of 2020, a similar bill, passed the House as amended, but no further action was taken on the bill.

Designated Cross File: SB 361 (Senator Rosapepe) - Education, Health, and Environmental Affairs and Budget and Taxation.

Information Source(s): Baltimore City; Baltimore County; Maryland State Treasurer's Office; Department of General Services; Board of Public Works; Maryland Department of Transportation; Department of Legislative Services

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