

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1238
Ways and Means

(Delegate Hixson, *et al.*)

Budget and Taxation

Transportation - Public-Private Partnerships - Notice to the General Assembly

This bill redefines a public-private partnership (P3) arrangement and requires the Maryland Department of Transportation to provide certain information to specified legislative committees at least 45 days prior to issuing a “public notice of procurement” or entering into a P3 arrangement.

The bill takes effect July 1, 2008.

Fiscal Summary

State Effect: Notice could be provided with existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: A “public-private partnership” is redefined: (1) a sale or long-term lease agreement between MDOT and a private entity under which the private entity assumes control of the operation and maintenance of an existing transportation facility; or (2) an agreement between MDOT and a private entity under which the private entity constructs or reconstructs, finances, and operates a transportation facility and is authorized to collect tolls or fees for the use of the transportation facility.

At least 45 days prior to issuing a public notice of procurement related to a P3, MDOT must provide to specified legislative committees, for their review and comment, and the

Department of Legislative Services a summary of the proposed procurement document to be used to solicit proposals.

MDOT must also provide a description of a proposed P3 and a financing plan to specified legislative committees, for their review and comment, and DLS at least 45 days prior to entering into a P3 arrangement. The information provided must include:

- the terms of the agreement;
- the scope of any authority to be granted to the private partner to charge tolls or fees;
- a cost-benefit analysis of the P3;
- the estimated dollar amount of any bonds, including private activity bonds, to be used to finance the P3s and the estimated impact of the issuance of the bonds on the bonding capacity of MDOT or other issuing entity; and
- a description (including estimated value) of the land, buildings, and other assets to be transferred to or exchanged with a private entity as part of the P3.

Current Law: A P3 arrangement is a lease agreement between MdTA and a private entity where the private entity assumes responsibility for operating and maintaining an existing or future revenue-producing highway, bridge, tunnel, or transit facility.

MdTA must provide a description of the proposed lease agreement and a financing plan to specified legislative committees, for their review and comment, and DLS at least 45 days prior to entering into a P3 arrangement. The information provided must include:

- the length of the proposed lease;
- the scope of any toll-setting authority to be granted to the private partner;
- the scope of payments to MdTA;
- a cost-benefit analysis of the proposed P3 arrangement; and
- requirements pertaining to the ongoing operation and maintenance of the facility and contract oversight.

At least 45 days prior to issuing a public notice of procurement related to a P3, MdTA must also provide to specified legislative committees, for their review and comment, and DLS a summary of the proposed procurement document to be used to solicit proposals. A public notice of procurement includes a request for proposals issued by MdTA.

A State agency, including MDOT and MdTA, must get the approval of the majority of affected governments to construct a toll road, toll highway, or toll bridge in affected counties.

Background: MDOT is charged with responsibility for managing the State's transportation systems. The department is organized into a Highway Administration, Motor Vehicle Administration, Aviation Administration, Port Administration, and Transit Administration. Other departmental components include the Office of the Secretary and certain advisory and zoning boards. A separate Maryland Transportation Authority operates revenue-generating transportation facilities.

MdTA has assumed an expanded role in financing nontolled transportation facilities since the 1980s. MdTA has provided fund transfers and loans to the TTF and has assumed responsibility for building nontolled facilities that could not be financed through TTF. MdTA has also served as the conduit through which debt backed by a number of revenue sources has been issued by several MDOT modal administrations.

Maryland's Transportation P3 Program

Maryland's Transportation Public-Private Partnership (P3) Program was established in 1997. The P3 Program is intended to focus on nonhighway facilities, such as transit-oriented development projects, airport and port facilities, and allows qualified private entities to submit unsolicited proposals to acquire, finance, construct, and/or operate new transportation facilities or undertake major rehabilitation of existing transportation facilities. MDOT has been contacted by entities interested in developing port terminals and transit-oriented development projects.

MdTA is responsible for administering the P3 provisions on behalf of MDOT. Unlike some states, Maryland only accepts unsolicited proposals for nonhighway projects. MDOT is interested in soliciting P3s for highways. MDOT, MdTA, and the State Highway Administration issued a Request for Information (RFI) on Highway Public-Private Partnerships to obtain private-sector input on the potential application of the P3 approach for highway projects in Maryland. The RFI receive 17 responses. In June 2005, MDOT, MdTA, and SHA issued a study and report entitled *Current Practices in Public-Private Partnerships for Highways*.

MdTA has undertaken several P3 projects using nontraditional financing mechanisms (sharing financial risk with private partners and providing a return on investment for the private partners) to finance projects such as port and airport support facilities. MdTA has traditionally focused on using design-build partnerships, whereby MdTA undertakes a portion of the design process and a private entity finishes the design and builds the road. This approach is being used to build the planned express toll lanes on Interstate 95. The

State Highway Administration has built other highways in Maryland using such an approach. In addition, in the fall of 2006, MdTA issued a request for expressions of interest for the Corridor Cities Transitway.

P3 National Efforts

P3s have been used to finance billions of dollars worth of new highway projects in the United States and can take several forms. The 2005 *Current Practices in Public-Private Partnerships for Highways* report lists billions of dollars for 2004 alone, and there have been large projects since then. For example, in 2006, Indiana leased a toll road to a private consortium in a 75-year lease for \$3.8 billion. Virginia has completed three projects: Route 895; the Dulles Greenway – the first private toll highway development in Virginia in 170 years; and Route 288.

In some cases, P3s can supplement shortfalls in state or local budgets for transportation projects and accelerate project completion. In addition, a U.S. Department of Transportation report from 2004 states that such partnerships can save from 6% to 40% of the cost of construction. Such partnerships also contain inherent risks for both parties. For the public entity, those risks can include higher total project cost, adverse project selection, contract management problems, public opposition, and private-sector inefficiency. The private partner also faces certain risks, such as public opposition, approval and permit-related setbacks, land acquisition obstacles, and liability.

State Fiscal Effect: Legislative Services advises that providing notice, descriptions of proposed P3s, and financing plans could be handled with existing resources.

Additional Information

Prior Introductions: A similar bill, HB 227, was enrolled as Chapter 383 in the 2007 session.

Cross File: None.

Information Source(s): Maryland Department of Transportation, Maryland Transportation Authority, Department of Legislative Services

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