



Questions about Maryland Public-Private Partnerships? Contact Scott Livingston or Michael Miller of the Rifkin Weiner Livingston, LLC Contracting Group at slivingston@rwllaw.com or mmiller@rwllaw.com, or call them at (301) 951-0150

Maryland P3 Alert

Welcome to the RWL Maryland P3 Update, a report that will highlight issues in Maryland Public-Private Partnerships, focusing on relevant laws, developments in recent or on-going projects, and opportunities on the horizon. The RWL Maryland P3 Update is a companion to our Maryland Procurement Alert, which focuses on Maryland procurement law.

PENDING LEGISLATION BEFORE THE GENERAL ASSEMBLY

There are a number of bills are pending in the Maryland General Assembly that affect current and prospective Public-Private Partnership agreements between the State of Maryland and private parties. This includes the “Purple Line” light-rail project spanning Montgomery and Prince George’s Counties, and the “I-495 & I-270 P3 Program” which seeks improvements to over 70 miles of interstates in the Washington, DC Metro Region.

HB91 – Pre-solicitation Reports – Environmental Impact Statements

Before issuing a public notice of solicitation for a P3, an agency must submit a pre-solicitation report to legislative budget committees and the Department of Legislative Services. This bill would prohibit the submission of a pre-solicitation

report until a draft environmental impact statement (“EIS”) as required by the National Environmental Policy Act was available.

With regard to the I-495/270 P3, the Federal Highway Administration issued a Notice of Intent in March 2018 to prepare an EIS for the majority of the project. According to the Maryland Department of Transportation (“MDOT”), the study is expected to be completed by Fall 2020.

HB102/SB442 - Toll Roads, Highways, and Bridges – County Consent Requirement – Expansion

Currently, State law requires a majority of affected Eastern Shore counties to approve the construction of any toll road, toll highway, or toll bridge. This bill would expand that approval requirement to all counties statewide. With regard to the I-495/270 P3, this would mean that two of the three counties affected – Frederick, Montgomery, and/or Prince George’s – would need to approve the construction of the tolled roadways.

HB695/SB788 – Transportation Climate Accountability Act of 2019

This bill requires the Maryland Department of the Environment (“MDE”) to conduct an additional comprehensive environmental impact study concerning any P3 project prior to submission of a pre-solicitation report. Concerning the I-495/270 P3 Program, this environmental report would need to be completed even if a pre-solicitation report was submitted prior to the bill’s effective date. Private entities would be required to reimburse the State for the costs associated with MDE’s environmental study.

The MDE study would be required to estimate a project’s impact on air and water pollution – including goals and requirements of the Greenhouse Gas Emissions Reduction Act – during construction and at the three-, six-, and nine-year time periods following completion. Among those impacts are the potential for electric and autonomous vehicles, and effects upon “low-income communities and State-identified environmental justice communities with existing environmental issues.”

HB1091 – Public-Private Partnerships - Reforms

This bill requires, prior to Board of Public Works (“BPW”), approval of any P3 agreement, an independent credit rating assessment survey concerning the private party’s credit strength and the impacts upon the credit ratings of State and local governments.

This bill would also expand the prohibition of noncompetition clauses in P3 agreements. Currently, Maryland law prohibits noncompete clauses in road, highway, or bridge P3s concerning the construction of State-funded transit projects. This bill would include *all* transit projects within the scope of prohibition, including P3 and locally-funded transit projects. Finally, the bill would require revenue-sharing P3 agreements to reimburse the State for advanced project expenses and an annual subsidy to impacted local governments.

HB1257/SB931 – Maryland Transportation Public-Private Partnership Oversight Act

This bill would create the Office of Transportation Oversight (“OTO”), which would operate as an independent unit in the Executive Branch tasked with serving as the regulatory entity for transportation-related P3s. Effective November 1, 2019, this bill would temporarily suspend all planning and construction on certain transportation-related P3s (including “new State or Federal highways” and any “new rail-based transportation mode” such as the the Purple Line) while the OTO reviews the P3 agreement. This review would include public comment and review of any P3 placed on hold.

The OTO would oversee the “drafting, legislative review, implementation, extension, modification, and termination of transportation-related public-private partnerships and partnership agreements.” Among its powers would be the authority to require modifications to P3s, regulate transit fares and services under a P3, and enforce the provisions of P3 agreements by way of legal action.

Further, this bill would give State, Maryland residents, counties and municipalities the ability to file legal action against parties to Maryland transportation-related P3s. It would authorize OTO to represent a Maryland resident or government agency in an action against a party to a P3, and could require that party to pay attorney's fees and costs during the course of that litigation. Finally, the bill sets forth various evaluation factors for P3s, including cost effectiveness in terms of congestion relief, increases in energy efficiency, environmental sensitivity including noise pollution, and addressing "environmental justice issues."

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Give us a call at [301.951.0150](tel:301.951.0150) or send an [email](#) to find out how we can help.

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