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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

HB 956 - Public-Private Partnerships Oversight & Review Act
March 1, 2024
House Environment and Transportation Committee

Chairman Korman, Vice Chair Boyce, and Respected Colleagues,

Thank you for the opportunity to present today on my legislation HB 956, which adds sensible oversight and changes to the state Public Private Partnership (P3) statute. It adds additional prudence to a process that if used improperly could have significant negative impacts on our communities and state finances for decades to come.

To be clear, I represent a district in Montgomery County that is impacted by the former Governor's plan to widen I-495 and I-270. And while I disagree with the project, this bill is not a response to that project. This bill is about ensuring oversight and predictability for the financial health of our state in all P3 agreements, not just the potential road project currently under consideration.

The bill would:

- Establish greater legislative oversight of P3 transportation projects and require approval by the Maryland General Assembly of projects valued at more than $1 billion;
- Require P3 proposals to be reviewed by the State's financial advisors to assess financial risks;
- Prohibit P3 operators from demanding compensation from taxpayers for transit or road maintenance projects that lead to reduced toll revenues; and
- Require disclosure of any financial rate of return guaranteed to the operator.

Other components of the bill include:

<u>P3 Oversight Review Board & Legislative Review</u>

The bill establishes a Public-Private Partnership Oversight Review Board consisting of members appointed by the Speaker of the House, President of the Senate, and the Governor. The Review Board will:

- Review and make recommendations for all P3 pre-solicitation reports;
- Make recommendations regarding the designation of a public infrastructure asset as a P3;

- Consult with a reporting agency in reviewing any unsolicited proposals for a P3;
- Review best practices regarding P3 projects from other states and internationally; and
- Monitor the implementation and operation of existing P3s.

Strengthened Presolicitation Report Requirement

The General Assembly Budget Committees are given 60 days to review and comment on the presolicitation report and the recommendations of the P3 Oversight Review Board before the Board of Public Works may designate the public infrastructure asset as a P3.

Independent Credit Rating Assessment & Risk Analysis

The bill requires an independent assessment of the impact on the state's credit rating for each contract under a proposed P3 by all credit rating agencies that rate the state's general obligation bonds and a risk analysis be completed by a financial advisory firm selected by the State Treasurer. The analysis should include the following elements:

1. An assessment of the risks to the State posed by the proposed P3 agreement, including economic, legal, and technological risks; and
2. An evaluation of the security package provided by the private entity and private funding source, including any payment and performance bonds, letters of credit, parent company guarantees, and lender or equity partner guarantees.

Any proposed P3 agreement will also be required to include financial information regarding each contractor and any subcontractor that will provide products or services under a P3 partnership agreement.

Non-compete Clause

The final component of the legislation clarifies changes made by the legislature in the 2018 Session to the non-compete clause section of the P3 law. Previously, the non-compete section was updated so that "state-funded transit projects" were not included. The bill removes the "state funded" caveat since it could cause a chilling effect on new transit, road, highway, or bridge projects that may rely on local funding or through the P3 program's revenue sharing.

Transferring Ownership and Operation of P3 Back to the State

The bill specifies the procedure for transferring the ownership and operation of a P3 back to the state or another private entity. The bill makes it clear that the tolls must be assigned to the state or to the new private entity to cover the costs of operation and maintenance. Current law only requires that the P3 agreement include provisions related to terms and conditions for returning the assets to the state.

Reimbursing the State for Advance Costs

The bill requires the P3 contractor to reimburse the State for advance project costs. The reimbursement must be considered a "primary payment" included in the project pro forma – not dependent on the project's profits. This provision is especially critical to the I-495 & I-270 project because of what was contained in the Presolicitation Report submitted on December 11, 2018:

"If the developer's assessment of the potential costs is less than the toll revenues forecast resulting in excess cash flow, the developer might offer the State of Maryland an upfront payment at the signing of the Agreement and/or a share of the excess revenues over the term of an Agreement."

That statement certainly meets the requirement to include the method and term for revenue-sharing. However, it does not meet the representation made by the Administration that the project will not cost the taxpayers. In fact, the BPW previously awarded a $90 million consulting contract for the project and State has incurred up-front planning costs, however this makes it seem uncertain as to whether that money will be repaid.

Once again, this legislation is about oversight, good governance, and most importantly creating financial certainty for our state. It is not targeting one particular project, but rather adding additional prudence to a process that if used improperly can have major negative ramifications for decades to come. I'll remind you that the Purple Line, which is the state's primary example of a large scale infrastructure P3 is nearly 5 years behind schedule and nearly $4 billion over budget.

This legislation, in almost an identical form, passed this Committee in 2021 17-6 and the full House 97-39. I hope we can once again pass this bill and urge a favorable report and thank you for your consideration.