HB 292 Written Testimony – Jeremy Mohler
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My name is Jeremy Mohler, Communications Director with In the Public Interest, a national nonprofit that studies public goods and services. Despite our national scope, Maryland is important to me. I grew up in La Plata and currently reside there on my family's farm, which we've owned since 1849.

In the Public Interest has long studied toll roads, particularly those financed through public-private partnerships. We've found that not only are these deals more expensive than traditional borrowing—and often vastly so—but they also come with complex financial risks that are difficult for governments to mitigate.

We've seen a number of P3s fail over the years, leaving taxpayers to clean up the mess. Some examples:

In 2017, an Indiana toll road project launched by then-Governor Mike Pence failed as the financial firm behind it slid toward bankruptcy. Halfway built, it was taken over by the state after two years of construction delays that caused increased traffic accidents and commute times. To add insult to injury, subsequent analysis found that the original deal was $137.3 million more expensive than if the state had used traditional public financing.

Last year, Denver decided it would operate the next phase of a massive P3 rail project itself after the first phases were plagued by skyrocketing costs, delays, dramatic breakdowns, lawsuits, and operational issues that put passengers at risk.

Transurban, an early favorite for Maryland's toll road P3, is currently building the West Gate Tunnel in Australia and has run into the type of risk issue we often see in these contracts. The global financial firm originally agreed to pay the entire cost of disposing of contaminated soil. But now that the cost to do so has ballooned to an estimated $675 million more than expected, rather than taking on the risk it agreed to in the contract, Transurban has halted the project by refusing to pay its contractors.

In short, P3s are risky and complex deals that can last past our lifetimes. As they say, the devil is in the details.

Unfortunately, after the Board of Public Works voted on January 8 to approve the P3 procurement process, and after recent changes to the RFP process, the details remain hazy and the financial risks to Maryland residents could be even greater.

The RFP process will now include "a series of confidential one-on-one sessions with shortlisted respondents," including "identification and sharing of risks, or other information to provide an offeror confidence that their solution may be implemented, while minimizing risk to both parties."

Risk transference is a legitimate variable in the process of deciding whether a government should pursue private over public financing. But it's a variable, not a given. And that means the process for calculating it requires as much transparency as possible. MDOT's continual behind-closed-doors changes to the procurement process should deeply worry Maryland legislators and taxpayers.

Weighing P3 risks also must involve as much input from stakeholders as is practical. Those who are to be impacted by a potential deal should fully understand the potential consequences. Allowing county stakeholders to weigh in on this deal shouldn't be seen as a liability. This is a massive decision—perhaps one of the biggest Maryland has ever made. More sunshine and democracy will only help ensure that this deal and others will get the scrutiny they require to protect the state for decades to come.