

POSITION STATEMENT

Bill: SB 843 - I-495 and I-270 Public-Private Partnership - Partnership Agreement - Requirements (Maryland Department of Transportation Promises Act of 2022)

Position: SUPPORT W/ AMENDMENT **Date:** February 24, 2021

Contact: Adrian R. Gardner, General Counsel

What The Bill Does: Among other things, the bill would synchronize the process for procuring a public-private partnership for the State’s project to construct toll lanes on I-495/95 and I-270 (the “Project”), and also engage the Montgomery County Government and Prince George’s County Government to ensure that the local public interest in environmental, local transportation and community benefits can be reasonably addressed.

Why We Support: The Maryland-National Capital Park and Planning Commission (Commission) is responsible for inspiring the local transportation plans and stewarding over 60,000 acres of public parkland on behalf of nearly 2 million Marylanders who live in Montgomery and Prince George’s counties. The parklands entrusted to our protection include some of the most environmentally sensitive areas of Rock Creek, Sligo Creek, and the Anacostia and Patuxent rivers. They also include vulnerable parkland acquired on behalf of the State under the aegis of the federal Capper-Cramton Act of 1930.

Under current law, the process for awarding a public-private partnership (“P3”) contract does nothing to assure the due diligence required to avoid impacts, or address risks that affect our local parkland and transportation plans. Indeed, right now, the State is procuring a P3 agreement for one phase of the Project and, at the same time, pursuing environmental approvals for the whole thing.

This approach threatens the quality of life our agency is founded to preserve. It departs from the customary, common-sense sequence of milestone events, as well as from best practices that require completing an environmental assessment that aligns closely with project phasing and scope.

Project impacts to local transportation systems and environmental assets can best be avoided or mitigated if they are known in time to avoid or mitigate them. Those impacts may affect our local parkland and transportation plans in ways the Commission cannot assess because the assessments have not been completed or undertaken properly.

Because the State is crafting a P3 deal before completing a fair evaluation of local environmental and transportation impacts – besides making the job of our Commission almost impossible – the consequence is to foist the entire financial risk of avoiding or mitigating those impacts onto the public.

On the one hand, if the necessary avoidance or mitigation measures are not specified at the time of solicitation, a later change of scope may entitle the selected vendor to additional compensation. On the other hand, if the wholesale risk of unknown work required to avoid or mitigate these impacts is assigned blindly to the successful vendor under the terms of a contract, potential vendors likely will hedge the financial terms of their offers to avoid the open-ended exposure to the unknown additional costs. In either case, the taxpayers are most likely to cover the cost of this avoidable uncertainty.

Considered in light of the application of the National Environmental Policy Act (NEPA) and its implementing regulations, the bill codifies what has long stood as best practice. Completion of the EIS is customarily completed before procuring a P3 partner for the reasons described above.

The bill would also require the State to disclose certain transportation planning and other data that is essential for the Commission and other local stakeholders to comprehend – at an appropriate time in the process – the Project’s immediate impacts on the communities we serve.

In short, this bill will help our Commission to do its job – protecting the public legacy in sensitive parkland and advancing the mission of local transportation planning. The Commission also supports the clarifying amendment we believe the sponsor will offer to require that a portion of the toll revenue must be used only for transit projects in the county where the collection facility is located, in a share to be determined by the appropriate county governing body.

The Commission accordingly urges your favorable report and passage with that amendment.

Cross-file: 2021 HB 67

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