



February 17, 2021

**Testimony on SB 361  
Public Private Partnerships-Process and Oversight  
Education, Health and Environmental Affairs**

**Position: Favorable**

Indivisible Howard County-an organization with over 700 members- supports SB 361 which will create a much needed review and oversight process for Public Private Partnerships (PPP's) in Maryland. Additional oversight and review is crucial to protect the public interests implicated in large PPP's which are fast becoming the contract vehicle of choice for large public contracts. The PPP approach carries with it significant risks that the provisions of SB 361 are intended to mitigate.

The PPP approach to contracting frequently goes hand in hand with the design-build contract methodology. This is true for the I-270 phase of Governor Hogan's toll lane project and will likely be true for the remainder of this mega, 50-year PPP if it goes forward. Both PPP and Design-build contract methodology have the advantage of placing certain additional burdens and risk on the contractor, but they also create additional risk for the public body. First, although the debt that is issued for a PPP is not, typically, public debt, that fact may also create a higher cost to the debt issuance. Also there are likely to be significantly higher transaction costs, with both factors leading to a higher overall cost to the project. The fact that the cost is intended to be borne by the user of the facility does not eliminate the government's obligation to mitigate costs. Second, although the Design-Build contracting approach is intended to create a single point of responsibility for the design and construction of the project, thus eliminating the possibility that the designer and contractor will point at each other when

problems arise, the methodology also makes oversight much more difficult for the public body and increases the need for strong monitoring. Finally, design-build contracts for PPP's frequently reduce price competition because the design is not known before contracting, there are more uncertainties and there are a limited number of companies that can handle mega projects.

SB 361 builds into the PPP process additional safeguards to address the considerable risks which a \$500, 000 million plus project entails. An Oversight Board (Board) is created with members of the House of Delegates and Senate, as well as gubernatorial appointees. The Board members are required to have expertise and may also employ expertise. The Board will look to PPP best practices and will monitor both the contracting and the implementation of the PPP.

Critically, the pre-solicitation report will go to the Board for review and must contain: 1) an analysis of each contract and; 2) the final Environmental Impact Statement if one is required by National environmental Policy Act; 3) an independent assessment of the effect of the PPP on the State's credit rating; and 4) an analysis of the economic, legal and technological risks involved in the PPP.

**We encourage a favorable report**

Carol O'Keeffe  
**IndivisibleHoCoMD**