

Pinsky_SB361_020821.pdf

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Position: FAV



CITY OF COLLEGE PARK

OFFICE OF THE MAYOR & CITY COUNCIL

8400 BALTIMORE AVENUE SUITE 375 COLLEGE PARK MD 20740 | COLLEGEPAKMD.GOV

February 8, 2021

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Senator Paul G. Pinsky, Chair
Education, Health, and Environmental Affairs Committee
2 West
Miller Senate Office Building
Annapolis, Maryland 21401

Re: SB 361 - Public-Private Partnerships – Process and Oversight

Dear Senator Pinsky:

On behalf of the College Park City Council and residents, I respectfully request your support for SB 361 which would establish a Public-Private Partnership Oversight Review Board.

Public-Private Partnerships have the potential to leverage and extend public resources in a way that provides valuable resources to Maryland residents. In College Park, we will benefit greatly from Maryland's largest public-private partnership – the Purple Line—but that experience has been challenging and expensive for all parties. If a P3 solicitation is not structured in a way that ensures accountability for the private partner and minimizes risk for the public entity, the resulting agreement could lead to a massive financial loss for taxpayers. This risk is especially great when the project has a total value over \$500,000,000.

SB 361 would help minimize the risk for the public side of massive transportation related P3 projects by setting up an oversight review board and allowing sufficient time for public review of a solicitation before it goes out for bids. It would also require that the private partner establish solid creditworthiness and ensure that the public partner obtains the revenue of a project if the private partner is no longer able to maintain or operate the facility. The City of College Park Council voted to support this bill to protect the investments of our public entities and taxpayers.

Thank you for your consideration of the City's position.

Sincerely,

Patrick L. Wojahn
Mayor

cc: 21st District Delegation

SB 361 CP 2-5 Changes.pdf

Uploaded by: Anderson, Stephanie

Position: FAV



CITY OF COLLEGE PARK

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February 8, 2021

Senator Guy Guzzone, Chair
Budget and Taxation Committee
3 West
Miller Senate Office Building
Annapolis, Maryland 21401

Re: SB0361 - Public-Private Partnerships – Process and Oversight

Dear Senator Guzzone:

On behalf of the College Park City Council and residents, I respectfully request your support for SB0361 which would establish a Public-Private Partnership Oversight Review Board.

Public-Private Partnerships have the potential to leverage and extend public resources in a way that provides valuable resources to Maryland residents. In College Park, we will benefit greatly from Maryland's largest public-private partnership – the Purple Line, but that experience has been challenging and expensive for all parties. If a P3 solicitation is not structured in a way that ensures accountability for the private partner and minimizes risk for the public entity, the resulting agreement could lead to a massive financial loss for taxpayers. This risk is especially great when the project has a total value over \$500,000,000.

SB0361 would help minimize the risk for the public side of massive transportation related P3 projects by setting up an oversight review board and allowing sufficient time for public review of a solicitation before it goes out for bids. It would also require that the private partner establish solid creditworthiness and ensure that the public partner obtains the revenue of a project if the private partner is no longer able to maintain or operate the facility. The City of College Park Council voted to support this bill to protect the investments of our public entities and taxpayers.

Thank you for your consideration of the City's position.

Sincerely,

Patrick L. Wojahn
Mayor

cc: 21st District Delegation

SB0361-FAV-DTMG-2-17-21.pdf

Uploaded by: Bartlett, Olivia

Position: FAV



Olivia Bartlett, Co-Lead, DoTheMostGood Maryland Team

Committee: Education, Health, and Environmental Affairs

Testimony on: SB0361 – Public–Private Partnerships – Process and Oversight

Position: Favorable

Hearing Date: February 17, 2021

Bill Contact: Senator Rosapepe

DoTheMostGood (DTMG) is a progressive grass-roots organization with more than 2500 members who live in a wide range of communities in Montgomery and Frederick Counties, from Bethesda near the DC line north to Frederick and from Poolesville east to Silver Spring and Olney. DTMG supports legislation and activities that keep all the members of our communities healthy and safe in a clean environment and that promote careful use of our taxpayer money.

DTMG strongly supports SB0361 because recent experience with the Purple Line Public Private Partnership (P3) shows conclusively that, to protect Maryland taxpayers, Maryland's large P3 agreements need much more oversight than they are currently getting. Current law allows all decisions for multi-billion dollar P3 projects impacting millions of residents in multiple counties to be made by just three people on the Maryland Board of Public Works – the Governor, the Comptroller, and the State Treasurer -- with no opportunity for input or oversight of these huge, complex agreements and projects by the Legislature or anyone else.

SB0361 will establish a Public–Private Partnership Oversight Review Board to review P3 agreements valued at more than \$500,000,000, beginning at the pre-solicitation stage, to make recommendations regarding the designation of a public infrastructure asset as a P3, to review best practices regarding P3s from other states and internationally, and to monitor the implementation and operation of existing P3s.

Furthermore, in order to protect Maryland taxpayers from potential problems, costly delays, or defaults later on during the P3 project, SB0361 will require that there be a pre-solicitation report of each contract under the P3, that relevant committees of the Maryland House and Senate with appropriate expertise examine the credit worthiness of potential contractors and potential legal, financial, and technological risks to the state of the proposed P3 projects, and that a final Environmental Impact Statement (EIS) be available pre-solicitation if an EIS is required for the P3 project under the National Environmental Policy Act (NEPA).

These commonsense provisions will protect Maryland taxpayers from having to spend tens of millions of dollars to reimburse contractors if the final EIS shows that the P3 project cannot be completed in compliance with NEPA or, worse, hundreds of millions of dollars if risky partnerships fall apart mid-project, like what happened with the Purple Line P3. It is very unfortunate that these provisions will be

enacted too late to protect Maryland taxpayers from problems with MDOT's massive \$11 billion P3 for toll lanes on I-270 and the beltway in Montgomery and Prince George's Counties.

Previous objections to additional oversight of the P3 process have centered on the extra time that would be needed for action by the P3 Oversight Board. SB0361 addresses these concerns by setting time limits for receipt of reports and recommendations from the Oversight Board and laying out procedures for how the Oversight Board will function when the Maryland General Assembly is not in session.

The taxpayer money that will be used to fix the Purple Line P3 mess and that has been used to pay contractors during the initial phases of the P3 for I-270 and the beltway comes from residents living throughout Maryland, not just those in two counties. We don't know where the next big P3 project will be proposed, but we all need to be sure that the decisions to spend our tax dollars will have adequate oversight and will not be subject to the whims of just three people.

Therefore, DTMG strongly supports SB0361 and urges a **FAVORABLE** report on this bill.

Respectfully submitted,

Olivia Bartlett
Co-lead, DoTheMostGood Maryland Team
oliviabartlett@verizon.net
240-751-5599

SB 361 Statement by CAFE.pdf

Uploaded by: Coufal, Barbara

Position: FAV

**Statement by Citizens Against Beltway Expansion
In Support of SB 361
Regarding Public-Private Partnerships – Process and Oversight
Before the Education, Health and Environmental Affairs Committee
February 17, 2021
Barbara Coufal, Co-Chair
P.O. Box 3593, Silver Spring, MD 20918**

Chair Pinsky, Vice Chair Kagan, members of the Committee, Citizens Against Beltway Expansion thanks you for the opportunity to share our strong support for Senate Bill 361, filed by Sen. Rosapepe.

The need for this bill's reforms has become even more evident since we testified in support of this bill last year. As you know, the Purple Line P3 triggered a \$250 million unbudgeted taxpayer bailout when it fell apart. The \$11 billion I-495/I-270 expansion exposes taxpayers to substantially more risk, despite claims by the Maryland Department of Transportation (MDOT).

We do not believe that the Purple Line P3 fiasco was a fluke. Independent research shows that P3s continually surprise taxpayers with expensive demands for more support.

To reduce the risk of future and unaffordable P3 surprises, we strongly support provisions in SB 361 for greater fiscal and environmental transparency. We also strongly support the establishment of a Review Board to ensure long-term accountability and give the General Assembly oversight over future and existing P3 projects.

In light of MDOT's handling of the I-495/I-270 P3, we strongly endorse the bill's requirement for federal environmental reviews to be completed before the State can enter into P3 pre-solicitation agreements. We also strongly endorse the provision to prevent P3s from demanding compensation when planned roads and public transport could reduce congestion on a P3 toll road.

Although the bill would not stop the addition of for-profit toll lanes to I-495 and I-270, it will better ensure oversight, protect taxpayer wallets and Maryland's credit rating, and provide greater predictability for future projects that could otherwise have significant negative impacts on our State for decades to come.

This legislation was overwhelmingly approved by the House of Delegates last year. We urge you to report this bill favorably and quickly.

2.17.2021 SB361 P3 Process&Oversight(HB 485).pdf

Uploaded by: Ditzler, Barbara

Position: FAV



**TESTIMONY TO THE SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL
AFFAIRS COMMITTEE**

SB 361 Public-Private Partnerships – Process and Oversight

POSITION: Support

BY: Lois Hybl and Richard Willson – Co-Presidents

Date: February 17, 2021

The League of Women Voters of Maryland (LWVMD) supports proposed legislation SB 361 that creates a board to help oversee Public-Private Partnerships (P3s) and offers the public assurances and protections. LWVMD believes in wise environmental, fiscal, land use, and governmental guidelines that are transparent so prudent planning decisions may be made for the Maryland population and those decisions also follow through with a set course of action.

Previously, a bill was enacted to help implement the Purple Line with its P3 agreement. This proposed legislation helps to clarify and expand concerns that have developed since all projects that may involve a P3 do not have the same terms, financial commitments, or state involvement. We don't know how P3s may evolve and what may next be proposed, but the guidelines set forth in this bill help set prudent procedures with timelines for implementation that promote good management.

The composition of the board proposed in this legislation draws from a broad spectrum of both governmental officials and appointees who have experience in transportation law, public policy, finance or management consulting. The Oversight Review Board has the potential to add much valuable knowledge to the P3 process.

The positions of LWVMD clearly say that state government should help enable the compliance with state goals. Our transportation systems should reflect local concerns, promote environmental protection, aid economic development, and encourage cooperative working relationships. Wise decisions are difficult to make.

SB 361 helps make government more effective and transparent for P3 projects, by incorporating public input, protections and assurances with clear guidelines and stipulations. LWVMD urges a favorable report.

Glaros Support for SB361.pdf

Uploaded by: Glaros, Dannielle

Position: FAV



Dannielle M. Glaros

Council Member

Council District 3

(301) 952-3060

Together Strengthening Our Community

February 12, 2021

Senator Paul Pinsky, Chair

Senator Cheryl Kagan, Vice-Chair

Senate Education, Health and Environmental Affairs Committee

RE: Senate Bill 361 – Public Private Partnership Oversight & Review Act

Dear Chair Pinsky, Vice Chair Kagan, and Members of the Education, Health and Environmental Affairs Committee:

I am writing today in strong support of Senate Bill 361, which will help ensure oversight and predictability for the financial health of the State of Maryland in future Public-Private Partnership (P3) agreements. This legislation 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.

I am a strong proponent of the benefits of Public Private Partnerships for their ability to further the goals of our local communities and deliver complex projects.

However, I have also seen first-hand that strong safeguards and an oversight review board are crucial to protecting the public investment in public private partnerships. Had Senate Bill 361 been in effect, or had the provisions outlined in it been implemented with the Purple Line Public Private Partnership, I feel confident this light rail project, which will eventually yield incredible community and economic benefits for neighbors across Prince George's and Montgomery Counties, would have avoided the delays and challenges of the past year and be much closer to completion.

In fact, in Prince George's County we have already begun implementing the sorts of safeguards and oversight SB361 calls for. In finalizing our public-school alternative construction financing P3, we put into place an oversight board and other protections for our public dollars. This P3 will deliver six new middle schools for residents of Prince George's County.

Thank you for your dedication to the residents of the State of Maryland. I urge your strong support of SB361 to ensure the best stewardship of our public dollars for public good.

Together Strengthening Our Community,

Dannielle M. Glaros

SB 361 P3 Oversight Position Statement.pdf

Uploaded by: Hessler, Therese

Position: FAV



THE PRINCE GEORGE'S COUNTY GOVERNMENT

(301) 952-3700
County Council

POSITION STATEMENT

SB 361
Senator Rosapepe
(Education, Health &
Environmental Affairs
Committee)

Public-Private Partnerships - Process and Oversight

POSITION:

SUPPORT

SB 361 – Public-Private Partnerships - Process and Oversight – Establishing the Public-Private Partnership Oversight Review Board; requiring a certain reporting agency to include in presolicitation reports for certain public-private partnerships presolicitation reports of certain contracts and a certain environmental impact statement under certain circumstances; requiring certain presolicitation reports to be submitted to the Legislative Policy Committee; prohibiting the Board of Public Works, under certain circumstances, from designating a public-private partnership; etc.

Over the past several years, the State of Maryland has been working to develop the State's capacity and framework to implement innovative financing and delivery mechanisms for vital infrastructure projects. One tool the State has identified is Public-Private Partnerships (P3) to leverage the expertise and efficiencies of the private sector and mitigate risk for the State when undertaking large transportation infrastructure projects. P3s are contractual agreements between a government agency and a private entity that typically involve the renovation, construction, operation, maintenance, or management of a facility or system. The agency generally retains ownership in the facility or system, but the private entity has additional decision rights in determining how the project or task is completed.

State P3 laws provide for varying levels of oversight by an independent commission or the legislature, with some requiring legislative approval of a final P3 agreement. SB361 would help strengthen the Maryland's current P3 oversight process by establishing a Review Board and adding additional safeguards as well as reporting requirements to current law. Creating effective Public-Private Partnerships is more necessary today than ever, given public sector needs and fiscal constraints when faced with challenging urban and rural development issues.

For the foregoing reasons, the Prince George's County Council **SUPPORTS SB 361** and respectfully requests your favorable consideration of its position.

Prepared by: LA PEREZ CONSULTING
On behalf of Prince George's County Council

County Administration Building – Upper Marlboro, Maryland 20772

2021-02-17 SB 361 (Support).pdf

Uploaded by: Jung, Roy

Position: FAV

BRIAN E. FROSH
Attorney General



ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.

WRITER'S DIRECT DIAL NO.

410-576-6584

February 17, 2021

To: The Honorable Paul G. Pinsky
Chair, Education, Health, and Environmental Affairs Committee

From: Office of the Attorney General

Re: SB0361 – Public-Private Partnerships – Process and Oversight (Support)

The Office of Attorney General submits this written testimony urging the Education, Health, and Environmental Affairs Committee to favorably report SB 361, Senator Rosapepe's bill to establish the Public-Private Partnership Oversight Review Board to oversee public-private partnerships ("P3s") with values exceeding \$500,000,000. The bill also expands P3 agreement requirements and prohibits the use of noncompete clauses in P3 agreements for roads or bridges that would inhibit any transit or road maintenance projects.

We generally support legislation that is aimed at preventing waste fraud and abuse of taxpayer dollars. Senate Bill 361 is designed to do just that and, consequently, deserves to be enacted.

For the foregoing reasons, we urge a favorable report on SB 361.

cc: Committee Members

SB0361_FAV_City of Rockville_Public-Private Partne

Uploaded by: Kasemeyer, Pam

Position: FAV



Testimony of the Rockville Mayor and Council Senate Bill 361 – Public-Private Partnerships – Process and Oversight Support

Good afternoon Chairman Pinsky and members of the Committee. Thank you for the opportunity to testify with the unanimous support of the Rockville City Council for SB 361.

We thank Senator Rosapepe for his leadership in bringing this Bill forward. While SB 361 would not impact the current I-270 and I-495 P3 projects, Rockville's experience with the current P3 initiative has brought to our attention numerous and serious flaws in the P3 process. For example, this massive public-private- partnership (P3) is totally in the hands of the Board of Public Works, a 3-member body, and the General Assembly has had little or no effective input into this initiative. Furthermore, there have been issues with transparency, including the recent information that the State taxpayers are already on the hook for millions if this project is delayed or cancelled.

The City of Rockville is the municipality most impacted by the I-270 and I-495 P3 project. Yet, we were blindsided a year ago when the announcement was made. Additionally – it has only been recently that the City has been included in discussions and information. Therefore, Rockville endorses provisions of SB 361 such as:

- The establishment of a Public-Private Oversight Review Board that would review any P3 over a certain large threshold.
- The explicit involvement of legislative budget committees.
- The several provisions that provide for transparency and clarity of process that have sorely been lacking from the current P3 process.

And we request that a provision be added that would require the State to include municipalities that are directly impacted by a P3 as a partner in the process.

SB 361 makes substantial improvements to the state's inadequate P3 process for public infrastructure assets. It creates safeguards that will protect taxpayers and provides the public with the opportunity to understand the real impacts of large-scale transportation P3 infrastructure. For these reasons, we urge this Committee to provide SB 361 with a favorable report and quickly advance it to the Senate floor for a vote. Thank you.

AFSCME_FAV_SB361.pdf

Uploaded by: Kilpatrick, Lance

Position: FAV



190 West Ostend St., #201
Baltimore, MD 21230
Phone: 410.547.1515
Fax: 410.837.5436

Patrick Moran - President

Testimony
SB 361 – Public-Private Partnerships - Process and Oversight
Education, Health & Environmental Affairs
February 17, 2021
Support

AFSCME supports SB 361. This legislation would establish a Public-Private Partnership Oversight Review Board, and require mechanisms and procedures be put in place where due diligence by stakeholders involved in the consideration of a P3 project is able to take place before that project could begin to be implemented.

When triggered by a \$500M budget for a P3 transportation project, the Oversight Review Board would join with the General Assembly budget committees to review all pre-solicitation reports; they then would review the projects and consider development of recommendations; these recommendations would in turn inform reporting to the Board of Public Works and the aforementioned budget committees.

The bill also requires an independent rating assessment survey be completed by an independent auditor or a credit rating agency for each contract under the P3 agreement before it can be approved by the Board of Public Works.

In 2019 the Department of Legislative Services highlighted the lack of specificity in MDOT's I-495/I-270 proposal and the absence of an analysis to determine whether a P3 financing model would be more financially advantageous than conventional procurement. For any undertaking of this size, a basic understanding and analysis is clearly needed to move a project forward.

The siren's call of "quick and easy" should NOT override the ultimate goal of addressing the needs of Marylanders in a strategic, and sustainable fashion. This is a truth that should be applied to *any* undertaking for the state's inhabitants. AFSCME is not looking to kill roads – but we are wanting more strategic and holistic solutions. Senator Rosapepe's proposal puts in place needed prescriptions to address the impulse to pave over transportation challenges.

AFSCME Council 3 urges a favorable report of SB 361. Thank you.

Every AFSCME Maryland State and University contract guarantees a right to union representation.
An employee has the right to a union representative if requested by the employee.
800.492.1996

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SB0361_public_private_partnerships_fav_TPMEC_2.17.

Uploaded by: McGilvray, Laurie

Position: FAV



Environment Committee

Committee: Education, Health, and Environmental Affairs
Testimony on: SB0361 – Public-Private-Partnerships—Process and Oversight
Organization: Takoma Park Mobilization Environment Committee
Submitting: Laurie McGilvray
Position: Favorable
Hearing Date: February 17, 2021

Dear Mr. Chairman and Committee Members:

Thank you for allowing our testimony today in support of SB0361. The Takoma Park Mobilization (TPM) is a grassroots organization based in Takoma Park, Montgomery County and focused on state and local climate change issues. The TPM Environment Committee urges you to vote favorably on SB0361. The bill will bring much-needed oversight to the public-private partnership (P3) process by establishing the Public-Private Partnership Oversight Review Board; requiring P3 agreements be submitted to the Legislative Policy Committee; and prohibiting the Board of Public Works from approving a proposed P3 agreement until the Legislative Policy Committee has reviewed and commented on it.

The current public-private partnership model in Maryland, where the three-member Board of Public Works is the sole approving body, lacks the oversight necessary to ensure that large-scale infrastructure projects are in the public interest. P3 projects, such as the project to expand I-270 and I-495, have far reaching fiscal, environmental, and economic impacts that deserve the highest degree of public scrutiny. By creating the Public-Private Partnership Oversight Review Board, SB0361 will improve P3 oversight by involving a broader selection of elected officials, as well as appointees who have relevant expertise in key professional fields. Although the current P3 model does provide flexibility and speed that can be appealing, it is important to balance urgency with proper public oversight. There are multiple examples in the U.S. of poorly structured P3 deals -- including the Purple Line Project -- that drag on, cost more, and which frustrate taxpayers and government leaders. When we prioritize speed alone for entering into a private partner contract, we sacrifice other important goals namely public support, cost, and/or quality of the project. SB0361 can help to ensure Maryland leaders and the public are more fully informed on the costs, risks, alternatives, and likely outcomes before entering into P3 projects.

P3 Issues for Takoma Park

Takoma Park is uniquely located in Montgomery County on the Prince Georges County border. As such, Takoma City residents have been and potentially will be affected by two major P3 projects – the Purple Line and I-495/I-270 toll lanes - addition to the financial and tax burdens they may share with other Maryland residents (e.g., WSSC water utility relocation and project cost overruns).

- Purple Line - The mismanagement of the P3 Purple Line Project has affected Takoma Park residents and businesses by prolonging the major disruption associated with longer, uncertain construction timeframes. Neighborhoods, roadways, traffic, and businesses were already being significantly impacted by the Purple Line construction and now the extended construction timelines

have worsened the situation due to the project's mismanagement. All Maryland taxpayers are now paying the cost of the glaring contract failures, including the failure to include an arbitration clause.

- I-495/I-270 Toll Lanes – The proposed I-495 toll lanes expansion will not pass directly through the City of Takoma Park; however, the natural resource, water quality, and stormwater impacts to Sligo Creek will directly affect Takoma Park. Additionally, Takoma Park will be affected by the traffic congestion on feeder roads resulting from both construction and operation of the proposed toll lanes. Finally, many Takoma Park residents enjoy the natural resource and recreational opportunities in nearby Rock Creek and other County parks that will be lost and negatively impacted by the project.

How SB0361 Addresses These Concerns

Many of the P3 problems arise from the lack of transparency in the origin, negotiation, and execution of P3 projects. There is a critical lack of oversight and too much power resides with the Governor's Office and the Board of Public Works to make P3 decisions that put Maryland taxpayers and the State's natural resources at the mercy of private partners/investors and poorly designed P3 projects. This bill will bring greater oversight and transparency to the process.

For these reasons we urge a favorable vote for SB0361.

SB361_IndivisibleHoco-FAV_Carol O'Keeffe..pdf

Uploaded by: O'Keeffe, Carol

Position: FAV



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

Testimony SB 361 P3 Process & Oversight.pdf

Uploaded by: Pérez, Rodolfo

Position: FAV

Rodolfo E. Pérez, PE
Consulting Engineer
6 Manor Spring Court
Silver Spring, MD 20906

February 17, 2021

Testimony on SB 361 Public Private Partnerships - Process and Oversight
Committee: Education, Health and Environmental Affairs
Position: Favorable

I offer this testimony in the context of my forty years of engineering experience in the private and federal sectors, including over two decades as advisor to the Inspector General, US Department of Transportation, and my pro bono service on the Montgomery County Transportation Policy Task Force from 2000 to 2002.

This bill will provide to the General Assembly a much-needed oversight role over future public private partnership (P3) projects. With this oversight, the taxpayers will gain more transparency on the financial and environmental consequences for all P3 projects with a value exceeding \$500 million.

The SB 361 includes indispensable taxpayer protections. For example, SB 361 will prohibit contractual provisions that allow toll concessionaires to demand compensation when local governments fund transportation projects that would reduce the number of drivers on toll lanes (similar to an existing prohibition applying to State-funded projects). The bill will also require independent auditors (or rating agencies) to conduct rating assessments for every contract under a large P3 agreement before the Board of Public Works can vote on it.

In the case of the I-495/I-270 P3 Project, the absence of this oversight has allowed the Maryland Department of Transportation to proceed without any review of non-tollway alternatives, and without a full disclosure of financial and environmental consequences. This approach has denied the public a voice in shaping decisions about this large project.

I urge the Committee to report favorably on SB 361 to ensure that legislators, local planners and the public have the transparent oversight that they deserve when considering P3 projects.

Rodolfo E. Pérez, PE

SB0361_P3_Oversight_MLC_FAV.pdf

Uploaded by: Plante, Cecilia

Position: FAV



TESTIMONY FOR SB0361 PUBLIC-PRIVATE PARTNERSHIPS – PROCESS AND OVERSIGHT

Bill Sponsor: Senator Rosapepe

Committee: Education, Health, and Environmental Affairs

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Cecilia Plante, co-chair

Position: FAVORABLE

I am submitting this testimony in favor of SB0361 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of individuals and grassroots groups with members in every district in the state. We have over 30,000 members across the state.

Our members are very concerned about the status of transportation projects in Maryland. It seems as though there is no real master transportation plan that connects the state and is also environmentally responsible. Projects are approved willy-nilly and there is no real oversight.

In the past several years, the idea of using public-private partnerships to manage large projects has become popular. We have no structure for handling these kinds of partnerships. Our ability to manage projects without involving P3s is very much in question and from what we have seen with the Purple Line, we don't seem to be able to manage projects WITH P3s.

We are in need of oversight – badly. This bill will authorize a review board, which would lend some much-needed structure to this process. It would also require pre-solicitation reports, so some real analysis can be done before solicitations can be provided to bidders.

The process we have now seems to result in poorly thought-out projects with huge cost overruns that are not environmentally sound. This is a good idea. The Maryland Legislative Coalition supports this bill and we recommend a **FAVORABLE** report in Committee.

SB361 - FAV - P3, GCAN.pdf

Uploaded by: Rosenthal, Lore

Position: FAV



Greenbelt Climate Action Network

Committee: Education, Health and Environmental Affairs
Testimony on: SB361 – “Public-Private Partnerships – Process and Oversight”
Organization: Greenbelt Climate Action Network
Person Submitting: Lore Rosenthal, Program Coordinator
Address: 15 Crescent Road, Greenbelt, MD 20770
Position: Favorable
Hearing Date: February 17, 2021

Chairman Pinsky and members of the Committee, thank you for the opportunity to express Greenbelt Climate Action Network’s (GCAN) **support for SB361**, legislation that would reform the P3 process.

This legislation would establish taxpayer and environmental protections and as well as legislative oversight of public-private partnership (P3) transportation proposals. The bill would create a Review Board, including members appointed by leaders of the House and Senate and the Governor, to examine any future P3 project and to provide oversight of existing P3 projects. The bill would also prevent toll companies from effectively vetoing future transit projects sponsored by local governments, as well as the State.

Under SB 361, P3 projects that exceed \$500 million, would be subject to additional requirements. For these large projects, the bill would require that the presolicitation report include a final environmental impact statement. This will ensure that the public and elected officials understand any harm that a large project would have on the environment and our communities before the Board of Public Works (BPW) takes decisive action. The bill also requires that before the BPW considers a large P3 project, the General Assembly Budget Committees would have 60 days to review the presolicitation report and make recommendations to the Review Board. The legislation would also require a risk analysis and an assessment of a potential P3’s impact on the State’s credit rating.

The existing P3 process failed to prevent substantial problems with the Purple Line Light Rail P3, which ultimately led to a negotiated payment of \$250 million to contractors who quit the project. The existing process is also failing to protect our environment from the Governor’s plan to widen I-495 and/ I-270. The predevelopment contract for this \$11 billion P3, will be submitted to the BPW Board of Public Works for approval before the environmental review is completed and before we have a full understanding of its impacts on our communities. GCAN members are concerned about this Beltway widening P3 project. During this climate crisis, when we are trying to reduce the amount of single-occupancy fuel burning vehicles as a way of limiting carbon emissions, we don’t want to see more cars on the road.

This P3 reform bill was approved by the House of Delegates last year and it is critical that it be enacted into law this year. **We urge the Committee to report this bill favorably.**

SB361Testimony.pdf

Uploaded by: Ross, Benjamin

Position: FAV



Testimony in Support of SB361

Benjamin Ross, Chair, Maryland Transit Opportunities Coalition

submitted to
Senate Education, Health, and Environment Committee
February 17, 2021

The Maryland Transit Opportunities Coalition, a statewide coalition of transit riders, transit workers, and transit advocates, strongly supports Senate Bill 361.

The Purple Line has exposed the risks that are inherent in the P3 form of financing, even when a urgently needed and extremely cost-effective facility is carefully vetted before the procurement begins. These risks are far greater when the P3 process is abused to push through a misbegotten scheme like the I-270/I-495 toll lanes without the fiscal and policy oversight that would expose its deep flaws.

Senate Bill 361 provides for greater transparency and financial oversight in future P3 procurements. For the protection of Maryland's taxpayers and everyone who uses our transportation system, we urge you to give it a favorable report.

SB361 - Public-Private Partnerships-Process & Over

Uploaded by: Tulkin, Josh

Position: FAV



7338 Baltimore Ave
Suite 102
College Park, MD 20740

Committee: Environment and Transportation
Testimony on: SB361 - “Public-Private Partnerships – Process and Oversight”
Position: Support
Hearing Date: February 17, 2021

The Maryland Chapter of the Sierra Club strongly supports SB361 that would put in place a more detailed, deliberative, and transparent process for evaluating the potential environmental and financial impacts of proposed public-private partnerships (P3) for large transportation projects.

It is clear that a number of safeguards need to be added to the existing P3 evaluation process because current law has allowed Governor Hogan to fast track an ill-conceived proposal to add four toll lanes to I-495 and I-270 without meaningful environmental and financial evaluations being completed beforehand.

Requiring a Timely Review of the Environmental Impact of Large P3 Transportation Projects

For every proposed P3 with a total value that exceeds \$500 million, the bill would require the Department of Transportation (DOT) to include a completed environmental impact statement (EIS) that complies with the National Environmental Policy Act in the pre-solicitation report it submits to the Board of Public Works (BPW). Currently, DOT is interpreting the state’s P3 law as allowing it to publish the final EIS after the preferred alternative for the project and a developer partner have been selected by DOT, and after the BPW has approved a P3 agreement with the partner to complete extensive pre-development work on the project. The proposed agreement for the I-495 and I-270 project calls for paying the partner \$50 million if a decision is later made not to proceed with the project.

An EIS needs to be completed much earlier in the review process than at present because its findings, including whether a project will comply with state and federal environmental laws, should be a critical factor in helping the BPW to determine whether to approve creation of a P3 and in helping DOT to determine what the preferred alternative should be. No major P3 transportation project should even be considered by the BPW until the impact of each alternative considered is evaluated for its impact on greenhouse gas emissions and human health, as well as the impact on parks, stormwater runoff, and affected bodies of water. The transportation sector is already the largest source of climate-damaging greenhouse gas emissions in Maryland, as well as a major source of toxic emissions that are hazardous to human health.

Numerous studies show that expanding highways to solve congestion does not work for long because more lanes encourage more people to drive, which leads to congestion again, more sprawl, and more climate and health-damaging air pollution being emitted from the tailpipes of the increasing number of cars on the road. The state already has acknowledged difficulty in meeting the goal it set for itself in the Greenhouse Gas Reduction Act to reduce state greenhouse gas emissions 40% by 2030 (compared to the 2006 level).

In part to ensure that the EIS analysis of the proposed P3 is properly considered, the bill would establish a Public-Private Partnership Oversight Review Board – composed of House and Senate members as well as gubernatorial appointees – to review P3 pre-solicitation reports, which would include the EIS. The Board also would review and make recommendations regarding the designation of a P3 to the BPW, review best practices from P3s in other states and countries, and monitor the implementation and operation of existing P3s.

Founded in 1892, the Sierra Club is America’s oldest and largest grassroots environmental organization. The Maryland Chapter has over 75,000 members and supporters, and the Sierra Club nationwide has over 800,000 members and nearly four million supporters.

Improving Financial Oversight

The bill also would significantly tighten the financial controls over P3 transportation projects valued at over \$500 million.

- DOT would be required to prepare a separate pre-solicitation report for each contract under a proposed P3. Currently, DOT only prepares one pre-solicitation report to explain and justify why a project should be procured as a P3. After a review and comment period, the BPW then decides whether to approve the P3. Requiring a separate pre-solicitation report to explain and justify each contract would allow much greater insight into how a project is being planned and would work.
- An independent assessment of the impact on the state's credit rating must be completed for each contract under the P3 by all credit rating agencies that rate the State's general obligation bonds. An independent analysis also must be completed that considers the economic, legal, and technological risks to the state posed by a proposed P3 agreement.
- A proposed P3 agreement also would need to include financial information regarding each contractor and subcontractor that would provide products or services under the P3 agreement.

In summary, this bill would add reasonable and prudent provisions to the process for reviewing large proposed P3 transportation projects to better protect the interests of the state and its taxpayers. Major transportation investments such as those involving P3s need to be consistent with our goals to better serve the needs of all our residents while reducing climate, air, and water pollution. We urge a favorable report on this bill.

Brian E. Ditzler
Transportation Chair
Brian.Ditzler@MDSierra.org

Josh Tulkin
Chapter Director
Josh.Tulkin@MDSierra.org

MTBMA MAA_SB 361_UNF.pdf

Uploaded by: Clark, Rachel

Position: UNF



Senator Paul G. Pinsky, Chair
Education, Health and Environmental Affairs Committee
2 West, Miller Senate Office Building
Annapolis, MD 21401



Senator Guy Guzzone, Chair
Budget and Taxation Committee
3 West, Miller Senate Office Building
Annapolis, MD 21401

February 17, 2021

RE: SB 361 – UNFAVORABLE – Public-Private Partnerships – Process and Oversight

Dear Chair Pinsky, Chair Guzzone, and Senate Committee Members:

The Maryland Transportation Builders and Materials Association (“MTBMA”) and the Maryland Asphalt Association (“MAA”) collectively represent tens of thousands of Marylanders who operate in the areas of transportation construction, production and engineering. Together, for nearly 100 years these organizations have served as the voice of the transportation construction industry. The mission of both MTBMA and MAA is to encourage, develop, and protect the prestige of the transportation construction and materials industry in Maryland by establishing and maintaining respected relationships with federal, state, and local public officials. We proactively work with regulatory agencies and governing bodies to represent the interests of the transportation industry, and also advocate for adequate state and federal funding for Maryland’s multimodal transportation system.

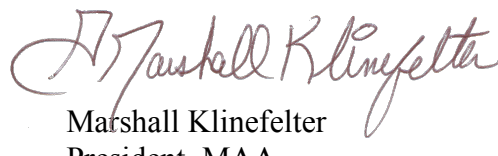
SB 361 would establish the Public-Private Partnership Oversight Review Board that would review P3 pre-solicitation reports and make recommendations regarding the designation of a public infrastructure asset as a P3. This bill is entirely redundant and unnecessary. The State already has an oversight review board that reviews P3 projects called the Board of Public Works (“BPW”). In fact, the three members who make up the BPW – the Governor, the Treasurer, and the Comptroller – would be required members of this P3 Oversight Review Board. We cannot understand why such a board is needed when the BPW already reviews all of the tasks listed in this bill. Enacting such legislation would only further delay necessary transportation projects in our State and undermine the process already in place.

We thank you for your time and consideration and ask for an UNFAVORABLE report on SB 361.

Sincerely,



Michael Sakata
President & CEO, MTBMA



Marshall Klinefelter
President, MAA

BMC-COG Letter - SB361 - P3 Process and Oversight

Uploaded by: Shepter, Brian

Position: UNF



**BALTIMORE
METROPOLITAN
COUNCIL**



**Metropolitan Washington
Council of Governments**

February 10, 2021

The Honorable Paul G. Pinsky, Chair
Education, Health & Environmental Affairs Committee
2 West Miller Senate Office Building
Annapolis, Maryland 21401

RE: UNFAVORABLE – SB361 – Public-Private Partnerships – Process and Oversight

Dear Chairman Pinsky and Honorable Members of the Committee:

We write to express concern with the language of SB361 – Public-Private Partnerships – Process and Oversight, specifically and exclusively with regard to the role the bill creates for the Baltimore Metropolitan Council (“BMC”), Metropolitan Washington Council of Governments (“COG”) and metropolitan planning organizations (“MPOs”) as staff to the Public-Private Partnership Oversight Review Board (“Review Board”). This function is inappropriate for our organizations and presents a conflict of interest with our planning operations.

This letter does not reflect a position as to the efficacy of SB361 generally. **We simply request the Committee remove all references to BMC, COG and MPOs from the bill’s language.** See Page 3, Lines 12-14 and Page 10, Lines 22-25. If the Committee cannot amend the bill as requested, we must respectfully oppose passage and request an **unfavorable** report.

As the Committee is likely aware, BMC and COG are the regional councils of government serving greater Baltimore and greater Washington, respectively. BMC and COG host and provide staff support to the MPOs that coordinate federally mandated regional transportation planning for each geographic area. These MPOs are the Baltimore Regional Transportation Board (“BRTB”) and National Capital Region Transportation Planning Board (“TPB”), respectively.

Under federal law, MPOs exist to coordinate the long and short-range transportation planning processes between local departments of transportation and state department(s) of transportation, ensuring that federal transportation investment reflects a regional approach to transportation system development and maintenance. These boards are independent bodies charged with the responsibility to implement the federal continuous, cooperative and comprehensive metropolitan planning process. Neither BRTB nor TPB undertake individual project development activities on behalf of any their members, especially should such projects come before the full board for inclusion in the MPO plan and program. It is important for the objectivity and independence of the board that MPO staff do not also serve as staff to one or more of its member agencies.

As outlined in the bill, the role of the Review Board is rooted in the General Assembly’s function in legislative oversight of executive action. The employment of public-private partnerships in infrastructure projects is currently within the domain of the Governor and executive agencies. For BMC, COG or its MPOs to serve any one set of stakeholders over another would hinder their independence.

Additionally, the work activities undertaken by the staff of BMC, COG or their MPOs is reviewed and approved by their respective boards of directors. As such, these entities would be unable to accept any mandated work activity outside of the board process.

Furthermore, the bill is not clear about whether an organization and/or its MPO would review a public-private partnership within its respective federally-prescribed Metropolitan Planning Area (MPA) or possibly even opine on a project outside that planning area. MPAs are the geographic area determined by agreement between the MPO and the Governor, in which the metropolitan planning process is carried out. In either respect, the language of the bill presents multiple issues for the undersigned parties and MPOs.

First, if asked to review a project *within* our MPA, we would be presented with a conflict of interest, because each project has already been reviewed and approved in some capacity by the MPO (including voting members from state and local DOTs) in the planning process. Not only would this be redundant and unnecessarily duplicative, we simply could not serve as neutral third parties in the review of projects our MPOs have already approved.

Second, if asked to review a project *outside* our planning area (MPA), we would risk running afoul of federal law. MPOs are prohibited from planning outside of their MPA. At the very least, this legislation could violate the spirit of federal law, and would force one MPO to question the professional judgment of colleagues in a neighboring region.

Third, if a project were to traverse two planning regions (imagine a large-scale project along the I-95 corridor between Washington, DC and Baltimore), neither organization could serve as a neutral third party in the oversight function.

We find ourselves in the unenviable position of opposing legislation that passed the House of Delegates in 2020. However, the bill, as originally introduced last session, did not include BMC, COG or MPOs. The language at issue was added by amendment. **We simply ask the Committee to remove all references to BMC, COG and MPOs from the bill and that the obligation for staff support to the Review Board rest elsewhere.**

If the Committee does not see fit to remove this language, we respectfully oppose passage of this legislation and request an **unfavorable** report.

Thank you for your consideration of the concerns expressed herein. Please contact us anytime.

Sincerely,



Michael B. Kelly
Executive Director
Baltimore Metropolitan Council
mkelly@baltometro.org



Chuck Bean
Executive Director
Metropolitan Washington Council of Governments
cbean@mwkog.org

cc: Senator Guy Guzzone, Chair, Senate Budget & Taxation Committee
Senator Jim Rosapepe, Sponsor
President Bill Ferguson, Member, Baltimore Metropolitan Council Board of Directors

SB0361 - MDOT - Process and Oversight - OPP_FINAL.

Uploaded by: Westervelt, Patricia

Position: UNF

February 17, 2021

The Honorable Paul G. Pinsky
Chair, Education, Health, and Environmental Affairs Committee
2 West, Miller Senate Office Building
Annapolis MD 21401

Re: Letter of Opposition – Senate Bill 361 – Public-Private Partnerships – Process and Oversight

Dear Chairman Pinsky and Committee Members:

The Maryland Department of Transportation (MDOT) respectfully opposes Senate Bill 361, as this legislation represents a significant departure from the State's carefully considered public-private partnership (P3) law, which could serve to irreparably damage the P3 market in the State of Maryland.

Senate Bill 361 would fundamentally alter the framework under which P3 agreements are undertaken. Maryland has a model statutory framework for P3 agreements, which was developed in 2013 in accordance with the recommendations of a multi-year Joint Legislative and Executive Oversight Commission on Public-Private Partnerships. The P3 law in place was passed with overwhelming majorities in both the House and Senate just eight years ago.

Senate Bill 361 will cause a negative ripple effect to the P3 market in Maryland by creating project delays and uncertainty, limiting innovation and competition, and creating financial challenges for Maryland P3 projects seeking financing through multiple means.

First, the legislation requires a Final Environmental Impact Statement that complies with the National Environmental Policy Act to be submitted with the Pre-Solicitation Report to the P3 Oversight Review Board. Today, the environmental review and the solicitation processes can happen concurrently. This change would greatly limit MDOT's ability to identify the best solutions in partnership with the concessionaire, which could result in costly redesign and reevaluation in response to design changes. This would also delay the project schedule, resulting in increased project costs and reduction of value to the State.

Second, this bill creates a seven-member Public-Private Partnership Oversight Review Board to review the Presolicitation Report and make recommendations regarding the P3 designation. For P3 projects of \$500 million or more, the newly established Oversight Review Board would have sixty days to review the Presolicitation Report and provide their recommendation to the legislature. Thereafter, the legislature would have another 60 days to review the P3 Review Board's recommendations. The P3 Review Board, composed of two members of the House of Delegates, two members of the Senate, and three appointees of the Governor, increases project cost and uncertainty and reduces value to Maryland citizens.

As noted in the report from the 2013 P3 Commission, “the private sector is less likely to make substantial upfront investments if they believe that a political debate will derail a P3 project.” The proposed Review Board creates uncertainty for private developers - developers equate uncertainty to risk and risk costs money. P3 developers cite political risk as one of the most critical, and potentially most costly, project risks in the P3 market that they are unable to price.

Also, the inclusion of either the Baltimore and Washington Council of Governments (COG) or their associated Metropolitan Planning Organizations (MPO) as staff of the proposed Review Board could prove to be problematic in the future. As the planning bodies responsible for developing and carrying out a continuing, cooperative, and comprehensive transportation planning process, they consist of elected and local officials as well as transportation and transit agencies. MPOs approve plans for an entire region, and there is a potential risk for conflicts of interest, depending on who the COG or MPO staff would be. Staffing the Oversight Review Board and project-level approvals is ultimately not the MPO or COG role.

Third, the legislation requires all revenues to be assigned to the State or a successor entity to apply to the operations and maintenance of the project if the P3 partner goes bankrupt. This provision will make P3 projects in Maryland unbankable, meaning that projects will not be able to obtain financing with this provision. To issue debt to fund projects, an issuer must provide protections for the bondholders to get repaid. While bond holders accept the risk that project revenues may be insufficient for them to be repaid, they will not accept a provision in law that reassigns the revenues that are supposed to provide for debt repayment to another party. Reassigning all of these revenues to another party would also result in a financial windfall for that entity, because they would be receiving all project revenues while not having paid anything for project construction. Additionally, this provision would prohibit the State from receiving any financial benefit from the reassignment.

Fourth, Senate Bill 361 would prohibit the Board of Public Works from approving a P3 agreement until a risk analysis is completed by a financial advisory firm selected by the State Treasurer and an independent assessment is completed by all credit rating agencies the rate the State’s debt. It will be difficult for either of these actions to occur within the 30 days allotted for legislative review of a P3 agreement. Additionally, these efforts would be duplicative of other efforts. A complete project risk analysis is routinely completed by the project team. The State Treasurer is already required to provide an analysis of the P3’s impact on State debt. Credit rating agencies will be unwilling to provide the type of analysis required in this bill because it then could create a liability for them if something goes wrong with the private partner or funding source. A credit rating does not guarantee against a company going bankrupt or facing other financial challenges; it merely quantifies the risk of that happening. Every credit rating report includes lengthy disclaimers that the rating report should not be relied upon to make investment decisions.

The Honorable Paul G. Pinsky
Page Three

The language below is an excerpt from the disclaimers used in every Moody's credit rating report. Similar language exists in the credit rating reports for Fitch and S&P as well.

"Credit ratings and Moody's publications do not constitute or provide investment or financial advice, and credit ratings and Moody's publications are not and do not provide recommendations to purchase, sell, or hold particular securities...Moody's credit ratings and Moody's publications are not intended for use by retail investors and it would be reckless and inappropriate for retail investors to use Moody's credit ratings or Moody's publications when making an investment decision...Credit ratings and Moody's publications are not intended for use by any person as a benchmark as that term is defined for regulatory purposes and must not be used in any way that could result in them being considered a benchmark."

Finally, Senate Bill 361 requires that if an agency receives an unsolicited proposal, it must notify and consult with the P3 Review Board about the unsolicited proposal. This provision will likely deter the private sector from submitting any unsolicited proposals. Unsolicited proposals may contain key business information – an idea that an entity has about how it can do something better, faster, or cheaper than the State. To require that these unsolicited proposals be reviewed by the Board, which would have to be a public body and subject to PIA and open meetings, would likely discourage any potential unsolicited proposals.

The Maryland Department of Transportation respectfully requests the Committee consider this information when deliberating Senate Bill 361 and issue an unfavorable report.

Respectfully submitted,

Melissa Einhorn
State Legislative Officer
Maryland Department of Transportation
410-865-1102