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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.

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