



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,



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