
April 8, 2021

Re: Letter of Opposition – Senate Bill 960 – Highways - Public-Private Partnerships - Cultural Preservation

Dear Chairman Pinsky and Committee Members:

The Maryland Department of Transportation (MDOT) respectfully opposes Senate Bill 960 as it would prohibit highway projects subject to a Public-Private Partnership (P3) Agreements in the State of Maryland from moving forward and would halt the American Legion Bridge I-270 to I-70 Relief Plan.

The MDOT State Highway Administration (SHA) is very sensitive to protecting important pieces of Maryland history, and employs a dozen archaeologist and architectural historians to serve this goal. All MDOT SHA projects must also follow existing federal and state laws that require consideration of historical cemeteries, bridges, and structures.

The Morningstar Tabernacle No. 88 Moses Hall and Cemetery (Moses Hall) provides one example of MDOT SHA’s commitment to preserving historic sites. Since the 1890s, Moses Hall has been a final resting place for African American residents in the Cabin John area of Montgomery County. While the cemetery is no longer operational, it remains an important piece of Maryland’s history. In early 2020, MDOT SHA began in-person and virtual consultations with Friends of Moses Hall to discuss avoidance and minimization efforts at the cemetery. Through design efforts that led to refinement of the limits of disturbance, MDOT SHA has developed design options that significantly minimize ground disturbance within the cemetery parcel and reduce impacts by two-thirds of the original 0.3-acre estimate. The collaboration with Moses Hall still continues today.

Currently, MDOT SHA complies with the Maryland Historical Trust Act (MHT Act) of 1985 for actions where only state funds are used and no federal approvals are required for the action or project. For Federal Highway Administration-funded actions, or where other federal approvals are needed, MDOT SHA complies with Section 106 of the National Historic Preservation Act (Section 106). If a project is reviewed under Section 106, there are no additional requirements under the MHT Act for additional or separate compliance.

Senate Bill 960 would repeal the MHT Act, and replace it with amendments. This bill would prevent any P3 from acquiring right of way or exercising eminent domain for “A Historic African American Cemetery, Burial Ground, or Cultural Heritage Site”, “A Property Listed in the Maryland Inventory of Historic Properties (MIHP)”, or “A Property that benefitted from a grant from the State within 20 years before the adoption of the Public-Private Partnership Agreement under Title 10A of this Article”.

The Honorable Paul Pinsky

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The bill contains insufficient definitions and property types that would affect the current processes in place for consideration of historical cemeteries, bridges, and structures. In the bill, there is no legal definition for what constitutes an “African American Cemetery, Burial Ground, or Cultural Heritage Site”. Under the current MHT Act and Section 106, MDOT SHA must evaluate and consider properties eligible for or listed in the National Register of Historic Places (NRHP). This is a program with well-defined and accepted criteria that has been established since 1966. The MIHP, which the bill plans to use, is not a register of properties meeting certain criteria like the NRHP, but rather, a database of locations/structures/sites that the MHT maintains for properties subject to further evaluation. It contains many records of properties with low integrity, that do not meet NRHP criteria, and frequently includes sites and buildings that are destroyed or would otherwise not merit additional consideration. Furthermore, the bill does not identify parameters for grant types or grant recipients.

For MDOT SHA projects that have acquired or will acquire right of way or slightly encroach on historic properties, conditions are developed to avoid diminishment of the historic property, or, in the event of unavoidable adverse effects, mitigation that enhances the affected property in some other aspect is agreed upon. These mitigation efforts can be mutually beneficial for both the transportation solution and the affected historic property. Given the high density of historic properties in Maryland, and the broad definitions of what constitutes a historic or otherwise protected property under this bill, it would be impossible for highway P3s in the State to continue if this bill is passed.

Senate Bill 960 holds highway P3 projects to the requirements of the bill, but leaves out all other projects including other P3 projects. This creates inconsistency among projects and will not help if the overall goal of the bill is to have state mandated preservation of the resources defined.

For these reasons, the Maryland Department of Transportation respectfully requests the Committee grant Senate Bill 960 an unfavorable report.

Respectfully submitted,

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