



MARYLAND STATE TREASURER
Nancy K. Kopp

Written Testimony of State Treasurer Nancy K. Kopp

**SB 345 – State Government – Information Technology – Review of Projects and
Proposals**

**Before the
Health and Government Operations Committee**

March 24, 2021

Thank you for the opportunity to provide testimony regarding Senate Bill 345. I appreciate the Committee's invitation.

Though I did not submit testimony when the bill was heard in the Senate, my office has been following SB 345 closely. In light of testimony given at the Senate hearing, and as a member of the Board of Public Works (BPW), I think it is important to share my concerns about the reduction of transparency and oversight that could result from this legislation, and offer the assistance of my office if the Committee chooses to pursue amending Senate Bill 345.

Resource Sharing Agreements (RSAs) allow private companies to install, operate and maintain communications systems on State resources. In exchange, these companies provide the State with monetary compensation, equipment, or services. Currently, RSAs valued at \$100,000 or more require review by the Legislative Policy Committee, and all RSAs, regardless of value, require review and approval by the BPW. SB 345 would remove RSAs up to \$200,000 from public scrutiny in three ways.

First, SB 345 raises the threshold for review of Resource Sharing Agreements by the LPC from \$100,000 to \$200,000 and sets a threshold of \$200,000 for review and approval by the BPW. Secondly, by providing that RSAs are not defined as procurements under Division II of the State Finance & Procurement Article, RSAs under \$200,000 would not be required to be reviewed by the BPW as are regular procurements. And thirdly, SB 345 removes the requirement that RSAs under \$200,000 be placed on eMaryland Marketplace Advantage (eMMA), thereby reducing public notice.

During the bill's consideration in the Senate several questions were asked related to the process for submitting an RSA to the BPW for approval and it was alleged that the process

took a great amount of time. To clarify, I would note that RSAs are submitted as part of the Secretary's Agenda, the items under direct responsibility of the Secretary of the BPW and the first items on every meeting's agenda. These agenda items can be submitted by a state agency to the BPW Secretary up until noon on the Friday before a BPW meeting. While the internal DoIT process for submitting an RSA to BPW may be lengthy, the BPW process, once an item is submitted, can be quite swift.

Additionally, during the Senate hearing the argument was made that thresholds for review should be raised because vendors have been known to change contract terms in order to fall just beneath the current \$100,000 threshold requiring review by the LPC. The procuring agency should not allow this practice. Although RSAs are not legally considered procurements under Maryland's Procurement law (Division II of the State Finance & Procurement Article & Title 21 of COMAR), under COMAR 21.02.01.04, a unit is prohibited from artificially dividing a procurement contract or contract modification to avoid obtaining BPW approval. As this practice is barred for regular procurement contracts, indications that it is common for RSAs might lead one to believe that it necessary for the procuring agency to be more vigilant and, perhaps, to lower thresholds, rather than raise them.

The BPW process, while far from perfect, is designed to protect and enhance the State's fiscal integrity by ensuring that significant State expenditures are necessary and appropriate, fiscally responsible, fair, and lawful. Public posting of bi-weekly BPW meetings, including full agendas with descriptions of each item, provides a basic level of transparency for state procurements and private use of state properties. Thus, the BPW bears oversight responsibility for any contract, lease, real property, use of General Obligation Bonds or tidal wetlands licenses to ensure Marylanders that executive decisions are made reasonably and responsibly. Though RSAs differ from many of these transactions, they represent, cumulatively, tens of millions of dollars that the State has received over the past few years for use of public properties. The need for transparency in these transactions is not eliminated simply because the state generally derives some benefit from the agreements.

I question the prudence of eliminating BPW oversight and transparency for RSAs under \$200,000 and do not believe passage of SB 345 is necessary. But, if the General Assembly is concerned about the present process, I would suggest that SB 345 could be amended to authorize the BPW to review and approve these RSAs in the same way they do similarly sized regular procurements. That is, individual transactions under \$200,000 would be incorporated into a report for the BPW, made public on the BPW website, and presented as one consolidated item to be reported on the BPW Secretary's agenda, thus open to Board examination and review, but not requiring Board approval. This will ensure public transparency and continued BPW oversight, while allowing DoIT to expedite smaller RSAs using only a reporting, rather than an approval, process. If the Committee wishes, my staff would be happy to work with Committee staff on amendments.

Thank you for your consideration. I and my staff stand ready to assist as needed.