MARYLAND DEPARTMENT OF TRANSPORTATION

Wes Moore
Governor
Aruna Miller
Lieutenant Governor
Paul J. Wiedefeld
Secretary

March 7, 2023

The Honorable Kumar P. Barve
Chair, House Environment and Transportation Committee
Room 251, House Office Building
Annapolis MD 21401

RE: Letter of Opposition – House Bill 1201 – Public-Private Partnerships

Dear Chair Barve and Committee Members:

The Maryland Department of Transportation (MDOT) and Maryland Transportation Authority (MDTA) respectfully opposes House Bill 1201, as this legislation represents a significant departure from the State's carefully considered public-private partnership (P3) law. The P3 law was developed nearly a decade ago through a robust and collaborative process after more than a year of study and involvement from multiple stakeholders. House Bill 1201 creates significant new risks and process complexities to Maryland's P3 process that will effectively prevent Maryland from moving forward on future P3 projects by creating project delays and uncertainty, limiting innovation and competition, and creating financial obstacles for projects seeking financing through multiple means.

House Bill 1201 would fundamentally alter the framework under which P3 agreements are undertaken. Maryland has a model statutory framework for P3 agreements, which was established in 2013 in accordance with the recommendations of a multi-year bi-partisan Joint Legislative and Executive Commission on Oversight of Public-Private Partnerships chaired by then-Lieutenant Governor Anthony Brown. Over the course of a year, the 15-member Commission heard from national P3 experts, other state's P3 programs, labor, private interests, and State agencies and created a comprehensive statutory framework for P3s that balances the needs of many stakeholders. The model legislation created by the Commission, embodied in the current P3 law, passed with overwhelming majorities in both the House and Senate.

House Bill 1201 requires that P3 agreements with a value over $1 billion receive an affirmative vote by the General Assembly before going to the board of Public Works for final approval, which introduces significant political risk to a project. Private sector participants in the U.S. P3 market cite political risk as one of the greatest risks to the P3 market and the one that they have the least control over. 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 P3 Commission purposefully created a process where the Board of Public Works provides initial approval of a project moving forward as a P3 (through the P3 designation process) to provide the private sector some assurance of political support for the project moving forward as a P3.

The requirement for an affirmative vote of the Legislature of a P3 agreement also creates significant time delays that will negatively impact the project's financing. P3s are complex financing arrangements that involve multiple lenders. By having a P3 agreement wait until the 3-month legislative session, a project could be delayed by several months and the financials of the deal could change significantly during that time. Over the last few years, there has been significant changes in the prices of materials and labor, as well as the interest rate environment, in relatively short periods of time. These shifts in the economics of the deal may result in a project that was once financially viable, no longer being achievable. Moreover, once a P3 agreement has reached its final form, which it would have to be in at the time that legislative approval is sought, the State often retains the risk of interest rate changes. This means that changes in interest rates while waiting for the legislature to convene could cost the State hundreds of millions of dollars in interest and could impact the financing of the deal.

House Bill 1201 also creates a P3 Oversight Review Board, with a majority of the members being legislators, that will, among other things, consult with agencies regarding unsolicited proposals and monitor the implementation and operation of existing P3s. In addition, the bill requires that agencies notify the Legislative Policy Committee if unsolicited P3 proposals are received. The involvement of the legislature, through both the P3 Oversight Review Board and the Legislative Policy Committee, in these matters introduces a new level of legislative involvement in procurements and contract management that is unprecedented and blurs the lines of separation of powers between the legislative and executive branches.

House Bill 1201 requires a P3 agreement to stipulate that if the State or a successor entity takes over the operations of a P3 project, then the project revenues must be assigned to the State or the successor entity to apply to the operations and maintenance of the project. 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 bondholders accept the risk that project revenues may be insufficient for them to be repaid, they will not accept a provision 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.

MDOT and MDTA have utilized P3s for three projects currently in operation or under construction, including the construction of two 50-foot deep berths at Seagirt Marine Terminal, the replacement of MDTA's two travel plazas along Interstate 95, and the construction underway of the Purple Line Transit Project. The Seagirt P3 in particular has been a shining example of partnering with the private sector to build infrastructure and effectively operate and maintain facilities that has resulted in significant increases to business at the Port of Baltimore. The investment by our private partner in Seagirt will complement and enhance the benefits to Maryland of the Howard Street Tunnel project currently underway.

For these reasons, the Maryland Department of Transportation respectfully requests the Committee grant House Bill 1201 unfavorable report.

Respectfully submitted,

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