



March 5, 2020

Testimony on HB1424
Public- Private Partnerships-
Process and Oversight
Environment and Transportation
Appropriations

Position: Favorable
Indivisible Howard County supports HB1424

The Public –Private Partnership (P3) process is viewed as a method of funding public infrastructure projects without the need for the public budget to bear the full brunt of the cost of the project. P3 projects are looked to by cash strapped governments as a means to transfer risk to the private sector partner and a contractual vehicle for obtaining all the necessary services for a large project from design and engineering to construction and operation. However, the record of P3 projects throughout the world provides clear conclusions that they are not a panacea for our state and national infrastructure woes. A clear and a rigorous legal and regulatory framework is necessary for the success of P3 projects, combined, of course, with strong management by the cognizant state reporting agency and appropriate legislative scrutiny and oversight.

House Bill 1424 strengthens the current P3 law by ensuring that the financial and environmental risks of large (over \$500,000,000) P3 projects will be fully considered and understood before the state embarks on these complex, long term projects which are inherently risky because they are complex and long term. Private firms do not assume unlimited risk; the public pays for the assumption of risk in one form or another.

HB 1424 would:

- Create a Public-Private Partnership Oversight Review Board that will strengthen legislative oversight of the P3 process and incorporate gubernatorial appointees with expertise in transportation law, finance, public policy or management consulting. The complexity of mega P3 projects cannot be overstated. Their success depends on the ability of the State in all its elements to bring to bear the necessary expertise to scrutinize what is being proposed. Additionally, the prevalence of P3 unsolicited proposals and the resulting lack of competition demands extra rigor at all phases of the project. As noted in a recent comment in *The Conversation*, an on-line publication staffed by a consortium of universities, “Lock-in [in P3 projects] can occur when powerful corporations partner with government in circumstances that can enable them [the corporations] to exploit vulnerabilities in public institutions.” To avoid such pitfalls, all possible scrutiny and expertise should be brought bear on projects that have a potential of a fifty -year life.
- Require an independent credit review of each prime contractor and their funding sources before the Board of Public Works (BPW) approval and establish a minimum credit rating to be maintained by each contractor and their funding sources. This is so critical for large P3 projects with lengthy timeframes. This past week, we have seen how quickly the financial landscape can alter from rosy to dire. It is critical that contractors in a mega-project maintain continuing financial viability throughout the life of the project.
- Require separate solicitation reports for each prime contract. Current law requires a pre-solicitation report for the project as a whole, but that allows less detail than is required on large projects with several major contractors.
- Require a completed Environmental Impact Statement (EIS) in compliance with the National Environmental Policy Act (NEPA) as a part of the pre-solicitation report(s). On this point, Indivisible Howard County would prefer to see Maryland exceed NEPA by also requiring an analysis of the effect of the project on greenhouse gas emissions. However, the minimum requirement should be a completed EIS as a part of the pre-solicitation report. At this critical time in our environmental history, the very last thing that should be rushed is a full analysis of environmental impacts.

HB 1424 would bring needed transparency and rigorous oversight to the Public Private Partnership process.

Indivisible Howard County urges your favorable consideration of this important bill.

Carol O’Keeffe