

POSITION STATEMENT

Bill: HB 1424 - Public-Private Partnerships – Process and Oversight
Position: SUPPORT WITH AMENDMENTS **Date:** March 12, 2013
Contact: Adrian R. Gardner, General Counsel

What The Bill Does: The bill would provide more transparency and enable more prudent decision-making in the procurement process for certain (large) transportation projects that involve public-private partnerships (P3s) – by ensuring that environmental and local transportation impacts can be identified adequately before negotiating the public risk-share associated with those impacts.

Why We Support: The Maryland-National Capital Park and Planning Commission (Commission) is responsible for inspiring the local transportation plans and stewarding over 60,000 acres of public parkland on behalf of nearly 2 million Marylanders who live in Montgomery and Prince George’s counties. The parklands entrusted to our protection include some of the most environmentally sensitive areas of Rock Creek, Sligo Creek, and the Anacostia and Patuxent rivers. They also include vulnerable parkland acquired on behalf of the State under the aegis of the federal Capper-Cramton Act of 1930.

Project impacts to local transportation systems and environmental assets can best be avoided or mitigated if they are known in time to avoid or mitigate them. Under current law, the pre-solicitation process does nothing to assure that due diligence is exercised for these aspects of any project. In fact, based on the State’s announced approach to the I-270/I-495 Capital Beltway project, we are gravely concerned that important impacts and risks – putting aside important opportunities – are being left out of the equation in favor of an imprudent expediency. Those impacts may affect our local parkland and transportation plans in ways the Commission cannot assess because the assessments have not been completed or undertaken properly.

The bill offers the opportunity to address this glaring deficiency by requiring completion of the Environmental Impact Statement (EIS) as part of the pre-solicitation report. The bill would also create a new procurement governance model that includes subject matter experts to inform the policy prerogatives of members of the Board of Public Works.

If the State procures a P3 deal before completing a fair evaluation of local environmental and transportation impacts – besides making the job of our Commission almost impossible – the consequence is to foist the entire financial risk of avoiding or mitigating those impacts onto the public. On the one hand, if necessary avoidance or mitigation measures are not specified at the time of solicitation, a later change of scope may entitle the selected vendor to additional compensation. On the other hand, if the wholesale risk of unknown work required to avoid or mitigate these impacts is

assigned blindly to the successful vendor under the terms of a contract, potential vendors likely will hedge the financial terms of their offers to avoid the open-ended exposure to the unknown additional costs. In either case, the taxpayers are most likely to cover the cost of this avoidable uncertainty.

Considered in light of the application of the National Environmental Policy Act (NEPA) and its implementing regulations, the bill codifies what has long stood as best practice. Completion of the EIS is customarily completed before procuring a P3 partner for the reasons described above.

In short, this bill will help our Commission to do its job – protecting the public legacy in sensitive parkland and advancing the mission of local transportation planning. We will be working with the sponsors to consider a number of “friendly” amendments intended only to clarify and/or strengthen several technical aspects.

The Commission accordingly urges your favorable report and passage with amendments.

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