



GOVERNMENT CONTRACTS AND CONSTRUCTION PRACTICES

# ALERT

## MARYLAND PUBLIC-PRIVATE PARTNERSHIPS SENATE BILL 358

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To address Maryland's current infrastructure deficiencies and budgetary challenges, the Maryland State Senate is currently considering Senate Bill 358, which proposes to overhaul Maryland's current Public-Private Partnership (P3) framework. Maryland currently has a significant need for public infrastructure improvements. If Senate Bill 358 is passed, Maryland will be able to more effectively utilize P3s to fund infrastructure improvements that it could not fund otherwise. It is estimated that the increased utilization of P3s could contribute up to \$315 million to Maryland's \$3.1 billion annual capital budget and create up to 4,000 jobs.

P3s are nothing new in Maryland. However, the lack of legislative and regulatory guidance has caused P3s to be underutilized as a viable delivery method. Senate Bill 358 aims to remedy this underutilization by adopting a broader definition of P3s, establishing the guidance required to effectively implement these agreements, and adopting an express policy favoring the utilization of P3s.

### Redefining P3s

To facilitate the increased utilization of P3s, Senate Bill 358 defines P3s broadly. As a result, more projects will be considered appropriate for P3 agreements. The Bill defines a P3 agreement, in pertinent part, as "an agreement in which a private entity performs the functions normally undertaken by the Government, but the reporting agency remains ultimately accountable for the asset and its public function." This definition is much broader than the existing definition, which limits P3s to sale or lease agreements where a private entity assumes control over a State facility, or constructs or operates a

State facility and collects fees for the use of that facility.

### Increased Guidance

Senate Bill 358 also furthers its goal of increasing the utilization of P3s by providing for legislative and regulatory guidance. For instance, the Bill outlines a formal process for identifying and evaluating potential P3s and requires agencies to formally evaluate both solicited and unsolicited P3 proposals. Moreover, the Bill establishes a set of provisions required in every P3 agreement. Finally, the Bill requires certain agencies to adopt regulations and processes for the implementation of P3s.

### Express Policy Favoring P3s

Senate Bill 358 also adopts an express public policy favoring the use of P3s to address Maryland's infrastructure needs. Prior to this Bill, Maryland has never had any express policy regarding the utilization of P3s. In fact, Maryland has largely ignored its ability to utilize P3 agreements. If passed, the adoption of this express policy will ensure that Maryland gives appropriate consideration to the possibility of utilizing P3s on future infrastructure projects.

For more information regarding Public-Private Partnerships in Maryland or proposed Senate Bill 358, please contact Dirk Haire at 202.461.3114 or [dhaire@foxrothschild.com](mailto:dhaire@foxrothschild.com) or Sean Milani-nia at 202.461.3105 or [smilani@foxrothschild.com](mailto:smilani@foxrothschild.com) or any member of Fox Rothschild's Government Contracting or Construction Law practice.

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