

May 27, 2016

The Honorable Thomas V. Mike Miller
President of the Senate
State House
Annapolis, Maryland, 21401

Dear Mr. President:

In accordance with Article II, Section 17 of the Maryland Constitution, I have vetoed Senate Bill 907 – *Transportation – Harry W. Nice Memorial Potomac River Bridge – Replacement*.

The Harry W. Nice Memorial Potomac River Bridge is a high priority of this Administration and any claims to the contrary are simply untrue. Over \$61 million is allocated in Maryland's six-year Consolidated Transportation Plan for environmental studies, test borings, engineering, planning, right-of-way acquisition and replacement designs. To maintain the existing structure, annual inspections and prioritized repairs are accomplished to ensure safety of the bridge. As recently as last June 23, the Board of Public Works voted to approve a \$15 million design and engineering contract with a firm to perform preliminary design and engineering for the bridge's replacement.

Given this Administration's sizable investment in this facility, this legislation is entirely unnecessary.

In the context of numerous bills introduced over the past two sessions that erode the long-established powers of Maryland's Executive Branch, Senate Bill 907 intrudes on the Maryland Transportation Authority's (MDTA) statutory independence, creates an environment that encourages litigation by bondholders, and statutorily prioritizes certain MDTA projects over others. This legislation is every bit as regrettable as House Bill 1013 which the General Assembly passed in order to dictate which transportation projects get selected though a misguided and inept scoring matrix established by statute.

Instead of proceeding through the highly acclaimed professional process of MDTA to select a project of this magnitude, the General Assembly passed Senate Bill 907 which is likely the first of many bills attempting to push a transportation project to the head of the line by legislative "logrolling" – i.e. vote trading by Senators and Delegates to obtain passage of legislation provincial to each member. Since the early 20th century, Maryland has avoided the practice of logrolling in transportation projects and school construction by deferring to professional evaluations and nonpartisan processes in project selection. This bill foreshadows what will happen under House Bill 1013 whereby transportation projects with low scores are championed by powerful legislators who substitute raw political muscle instead of unbiased professional judgment for the selection of projects in Maryland's Consolidated Transportation Plan.

By substituting the judgment of the General Assembly for the rational and professional selection process of MDTA, Senate Bill 907 would mandate the appropriation of \$75 million of MDTA revenues into a fund starting in Fiscal Year 2018 solely for the Harry W. Nice Memorial Potomac River Bridge. The bill also mandates certain design elements such as the number of required lanes as well as mandating a construction and operational deadline of December 31, 2030.

Simply put, this bill is a de facto amendment to our trust agreement with bondholders and impacts MDTA's ability to fund the required and necessary maintenance of the MDTA system. The MDTA's General Account funds are used to facilitate the capital program on a pay-as-you-go basis. Mandating a \$75 million annual payment from the General Account to the Nice Bridge Replacement Fund puts the funding of the replacement project above all other MDTA capital projects, regardless of system needs. This may impact MDTA's ability to address other important needs at the William Preston Lane Jr. Memorial Bay Bridge and other facilities across the State.

Under the provisions of Senate Bill 907, the integrity of the MDTA's position with bond rating agencies is threatened. MDTA requires flexibility in meeting its required bond ratios and honoring its commitments to bondholders without legislative interference. The existing trust agreement places a priority on system maintenance and preservation and the diversion of funds required by the bill jeopardizes that agreement.

Moreover, Senate Bill 907 mandates the actual construction of a replacement Harry W. Nice Memorial Potomac River Bridge by a date certain without regard to the significant funding gap within the legislation or compliance with the National Environmental Policy Act (NEPA) and other federal requirements. Such statutory requirements and the mandated funding under Senate Bill 907 presupposes an outcome that limits the MDTA for future options such as a public-private partnership. Doing so would be costly and would not be in the State's best interests. Moreover, in an action contrary to Senate Bill 907's proposed replacement costs of \$700 million to \$1 billion, the General Assembly passed the Budget Reconciliation and Financing Act of 2015 that limits MDTA borrowing authority by \$700 million until fiscal 2021.

Senate Bill 907 further violates the statutory independence of the MDTA and the terms of the Trust Agreement by requiring MDTA to seek approval from the Maryland General Assembly's Legislative Policy Committee before reprioritizing funds in an emergency situation. Interjecting politics into this process and requiring the approval of a third party infringes on MDTA's independent ability to address system emergencies expeditiously.

For these reasons, I have vetoed Senate Bill 907.

Sincerely,

Governor Lawrence J. Hogan, Jr.