Maryland Transit Opportunities Coalition

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Testimony in Support of HB 292
County Consent for Toll Roads and Bridges

Presented by Benjamin Ross, Chair

February 13, 2020

The Hogan Administration is moving as fast as it can to commit the state to a vast investment in toll facilities. Current Maryland law enables the Dept. of Transportation to build toll roads through a public-private partnership (P3) with almost no outside checks beyond approval by the Board of Public Works. HB 292 will require consent of a majority of the counties where the project is built, a rule already in place on the Eastern Shore.

This local input will ensure that multi-billion dollar contracts are signed with full transparency and will help us move toward a balanced transportation system that works for those who choose to drive and for those who choose not to. Our statewide coalition of transit riders, transit workers and transit advocates strongly endorses this bill.

Proposed new toll roads and bridges will cost Marylanders between $15 billion and $21 billion, according to MDOT's own estimates, and the true cost will undoubtedly be even higher. Their cost estimate for toll lanes on I-270 and the Washington Beltway, and the Baltimore-Washington Parkway has jumped from $7 billion three years ago to as much as $11 billion now. And previous, more detailed, state studies of parts of the P3 plan point to costs far higher than $11 billion. On top of that is a third Bay Bridge that will cost between $4 billion and $10 billion.

Public investments of such great magnitude demand prudence, impartiality and transparency. What we have seen is a process sadly lacking in those attributes.

The state P3 law requires review by the General Assembly's budget committees of a "Pre-Solicitation Report" (PSR) setting forth the procurement process. Only after that review is complete does the Board of Public Works vote on the PSR. But legislative review of the toll lane P3 has been bypassed by amendments that were approved by the

BPW without any review by the budget committees. These amendments greatly increase the financial risk to state taxpayers.

Three months after the legislative review of the PSR concluded last January, MDOT sent the BPW a "PSR Supplement" containing "Key Terms of the proposed P3 Agreement" One of these terms states that if the contract is canceled due to non-performance by the contractor, MDOT "will pay partial compensation to the [contractor]'s lenders." This was directly contrary to the Governor's previous assurances that the contractor will bear the entire risk of project failure. This amendment was approved as part of the 2-to-1 BPW vote in June.

Just three weeks ago today, on January 8, another 2-to-1 BPW vote amended what was approved in June. Buried in the fine print was vague language authorizing further changes in the procurement process. Based on secret discussions to be held with the bidders, the state will modify the contract terms in the Request For Proposals to provide for "sharing of risks... to provide an offeror confidence that their solution may be implemented..." This vague language authorizes MDOT to lay almost any risk on the shoulders of Maryland taxpayers – a loophole big enough to drive a truck through.

The BPW also voted on January 8 that the first P3 contract "will include the Bi-state Capital Beltway Accord partnership for the American Legion Bridge." The text of this Accord has not been made public – in fact, we learned last Friday that it does not even exist. But Virginia has a signed agreement giving Transurban, the Australian company that runs its existing P3 express toll lanes, the contract for its share of the partnership.

Just 8 weeks after the Accord between the two state governments was announced, Governor Hogan's Director of Intergovernmental Affairs resigned to take a job with Transurban. Transurban also donated $25,000 to the governor's inaugural committee and has spent heavily on Maryland lobbyists – $162,000 in just the most recent 6-month interval.

Just six days ago, in a classic 7:00 pm Friday bad-news dump, MDOT issued the Request for Qualifications (RFQ) that kicks off bidding on the contract. Only then was the full scope of the contracting changes revealed. It amounts to a complete rework of the bidding process.

Under the original plans, MDOT was going to issue a Request for Proposals for each roadway segment to several qualified teams. Each bidder would come up with its own design for the road, seeking innovations to cut costs and improve results. The bidders would estimate the cost of the road, line up financing, and offer payments to the state.

MDOT would evaluate the proposals, negotiate, and sign a 50-year contract with the bidder who offered the best deal.

This has now been thrown out the window. Instead, MDOT will choose a “phase developer” to sign what other states call a “pre-development agreement” (PDA). After the PDA is signed, the phase developer will design each toll lane segment, determine construction costs, run the traffic and revenue models itself, and secure financing. The contractor is supposed to pay for all this work itself. Then it will negotiate the actual DBFOM contract with MDOT, on a sole-source basis with no competition. The phase developer – almost certainly Transurban – will be able to dictate the terms.

And those terms will surely put state taxpayers on the hook. The RFQ says merely "No public funds are expected to be provided by MDOT or MDTA" where it could have said "No public funds will be provided..."

Just as important as the effect of new toll roads on state finances is their effect on the finances of Maryland drivers. Here again, there has been a deeply troubling lack of transparency. MDOT knows how high the tolls must be for Transurban to make a profit – it has a computer model that, according to the deputy project manager, “spits out the toll numbers.” But it has not shared these numbers with the legislature or the public.

We can get a hint of the truth by looking to Virginia. Transurban charges an average of $1.50 to $1.80 per mile at the peak of rush hour. On some days last month, it cost as much as $74 to drive from Washington to Stafford. And those high tolls are headed even higher. Transurban’s CEO told his Australian investors last year that “We’re trying to maximize the tolls.” Maryland toll lanes truly will be Lexus Lanes that serve the rich.

Few Maryland commuters can afford to pay such high tolls, so heavy losses are likely. The Virginia toll lanes are losing money even with their current high tolls.

The finances of the toll lanes on I-95 north of Baltimore – a facility that MDOT hails as “immensely successful” – are already a drain on state resources. The toll revenue is $14 million per year for a project that cost $1.1 billion to build – barely 1%, when the Maryland Transportation Authority pays over 3% interest to borrow the money it uses to build. The northern extension, now under construction, is even more of a fiscal black hole – the MdTA’s own consultants estimate annual revenue of $8.4 million for a construction cost of another $1.1 billion. The Dept. of Legislative Services has said that the extension is “unaffordable.”

Equally troublesome is the financing of the new Bay Bridge. Except on summer weekends, few will use the new bridge if it's more expensive than the old ones. So tolls will need to go up on all three spans – but MdTA has not told us how high. Higher tolls will hurt the year-round economy of the Eastern Shore. Moreover, it is hard to see how the MdTA can find borrowing power within its $3 billion limit to finance a new $5 billion or $10 billion bridge.

We are on a reckless and dangerous course toward a 50-year commitment that will weigh heavily on Maryland's finances and credit rating. HB 292 empowers counties to provide the outside oversight that is missing under current law. In so doing, it restores the system of consultation and collaboration that served the state well for 40 years but has eroded since 2014. We urge you to report HB 292 favorably.