Maryland Transit Opportunities Coalition

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Testimony in Support of HB 1424
Public-Private Partnerships - Process and Oversight

Presented by Benjamin Ross, Chair

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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 no outside checks beyond approval by the Board of Public Works.

As a result, the state is hurtling toward a financial disaster in which an Australian toll road conglomerate sucks billions of dollars out of the pockets of Maryland drivers and taxpayers. HB 1424 places some controls over taxpayer liability in the quite likely scenario of the project going belly-up after its promoters have collected their fat paychecks and moved on.

Last month we learned that the state administration has completely reworked the procurement process that was reviewed by the legislature last year. This was authorized by fine print buried in the 2-to-1 Board of Public Works vote in January.

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” – almost certainly the giant Australian company Transurban. After the pretense of competition has been taken care of, Transurban will be the phase developer. It will design the toll lanes itself and line up financing. The 50-year contract to build and operate the toll lanes will then be negotiated on a sole-source basis.

Unless the General Assembly puts some checks in place, Transurban will be able to dictate the terms of this contract. Two members of the Board of Public Works have made the toll lanes the centerpiece of their transportation program. They will face a choice between swallowing whatever Transurban shoves down their throats, or admitting failure a few months before the next election.

This process could hardly be better designed to put the state at financial risk. When Transurban works out terms with its lenders, it will look out for its own interest and not for Maryland taxpayers. The BPW and MDOT have left the door wide open for Transurban to shift risks and costs to the state treasury:

- The "PSR Supplement" approved last June states that if the toll lane contract is canceled due to non-performance by the contractor, MDOT "will pay partial compensation to the [contractor]'s lenders."
- In January, it authorized the state to modify the contract terms in the Request For Proposals, based on secret discussions with bidders, to provide for "sharing of risks... to provide an offeror confidence that their solution may be implemented..."
- The Request for Qualifications issued last month says "No public funds are **expected** to be provided by MDOT or MDTA" [emphasis added] rather than "No public funds will be provided..."

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 1424 is a first step towards getting this runaway train under control. We recommend that you report HB 1424 favorably.