MARYLAND DEPARTMENT OF TRANSPORTATION

Larry Hogan
Governor
Boyd K. Rutherford
Lt. Governor
Gregory Slater
Secretary

March 5, 2020

The Honorable Kumar Barve
Chairman, House Environment and Transportation Committee
251 House Office Building
Annapolis MD 21401

Re: Letter of Opposition – House Bill 1424 – Public-Private Partnerships – Process and Oversight

Dear Chairman Barve and Committee Members:

The Maryland Department of Transportation (MDOT) respectfully opposes House Bill 1424, as this legislation would delay and threaten to halt the Governor's Traffic Relief Plan (TRP), which proposes to bring much needed congestion relief to the National Capital Region (NCR) by delivering added capacity along the I-495 and I-270 corridors at no net cost to the State. Further, this legislation represents a significant departure from the State's carefully considered public-private partnership (P3) law, which could serve to irreparably damage the P3 market in the State of Maryland.

House Bill 1424 would fundamentally alter the framework under which P3 agreements are undertaken. Maryland has a model statutory framework for P3 agreements, which was developed in 2013 in accordance with the recommendations of a multi-year Joint Legislative and Executive Oversight Commission on Public-Private Partnerships, chaired by former Lieutenant Governor Anthony Brown and included elected officials and the State Treasurer. The P3 law in place was passed with overwhelming majorities in both the House and Senate just seven years ago.

In 2017, Governor Hogan challenged MDOT to deliver an innovative solution to relieve the congestion that plagues the NCR. The I-495 & I-270 Public-Private Partnership (P3) Program is the largest component of the TRP and is being advanced to bring transformative relief to the growing congestion that impedes economic development and diminishes quality of life in the NCR. It is imperative to understand that if the State does not undertake this solution, the Transportation Trust Fund (TTF) will be faced with funding $1.7 billion over the next ten years simply to maintain a state of good repair on the existing infrastructure along the program corridor in Montgomery and Prince George's counties alone.

The National Capitol Region Transportation Planning Board's (TPB) long range transportation plan, Visualize 2045, includes the TRP among other projects necessary to be undertaken over the next 25 years to form the infrastructure backbone of the NCR. In December 2018, Visualize 2045 received all necessary federal approvals from the U.S. Department of Transportation (USDOT) and the Environmental Protection Agency (EPA) on the plan's financial constraint and, importantly, its air quality conformity under the laws and regulations that govern transportation planning. Moreover, a reliable Express Toll Network throughout the NCR was one of the aspirational initiatives that the entire Long Range Plan Task Force endorsed by the TPB in December of 2017. Those aspirational initiatives also included bringing jobs and housing closer together, expanding bus rapid transit, moving more people on Metrorail, increasing telecommuting, and improving walking and bike access to transit. The TPB concluded that **all** these initiatives, including expanding the express highway network, would be needed to significantly improve the region's transportation system performance compared to current plans and programs.

House Bill 1424 will threaten the TRP in several ways, and, should these provisions be enacted and become law, the P3 market in Maryland will be irreparably damaged.

First, the legislation requires a final Environmental Impact Study to be submitted along with any Presolicitation Report for P3 designation. By requiring MDOT to complete this process prior to engaging private sector partners to propose innovative design solutions, this legislation would delay all P3 projects, limit the State's ability to identify the best solutions to solve our most pressing challenges, and unnecessarily increase project and user costs. Waiting to engage national and international experts until after the environmental process is complete will result in costly re-design and re-evaluation in response to design changes. Preventing the State from working with the private sector short circuits one of the chief components of a Public-Private Partnership – to allow for efficient synergies to solicit innovative solutions to very complex problems.

Second, this bill creates a nine-member Public-Private Partnership Oversight Review Board to review the Presolicitation Report and make recommendations regarding the P3 designation. For P3 projects of $500 million or more, the newly established Oversight Review Board would have sixty days to review the Presolicitation Report and provide their recommendation to the legislature. Thereafter, the legislature would have another 60 days to review the Oversight Review Board's recommendations. The Oversight Review Board, composed of designees from the Board of Public Works and the legislature, increases project costs and reduces value to Maryland constituents. As noted in the report from the 2013 P3 Commission, "the private sector is less likely to make substantial upfront investments if they believe that a political debate will derail a P3 project." Further, this additional delay may increase risk and cost to the private sector. House Bill 1424 goes on to require that if the P3 is valued at more than $500 million, the official designation by the Board of Public Works must be submitted to the legislature for review and comment for a period of up to one year. This bill directly contradicts the conclusion that came about based on input from the P3 industry and the State of Maryland during the Commission's deliberations, during which they noted that "lengthy review periods can be a deterrent to P3 projects." In this instance, for example, the effect of a 25-basis point increase (a quarter percent) in interest rates would be about $350 million. Again, this provision reduces predictability and results in risk to the private sector.

Third, the legislation requires all revenues to be assigned to the State or a successor entity to apply to the operations and maintenance of the project if the P3 partner goes bankrupt. While this is advocated as a protection for the State, it is predicated on a false pretext. The Traffic Relief Plan is designed to benefit Marylanders by shifting the risk of financing, design, construction and operation to the private sector. This is known as a "revenue at risk P3". All debt issued by the developer is non-recourse to the State of Maryland. The bondholders on the private side will be assuming the risk and will take over operations of the project in the event of a concessionaire bankruptcy. At no point will the State be "left holding the bag" – the only effect of such a provision would be to disincentivize private sector investment and discourage any kind of P3 agreement going forward. In fact, even in the event of a bankruptcy, the State still has an asset it did not have to invest funds to build.

Fourth, the requirement that an independent rating assessment survey be conducted for P3 concessionaires is not a product or service offered in the financial market. This survey is required to include the credit strength of the private entity and funding sources and the impact of the proposed agreement on the credit ratings of the State and local jurisdictions. Credit rating agencies will not opine on the potential impact of a potential project on a party that is not directly related to the transaction. As stated in MDOT's December 11, 2018 Presolicitation Report, "the developer will finance its construction responsibilities under the P3 Program through debt and equity that have no recourse to the Reporting Agencies, nor to the State of Maryland." Nevertheless, as a practical matter the investors/bondholders will require an "investment grade" (BBB- or above) credit rating to purchase the bonds. It is a business decision of the concessionaire to acquire the best credit rating in order to lower their costs. Again, there is no credit, bond rating, or financial risk to the State.

Multiple studies over the last decade have shown that the NCR is one of the most congested corridors in the nation, and Marylanders face the second highest commuting times in the country. Today on average, travelers experience 7 hours of congestion daily on I-270. The duration is even worse on I-495 with travelers experiencing 10 hours of congestion daily. Travelers on the American Legion Bridge see backups of 4 miles for 4 hours every day of the week. Currently, travelers waste 87 hours in congestion at an annual cost of $2,007 per driver. With the projected population growth in the NCR, Marylanders will continue to see those numbers grow day after day, month after month, year after year, further diminishing their quality of life.

The I-495 and I-270 corridors are not just local highways but are major corridors for the nation's capital and mid-Atlantic region. Corridor performance has significant influence on national security capabilities and national security facilities. The I-495 & I-270 P3 Program seeks to catch up with our neighbors across the Potomac by removing the serious regional bottleneck at the American Legion Bridge and provide new managed lanes along the full limits of I-495 and I-270 in Maryland. The Commonwealth of Virginia is moving forward with the I-495 Northern Extension project extending their successful managed lanes up to the American Legion Bridge; it would be devastating to the entire region if the State of Maryland is not able to continue this progress on the Maryland side of the Potomac River. Changes to P3 oversight could seriously jeopardize or delay Maryland's ability to deliver on the non-partisan, bi-State Capital Beltway Accord to replace the American Legion Bridge. Virginia's own studies show that traffic operations will deteriorate on the Beltway's general-purpose lanes in Virginia with the opening of I-495 Northern Extension in 2024 without the replacement of the American Legion Bridge. It is critical for the region's economy, security, access to jobs, and ability for interstate transit along I-495 and I-270 that Maryland move forward with the American Legion Bridge and extension of the managed lane network as expeditiously as possible.

The P3 delivery will allow funding that would have been required to address the growing needs on I-495 and I-270 to be allocated for other vital transportation improvements. The P3 agreements will provide regional transit services improvements that will serve the underserved suburban to suburban transit markets in the affected counties, none which will be possible without this P3 and will be significantly jeopardized with continued delay. The P3 agreements will also provide a guarantee for long-term operations and maintenance of the managed lanes, this ensures funding will not be needed from the Transportation Trust Fund for future maintenance on the managed lanes, further freeing up future funding for other vital transportation improvements across Maryland. Utilizing a P3 delivery will allow the State to harness innovation from around the globe to address the significant challenges surrounding the I-495 and I-270 corridors while limiting impacts to adjoining properties.

As we have stressed throughout this process, the I-495 & I-270 P3 Program is more than simply highway improvements. It will provide significant multimodal improvement and opportunities for Marylanders traveling around and living within the NCR for generations. This program will be truly transformative for the region.

For these reasons, the Maryland Department of Transportation respectfully requests the Committee grant House Bill 1424 an unfavorable report.

Respectfully submitted,

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Maryland Department of Transportation
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