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February 15, 2022

The Honorable Maggie McIntosh  
Chair, House Appropriations Committee  
121 House Office Building  
Annapolis, MD 21401

***Re: Letter of Opposition – House Bill 458 – State Personnel – Collective Bargaining –  
Revisions and Budget Bill Appropriations***

Dear Chair McIntosh and Committee Members:

The Maryland Department of Transportation (MDOT) respectfully opposes House Bill 458 as it implements a binding arbitration process that may result in awards that do not reflect the economic conditions of the State, that disincentivizes true negotiation and compromise between the parties, and that could last as long as six months to negotiate Memorandum of Understanding (MOU) provisions with the unions for the next fiscal year.

MDOT recognizes the hard work and dedication of its employees and enjoys collaborative relationships with the eight unions that represent various employees within MDOT and the Maryland Transportation Authority. Recently concluded union negotiations resulted in multi-year agreements that include increments (steps), cost-of-living increases, bonuses, additional COVID leave, and stronger health and safety measures.

House Bill 458 requires mandatory participation by an arbitrator from the onset of the negotiations process to “proctor” negotiation sessions regardless of whether it is full contract negotiations or just an economic reopener. If after three months the parties reach an impasse, the arbitrator is engaged for the next three months to conduct a hearing and decide which party prevails.

House Bill 458 moves the State’s collective bargaining process from an actual negotiation to a process that incentivizes parties to take extreme views for the “winner takes all” decision process outlined in the bill. It provides little incentive for the parties to come to an agreement when and if the initial proposals are far apart. If the parties cannot agree on certain provisions of the MOU that are at issue, they will spend considerable time preparing for and participating in the arbitration process. Under the bill, the arbitrator is required to pick the last best and final offer of one of the parties as the final award. No compromise or neutral ground decisions by the arbiter are contemplated in the bill. Furthermore, the bill severely limits the ability of both the executive and legislative branches to take actions related to employee compensation as needed to balance the budget in times of significant economic hardship.

It is anticipated that the proposed process will have a significant fiscal impact, both in the cost of engaging an arbitrator, and also due to the potential for extremely costly awards. By way of example, the Maryland Transit Administration's (MTA) three unions are subject to binding arbitration because of a federal law that dates back to the inception of the MTA. During the 2010 session, the General Assembly was faced with a significant decline in revenues associated with the Great Recession and were forced to eliminate employee increments (steps), cost-of-living increases, and deferred compensation matches; implemented a furlough and service reduction plan; and established a commission on pension sustainability that ultimately resulted in significant pension reform. Meanwhile, at MTA, a binding arbitration award was made that granted certain MTA employees a significant wage and pension enhancement package of over \$35 million over the course of three years.

It would be irresponsible for MDOT to support binding arbitration, as it cedes fiscal responsibility and control to a third party, who is unfamiliar with the impacts that these financial decisions may have; per the bill, the third party is not permitted to consider the potential need to increase/implement taxes, fees, or charges. A third party should not be making unilateral financial decisions that bind MDOT and consequently, the taxpayers of Maryland.

In addition, House Bill 458 prolongs the negotiating process from three months to six months, which does not comply with the deadlines for submitting the budget to the General Assembly. Once the arbitration process proposed by the bill is completed, it would begin again six months later, each step of the way involving the costly services of an arbitrator.

Finally, it is not clear what happens when provisions of an MOU are negotiated outside of the bill's prescribed timeframes for negotiations. For example, there are occasions when both parties agree that a provision of the MOU needs to be amended to reflect current practice. House Bill 458 does not make an exception for such scenarios, so presumably an arbitrator would need to be engaged each time this occurs, which is approximately once per year for each union. The added cost of hiring an arbitrator may act as a deterrent for management and the unions to amicably resolve issues outside the contract negotiation timelines proposed in the bill. The willingness of management and the unions to work together could be hindered due to efforts to save money on additional costly arbitrator fees.

For these reasons, the Maryland Department of Transportation respectfully requests an unfavorable report on House Bill 458.

Respectfully Submitted,

Pilar Helm  
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Maryland Department of Transportation  
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