
March 31, 2022

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

Re: Letter of Information – Senate Bill 59 – Maryland Transportation Authority – Public-Private Partnerships and Options for the Payment of Tolls and Civil Penalties

Dear Chairman Barve and Members of the Committee:

The Maryland Department of Transportation (MDOT) and the Maryland Transportation Authority (MDTA) take no position on Senate Bill 59 but offer the following information for the Committee's consideration.

Senate Bill 59, as amended, (1) requires, when feasible and practicable, for the Maryland Transportation Authority (MDTA) to provide users of Transportation Facilities Projects a range of options to pay for toll transactions and penalties at toll facilities; (2) requires the MDTA to issue an invitation for competitive sealed bids for a public-private partnership related to tolling services or a toll facility; (3) requires the MDTA to publish notice of an invitation for competitive sealed bids within a certain timeframe; (4) requires the MDTA to submit a copy of the invitation for competitive sealed bids to the legislature; (5) requires the MDTA to waive penalties in accordance with the Customer Assistance Plan that was adopted by the MDTA Board; (6) requires the MDTA to offer a certain installment plan agreement to certain persons for the payment of certain tolls and penalties under certain circumstances; (7) authorizes the MDTA to charge an administrative fee for an installment plan agreement; (8) authorizes the MDTA to request that the Maryland Department of Transportation Motor Vehicle Administration (MDOT MVA) flag a motor vehicle registration for suspension or nonrenewal if the owner defaults on the installment plan agreement; (9) requires the MDTA to provide a certain reimbursement notification to certain customers; and (10) requires the MDTA to submit certain reports to the legislature.

Public-Private Partnership

To date, all procurements for public-private partnership (P3) contracts and tolling services in Maryland have been procured using the competitive sealed proposal process, which follows separate sections of the Finance and Procurement law than the competitive sealed bid process. Senate Bill 59 requires the MDTA to issue an invitation of competitive sealed bids for a procurement solicitation related to a public-private partnership for tolling services or the construction, maintenance, or operation of a toll facility. The bill further requires the MDTA to publish certain notifications at least 60 days before issuing the invitation for competitive sealed bids and to submit a copy of the bids to the Legislative Policy Committee.

As amended, Senate Bill 59 would have a significant impact on the MDTA's operations as it would require the MDTA to select certain tolling services and the construction, maintenance, or operation services contractors based on the lowest possible bid received with no consideration of the technical capabilities and solutions of the contractors. **Selecting long-term contractors for performance-based services based solely on price as opposed to "best value" would be detrimental to the State and Marylanders.**

Furthermore, the MDTA anticipates that this legislation will reduce competition, because many P3 concessionaires and tolling vendors will not bid on contracts using the competitive sealed bid process. For example, the Design Build Institute of America (DBIA) recognizes in their Best Design-Build Practices publication that procurement actions can limit competition. They specifically recommend for contracts using design-build: "*Owners should use a procurement process that: (a) focuses heavily on the qualifications of the design-builder and its key team members rather than price; and (b) rewards design-build teams that have a demonstrated history of successfully collaborating on design-build projects.*" The competitive sealed proposal process aligns with this nationally recognized recommendation.

Toll Collection at MDTA Facilities

As amended, Senate Bill 59 requires that, when feasible and practicable, the MDTA provide users of Transportation Facilities Projects the option to pay for toll transactions and associated penalties at toll collection facilities via cash, check, money order, and electronic funds transfer through certain methods. As amended, the legislation appears to no longer require the MDTA to restore cash collections at the MDTA's legacy facilities and to begin collecting cash at the Intercounty Connector and I-95 Express Toll Lane facilities.

Recall of Debt & Civil Penalty Waiver

The proposed legislation requires the MDTA to recall a delinquent account from the CCU if the delinquent account exceeds \$300 in unpaid video tolls and associated civil penalties and the delinquent account holder agrees to enter into an installment plan. Furthermore, until the MDTA refers the debt to the Central Collection Unit (CCU) or after the MDTA has recalled a delinquent account from the CCU, the MDTA is required to waive civil penalties associated with a video toll payment in accordance with the Customer Assistance Plan adopted by the MDTA Board.

Effective February 24, 2022, the MDTA began a civil penalty waiver grace period for tolls paid in full and ceased referring toll bills to the CCU and the MDOT MVA temporarily. The grace period will end at 11:59 p.m. on November 30, 2022, and the MDTA will resume referrals of unpaid toll bills and civil penalties to the CCU and the MDOT MVA on December 1. This plan does not impact the posting of backlogged tolls. The MDTA will continue posting COVID-backlogged tolls into summer 2022.

For customers who choose not to pay their Video Tolls before the due date on the notice, mailings of citations/civil penalties will continue during the grace period and will remain in effect if unpaid tolls are not paid by 11:59 p.m. on November 30, 2022 (within the grace period).

It is estimated that customers could save an estimated \$125 million in civil penalty waivers. The net financial cost to the MDTA, when considering the volume of current civil penalty waivers being processed, the current below-average Video Toll payment rate, and the avoidance of future costs, is estimated at \$27.3 million over the next two years.

Installment Plan

Senate Bill 59 also requires the MDTA to offer installment plans in certain circumstances. Personnel costs associated with hiring four contractual positions to establish and administer the installment plans remains at approximately \$252,000 annually. Additionally, it is still estimated to cost approximately \$2.1 million to (1) modify the MDTA's existing tolling system to establish a mechanism for tracking accounts with installment plans and for vendor services to directly offer monthly installment plans in lieu of CCU performing these activities; and (2) provide individuals with the opportunity to apply for the installment plan and installment billing options on the MDTA's DriveEzMaryland.com website.

It is important to note that the costs above assume that the installment plans will be managed with proper system changes that allow for effective and efficient account management, and not extraordinary manual efforts that may be required to comply with the legislation based on the timeframe provided by the effective date. Costs will be higher to comply with the stated effective date of July 1, 2022 since the MDTA would likely have to undergo an emergency procurement process to procure the services needed, which would result in additional expenses beyond those noted herein. The MDTA Board-approved Customer Assistance Plan already acts as a temporary payment plan by allowing customers to stretch out toll payments over the waiver grace period until November 30, 2022 and without the worry of further consequences. However, the MDTA does not believe that the grace period in the Customer Assistance Plan meets all of the requirements of the installment plan in the bill (*e.g.*, no agreement is required, payments are at the customer's convenience (not requiring monthly), etc.).

Customer Reimbursement for Civil Penalties Paid

As amended, Senate Bill 59 requires that on or before January 1, 2023, the MDTA notify any individual who paid a civil penalty during the toll deferral period and is eligible for a reimbursement of the amount paid. The MDTA Board-approved Customer Assistance Plan will automatically waive civil penalties when each associated unpaid video toll is paid in full between February 24, 2022 until 11:59PM on November 30, 2022. The MDTA always encourages customers to check their statements and works with customers to resolve any billing concerns. However, there is not a specific list of customers eligible for reimbursement of paid civil

penalties during dates outside of the range of the Customer Assistance Plan. The eligibility for possible reimbursement will be on a case-by-case basis based on the specific circumstances of each customer and business. Therefore, the legislation will require the MDTA to send notifications to a much broader range of customers and businesses alerting them to the possible eligibility for reimbursement. Senate Bill 59 also requires the MDTA to submit a report to the legislature on what notification of reimbursement eligibility was provided to individuals who paid a civil penalty before the establishment of the civil penalty waiver grace period. The cost associated with providing the required notification is indeterminable.

Other Factors

The effective date of the legislation does not permit traditional procurements and reasonable and feasible timeframes for tolling system modifications for proper account management of installment plans. Even with emergency procedures, the MDTA does not anticipate it is feasible to comply with the legislation within the timeframe provided.

Since 1971, the MDTA has been responsible for constructing, managing, operating, and improving the State's toll facilities, as well as for financing new transportation projects under its purview, such as the Governor Harry W. Nice/Senator Thomas "Mac" Middleton Bridge in Charles County. The agency is entirely reliant on tolls collected from its users, as the MDTA does not receive any State General Fund or Transportation Trust Fund dollars. In accordance with the MDTA's Trust Agreement with bondholders, toll revenues are first pledged to pay operating expenses, including debt service for bonds that are used to fund major transportation projects at existing and new facilities.

The Maryland Department of Transportation respectfully requests the Committee consider this information as it deliberates Senate Bill 59.

Respectfully submitted,

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