

March 30, 2022

The Honorable William C. Smith, Jr.
Chairman, Senate Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, MD 21401

Re: Letter of Information – House Bill 29 – Vehicle Laws – Failure to Pay Video Toll and Electronic Tolling Performance Audit

Dear Chairman Smith and Members of the Committee:

The Maryland Department of Transportation (MDOT) and the Maryland Transportation Authority (MDTA) takes no position on House Bill 29 but offers the following information for the Committee's consideration.

House Bill 29 proposes to repeal the requirement for the Maryland Department of Transportation Motor Vehicle Administration (MDOT MVA) to suspend the registration of a vehicle for failure to pay outstanding tolls and civil penalties. For Maryland drivers, this could result in a disadvantage by prolonging the amount of time customers have to accumulate toll debt, leading to higher debts before cases are resolved. House Bill 29, as amended, also requires the MDTA to competitively bid for a certified public accounting firm to conduct a performance audit of the electronic tolling operations of the MDTA. **The proposed audit is duplicative of recent, ongoing, and future audits of the agency, presents an unfeasible timeframe, and severely restricts the pool of qualified firms which would be eligible for such an audit.**

The MDTA operates the toll facilities in Maryland, with tolls being collected through a combination of electronic toll collection and video toll collection. When a customer passes through a toll facility and fails to pay an electronic toll with an *E-ZPass* transponder, video images are captured of the vehicle license plate. The images are reviewed so that the vehicle is either matched with an existing *E-ZPass* account, Pay-by-Plate payment method, or the registered owner is mailed a video toll invoice (Notice of Toll Due or NOTD) at the address on file with the MDOT MVA. The NOTD is not a fine or citation, but rather a way for non-*E-ZPass* customers to pay a toll.

Existing statute provides three measures designed for recouping past due tolls – civil penalties, flagging or suspending vehicle registrations, and referrals to the Central Collection Unit (CCU). A motorist will only receive a citation if they fail to pay a NOTD within 45 days. A motorist must pay the citation (the toll and penalty) in the allotted timeframe or contest the toll in court. If a person (1) fails to elect to stand trial or pay the prescribed video toll and civil penalty, (2) is adjudicated to be liable after trial, or (3) fails to appear at a trial after having elected to stand trial, the MDTA may refer the case to the MDOT MVA for suspension of or refusal to renew the vehicle's registration.

The MDTA is committed to responding to customers and resolving any outstanding *E-ZPass* concerns. Over the last few years, the MDTA has taken significant steps to improve its customer service, especially in assisting customers with resolving their toll debt. To both work with the requests of the Legislature and meet Governor Hogan's goal of reducing tolls and fines, the MDTA Board developed a plan that reduces civil penalties while maintaining equity and fairness for those who pay their tolls as required.

In March 2020, the MDTA Board unanimously voted to lower the civil penalty for all toll violations to \$25, which took effect on July 1, 2020.

It has been demonstrated that individuals with high toll debt will continue to amass multiple fines for failing to pay tolls. Consequently, repealing the MDOT MVA's ability to suspend the vehicle registration when an individual has reached the \$1,000 threshold will only exacerbate the outstanding amount of toll debt owed, increasing the likelihood that the customer's account will be referred to CCU, where they will be charged the additional 17% collection fee. Furthermore, the MDTA's ability to work directly with the customer to resolve their outstanding debt is greatly limited after referral to CCU. The current system in place serves, not only as an incentive to pay tolls in a timely manner, but also functions as an opportunity for customers to pay their debt before being faced with additional charges.

House Bill 29 would eliminate the opportunity to interact with customers who have unpaid toll debts. The ability to flag or suspend a vehicle owner's registration for non-renewal is an important tool that helps to address habitual toll evaders. By the time a request is made to suspend a vehicle registration, the vehicle owner has received numerous notices of the toll amount due, including the opportunity to contest the case in District Court. Since 2014, the MDTA has recouped \$31.7 million in outstanding unpaid tolls and penalties as a result of the suspension program and customers' awareness of the program. Customers often seek early resolution of unpaid tolls and penalties with MDTA to avoid escalation to the registration suspension program.

Eliminating the ability to suspend the registration of a vehicle for failure to pay outstanding tolls and civil penalties will extend the duration of delinquency and size of the debt. The Commercial Collection Agencies of America found "that the probability of full collection on a delinquent account drops drastically according to the length of delinquency." Consequently, House Bill 29 is detrimental to the customer by allowing more sizeable debt to accrue and to the MDTA by reducing the likelihood of full debt collection.

The legislation also establishes an unrealistic timeframe of May 15, 2022 to successfully competitively procure independent auditors that have not previously provided any services to the MDTA to conduct a performance audit of MDTA's electronic tolling operations, evaluate the efficiency and effectiveness of tolling operations and customer service practices, including revenue collection, leakage analysis, and procurement and contracting processes and issue a report by December 31, 2022. Restricting the solicitation to only include independent accounting firms that have not provided audit services to the MDTA is unnecessary due to the independent requirements imposed on auditors by the Financial Accounting Standards Board (FASB) and Government Accounting Standards Board (GASB) and significantly limits the number of viable accounting firms and thereby stifles competition.

Although the legislation is categorized as emergency, the MDTA cannot procure the independent auditing services under the emergency procurement regulations on a competitive basis as time does not permit such competition. An alternative method of procurement is to issue a Task Order Request For Proposal (TORFP) against the Department of Budget and Management Auditing Services Master Contract (ASMC). However, this approach also has significant limitations as the MDTA is regularly audited by numerous independent auditors. Nearly 40% of the independent auditors on the ASMC would be precluded from bidding.

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Independent accounting firms are precluded from engaging in audits in which their independence is impaired, including the perception of a lack of independence. Failure to adhere to these widely accepted, stringent standards would jeopardize the auditors license and business vitality. The MDTA supports allowing the independent auditors to be accountable to the FASB and GASB independence rules rather than stifle competition and penalize local independent accounting firms merely because the auditors have provided independent attestation audits for the MDTA.

It is estimated to cost \$300,000 to obtain a certified public accounting firm to conduct a performance audit of the MDTA's electronic tolling operations. Additionally, the requirements for the audit firm to coordinate with the Joint Audit Committee (JAC) and Office of Legislative Audits (OLA) in the development of the scope and objectives of the performance audit will require the scope of the procurement to be undefined and open-ended, resulting in limited competition and higher costs to comprehensively cover all possible audit services associated with tolling operations and customer service. Furthermore, the duration of the audit is already on a very compressed schedule, and so the coordination requirement will further compress the schedule and escalate the associated costs to complete the undefined scope.

Lastly, the proposed audit is redundant in nature to the fiscal compliance audit that was conducted and published by the OLA in September 2021, as well as the special review of the MDTA's electronic toll collection, billing, and customer service processes that were initiated by OLA on February 17, 2022. Additionally, other similar audit requests have been proposed by the General Assembly during the 2022 legislative session. These include budget committee narrative requiring an accuracy study of the MDTA's tolling equipment and occurrences of customer overbillings and budget bill language restricting funds for policing services until the MDTA conducts a performance audit to evaluate the efficiency and effectiveness of the *E-ZPass* tolling program. The requirements contained in House Bill 29, as amended, are duplicative and will prohibit any firm that has provided services to the MDTA from bidding on the audit contract. As such, the audit provisions of the proposed legislation will significantly reduce the pool of available auditing firms and limit competition.

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 does not receive any State General Fund or Transportation Trust fund dollars and is instead entirely reliant on tolls collected from its users. 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 House Bill 29.

Respectfully submitted,

Bradley Ryon
Manager, Government Relations
Maryland Transportation Authority
410-387-5253

Pilar Helm
Director of Government Affairs
Maryland Department of Transportation
410-865-1090