



SIERRA CLUB

MARYLAND CHAPTER

Sierra Club Maryland Chapter

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Agency: Maryland Transportation Authority

Testimony: Toll Rate Range Setting Process #2, Phase 1 South: American Legion Bridge I-270 to I-370

Position: Oppose

Comment Deadline: October 28, 2021

Meeting Date: November 18, 2021

On behalf of Sierra Club Maryland Chapter's over 75,000 members and supporters, we continue to oppose the toll rate range, toll and fee escalations, and the private toll lane project in general.

Below we offer one process comment followed by our main technical comments.

It is disappointing that this 28-day toll rate range setting comment period was scheduled to overlap with two other comment periods on the I-495 and I-270 toll lane project (one month for Section 106 and 45 days for the Supplemental Draft Environmental Impact Statement). It is also disappointing that this toll rate range setting comment period has no in-person or virtual public hearing during the comment period. These timing decisions, lack of public hearings, and minimal advertising of the toll rate range setting comment period prevent the public from participating meaningfully in the process.

None of the concerns raised in our prior comment letter have been alleviated by the [three cent reduction](#) of the minimum toll. It is noteworthy that even though many thoughtful, persuasive comments were provided to your agency that this was the only change made. All of the concerns we raised in July 2021 still remain and can be viewed [here](#).

In addition, we believe that this toll scheme is even more inequitable and costly for would-be toll lane users than what was proposed during the first toll rate range setting. [Text](#) in the August 26, 2021 "First Amended and Restated I-495 & I-270 Public-Private Partnership Program (P3) Interagency Agreement (IAA) between Maryland Department of Transportation (MDOT) State Highway Administration (SHA), MDOT and MDTA" reads:

"If there is projected to be a Rate Covenant Shortfall (meaning the P3 Program revenues (including video surcharges, late payment fees, etc.) expected to be collected will be insufficient to cover the payments due to all Section Developers from the Operating Reserve Account and all principal and interest due on all MDTA Notes) in six or more consecutive months during the next 24 months, MDTA shall either

- (i) make administrative or operational changes that will eliminate the Rate Covenant Shortfall or
- (ii) if there are not administrative or operational changes that will eliminate the Rate Covenant Shortfall, then MDTA shall notify MDOT. Following such notification MDOT shall either

Founded in 1892, the Sierra Club is America's oldest and largest grassroots environmental organization. The Maryland Chapter has over 75,000 members and supporters, and the Sierra Club nationwide has over 800,000 members and nearly four million supporters.

- (a) instruct MDTA to take no further action on the basis that MDOT elects to make supplemental payments at the time of the projected shortfall so that, if such supplemental payments were included as additional P3 Program Revenues in the calculation of the Rate Covenant calculation then no shortfall would exist or
- (b) instruct MDTA staff to present to the MDTA Board a toll proposal to commence the toll rate setting process intended to fix, revise, charge, and collect the tolls, fees or other charges in the P3 Program so that the Rate Covenant Shortfall is eliminated. Upon the conclusion of the toll setting process the MDTA Board may approve, adjust or reject the toll proposal.”

This appears to mean that Maryland taxpayers and especially toll road users or would-be users will be penalized in the event MDOT’s traffic projections are incorrect and for other agency errors. It appears to mean quality of service (in the form of “administrative or operational changes”) provided by MDTA, a state agency, can be decreased in the interest of paying the developer (Australian toll lane giant Transurban) its promised profit, which it is owed even if the toll lanes are not well utilized. This scheme and contract appear strongly biased in favor of the private sector at the expense of Maryland residents.

In addition to the shortfall payments being a potential trigger for a new toll rate range setting process, the interagency agreement explicitly requires that MDTA not make any changes that could reduce P3 program revenues, saying: “MDTA agrees that it shall not (unless compelled to by law), reduce the civil penalty for late payment of tolls, citation fees, or enforcement fees applicable to the P3 Program, or take other rate setting action that causes P3 Program revenues to decrease.”

It is imperative that the public be told that this is just the first of the potential P3 toll rate range settings and that the only direction these tolls, fees, and escalations can go is up.

These strings-attached agreements, which are not subject to public comment, some of which were or will be executed after the reviews required by the P3 law and after the Board of Public Works vote, undermine public trust in agency processes, agency authority, and transparency. Some of these arrangements will be made without any further opportunity for the public to comment or even be aware of future changes regarding the tolls.

We believe that the Governor and MDOT have misled the public in repeated representations that the project risk would be transferred to the private sector. At each step, it is clear that the state is taking on more risk, including by changes made *after* the August 11, 2021 BPW vote. (Eg. “In connection with financial close of each Section, MDTA will issue bonds or notes to fund certain costs in which the State is best equipped to manage and reduce the overall risk,” August 26, 2021 IAA.)

The [August 2021 P3 contract](#) and [August 26, 2021 interagency agreement](#) have many examples of the state assumption of this financial risk. Still more than the state itself, it appears that the taxpaying public will be on the hook for dozens of compensation and relief events, toll road subsidies, monopoly markups, billions in utility relocations, and then even

shortfall payments for mistakes made by MDOT, MDOT SHA, MDTA, and Transurban. The toll payers themselves will surely pay for those mistakes.

Every day there are articles about the high tolls and woes Transurban is causing in Australia. Look at these articles as a cautionary tale that should send a strong warning sign that the same will occur here, to the extreme detriment of Maryland and the transportation system serving our nation's capital.

1. [NRMA calls for toll price transparency \(riverineherald.com.au\)](http://riverineherald.com.au)
2. ['Cost outweighs benefit': Trucking giant's toll message to drivers \(theage.com.au\)](http://theage.com.au)
3. [WestConnex: the toll road that ate Sydney \(smh.com.au\)](http://smh.com.au)

Under the interagency agreement, it seems that MDTA designates MDOT SHA as its agent. Then the contract stipulates: "No Party shall interfere with or impede any other Party's performance of its obligations under this Agreement or any P3 Agreement." In other words, following execution of the tolling agreement, MDTA will have no real say in future rate increases and escalations, with its role confined to rubberstamping MDOT SHA requests. And, all individuals in the parties are indemnified, so no individual who participated in this agreement can be held accountable. Again, it is toll road users and Maryland residents who will pay the price for the errors that are virtually certain to occur.

In a November 18, 2020 [letter](#), the developer told MDTA that even the exorbitant tolls being put forth during the rate settings are not high enough. That developer letter casts doubt on the currently-identified toll rate ranges, and the information about the interagency agreement further raises questions about just how fast the tolls might rise and when and how the conditions for exceeding the toll soft cap may change.

Two weeks ago, on October 13, the Metropolitan Washington Council of Governments [approved](#) two resolutions that would "prioritize equity in transportation, housing and funding." Equity is a regional value, and it is violated by \$50 toll lanes benefitting only the most affluent residents of the most affluent part of the region. [MDOT](#) has said that those driving on the toll lanes will have increased trip reliability and increased safety. That sets up a two-class system that people in Maryland don't want and don't buy into. On lanes right next to each other, only those who can afford the private lanes get a safer commute, with the general purpose lanes available to those who can't afford the toll lanes made less safe and even more congested than before.

We urge you to reconsider your role in supporting and legitimizing this unfortunate scheme and to increase transparency with the people of Maryland about this toll rate range setting exercise.

Thank you for receiving this feedback.

Sierra Club Maryland Chapter