



House Bill 402

Repeal of the Maryland Open Transportation Investment Decision Act of 2016

MACo Position: **SUPPORT**

To: Appropriations and

Environment and Transportation Committees

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From: Barbara Zektick

The Maryland Association of Counties (MACo) **SUPPORTS** HB 402. This bill repeals the 2016 legislation creating a “scorecard” for major transportation projects. That bill, with its many prescriptive elements, and the subsequent implementing regulations, have left counties deeply concerned about process for selecting major transportation projects. MACo urges the General Assembly to remedy the current two-part scheme of legislative and regulatory interpretation that collectively place projects in jeopardy, and may overwhelm county transportation planning staff. **Repealing last year’s legislation would eliminate this concern, as would a substantive re-working of both the current statutory and regulatory language. MACo supports either a “repeal” or “replace” path.**

During the 2016 legislative session, MACo raised concerns with HB 1013, the legislation targeted by this year’s HB 402. In testimony, MACo raised concerns about respecting county input into project selection, overburdening county public works departments, and the potential for unfairness in the legislated scoring system. Many of these points were addressed, in whole or in part, through both House and Senate amendments. During the interim, MACo was again alarmed by exchanges with the Maryland Department of Transportation, suggesting that a failure of counties to rapidly provide dramatically expanded information to defend proposed projects would result in them being “de-funded.” And finally, after the implementation of last year’s act was delayed pending regulations being adopted, MACo again expressed concern with the proposed Departmental regulations that failed to implement flexibility that we believe the legislation afforded. Taken together, counties fear the law and regulations’ scoring system will prove counterproductive and cumbersome.

Under the current set of goals and measures in the law, every project is scored based on the same set of criteria. This could yield counterintuitive results – where a mass transit project will be scored based on pedestrian safety, or a rural bridge project scored on its connections to

mass transit. In neither case does the “one size fits all” system in the legislated set of goals and measures serve the interests of transparency ideally. Testimony during the legislative review of the Department regulations indicated a difference of opinion on whether the Department had the authority to apply different weights to the various goals, based on the mode or region of the project. A legislative follow-up to amend these references and clearly grant that flexibility could offer a dramatic realigning of the legislature’s vision, and could move the Maryland scoring system toward the apparently successful model used in Virginia.

Similarly, the current statute has triggered uncertainty about the added analytical burden being placed on county public works and transportation staff. Similarly, the Department has implemented the “population multiplier” for each project score more rigidly than the General Assembly envisioned, citing a lack of authority to reach a different calculation. In both cases, these imperfect outcomes could lead to projects receiving an unfairly low score.

Imperfect scores undermine the entire system. An ideal scorecard system could advance the public’s ability to understand the State’s project selection process. Counties fear that the status quo, as a combined result of legislation and regulations, will substantially miss this mark. The Maryland public would not be well served if the Department were obliged to routinely offer a multitude of “rational basis” letters to assert an exception for a wide range of projects in order to retain funding, despite their project scores. Even though this process is spelled out in the law, a system that creates an unreasonable number of exceptions loses its utility.

Repealing the 2016 legislation would, clearly, remedy these county concerns. Should the Committee prefer to retain a scorecard structure, counties are willing to collaborate on alternative language – both in developing modified statute and in guiding revised regulations – to bring the process nearer to its intended goals.

For these reasons, MACo **supports** HB 402, as a means to remedy the confusing and cumbersome scorecard process currently in law. Should the Committee prefer to revise the process with remedial legislation, MACo and county professionals would be pleased to help inform and support that effort, to better reach the program’s intended goals.