

CHASING ‘FREE MONEY’: THE FATALLY-FLAWED SCHEME TO OUTSOURCE MD’S INTERSTATE HIGHWAYS TO TOLL-ROAD PROFITEERS

BY GARY V. HODGE

A 495-270-295 “traffic relief” plan was announced on September 21, 2017 by Governor Larry Hogan and Pete Rahn, his former Secretary of Transportation. Their plan was to privatize and widen I-270, the Capital Beltway and MD295, the Baltimore-Washington Memorial Parkway, with two new express toll lanes in each direction. As proposed, the State would enter into a public-private partnership, or P3, with a lead project developer and outsource the responsibility for designing, building, financing, operating and maintaining the managed lanes at no cost to the State, in return for granting them the right to collect toll revenue on the highways for the next 50 years. The State has not persuaded the federal government, or Maryland’s members of Congress, to agree to transfer ownership of the B-W Parkway to the State, so it’s no longer in the plan.



For the past month the State has been taking testimony from elected officials, government agencies, regional planners, community groups, advocacy organizations and private citizens at public hearings on the 19,600-page Draft Environmental Impact Statement (DEIS) on the I-495 and I-270 Managed Lanes Study. The Draft EIS, a requirement of the National Environmental Policy Act (NEPA), is the current step in the march of the Governor’s plan toward implementation.

If the goal was to maximize public participation, the timing of the hearings couldn’t have been worse, in the middle of a pandemic, an economic crisis, massive unemployment, a superheated Presidential campaign, and unprecedented weather events. During the second and final in-person hearing on September 10 in Rockville, the day I testified, the area was paralyzed by a torrential rainstorm and flash flooding.

I had given testimony on this project before, more than a year ago at the Maryland Board of Public Works meeting in Annapolis on June 5, 2019. I said there were three questions that needed to be answered before the State decided to move forward with the project:

First, “Will it work?”

Second, “Is it worth the risk?”

And third, “Is it the best we can do?”

The Governor said these were “good questions.” Back then the answer to all three questions was “no.” Today the answer is still “no.” It won't work, It's not worth the risk. And it's not the best we can do. The nearly 20,000 pages of the Draft EIS hasn't changed that—only confirmed it.

This project will result in more traffic congestion, not less, defeating its “purpose and need.” And in spite of initial assurances, the P3 will need to be subsidized by Maryland taxpayers after all. Even if one accepts the optimistic cost estimate of \$9.6 billion, the few minutes saved in commute times are hardly worth the price of the ordeal that lies ahead: Years of delays, detours and traffic snarls; constructing new entrance and exit ramps, interchanges, and bridges; and new traffic patterns, followed by high tolls to use the express lanes.

How much longer will the thousands of Marylanders who live in the shadow of this project be dangling on tenterhooks waiting for the sword of Damocles to fall on them, their homes, their neighborhoods, their security, and their daily lives?

The one indisputable fact is that chronic traffic congestion will need to continue indefinitely in the “free” lanes or there's no incentive for motorists to pay to use the toll lanes. That's the business model. To make this scheme work, the State's private sector partner in the P3 will need to harvest vast amounts of toll revenue, make a profit, and pay big dividends to their investors. And in these uncertain times they'll expect the State to minimize their risk with a safety net made of titanium.

Before embarking on a project this massive and costly, touted as “the largest P3 traffic relief project in the world,” the right sequence of steps would be to correctly diagnose the problem; prescribe the best possible solution after considering all the alternatives; and then find the means to pay for it, minimizing risks to the State and Maryland's taxpayers. The State should have engaged in a deliberate, thoughtful, collaborative and comprehensive search for solutions. Instead, it took a “ready, fire, aim” approach. Private capital investors decided what kind of solution they were willing to invest in, and the State complied, instead of taking the measures more likely to deliver the results that are needed.

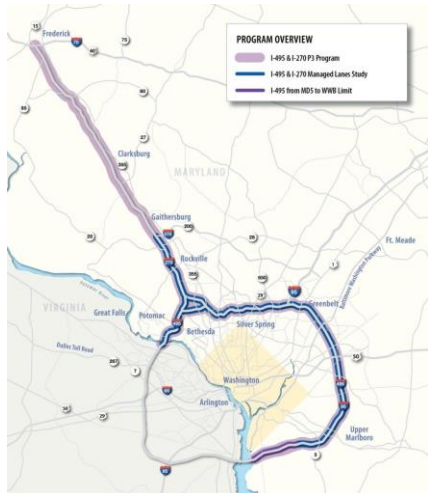
Politicians in the United States and around the world are proving to be no match for international toll highway privateers like Australia's Transurban, the leading contender

for the Maryland 495-270 P3. There's good reason to worry that in contract negotiations their team will run circles around State lawyers.

The federal government is failing in its historic responsibility to invest in the nation's infrastructure. To fill the funding gap, state leaders are chasing "free money." Maryland isn't the only state being seduced by the siren song of P3's. But Maryland is one state with a sterling reputation for sound fiscal management, with a AAA bond rating, and the ability to borrow money at the lowest interest rate in history. Unfortunately, in the aftermath of P3 deals, when the politicians who made them are gone, taxpayer bailouts have become commonplace. The truth is, there's no such thing as "free money." One way or another, sooner or later, Marylanders will pay—in tolls or in taxes—or both tolls and taxes.

It's been said that this project doesn't need legislative approval or support. Now that it's been acknowledged that State funding will be needed, it probably will. For almost three years a fire bell in the night has been ringing in the General Assembly's ears about the wisdom of this scheme. Legislation has been introduced, heard by the committees, and debated. A few bills have even been passed by the House of Delegates. But in spite of the valiant efforts of a few Delegates and Senators, the legislature as a whole has been indifferent, and has done nothing to assert its oversight authority, demand transparency and accountability, and take concrete action to slow or stop this juggernaut. Next January, legislators will have one more opportunity. Hopefully, for the sake of their constituents' wellbeing and their own election prospects in 2022, they won't leave Annapolis empty-handed a fourth year in a row.

On January 8, the three-member Board of Public Works, the State's most powerful decision-making body that most Marylanders have never heard of, decided in a 2-1 vote to greenlight the first phase of the project, with Governor Hogan and Comptroller Peter Franchot voting yes and Treasurer Nancy Kopp voting no. The BPW reduced the footprint of the first phase of the project to cover I-495 from the vicinity of the George Washington Memorial Parkway to the I-270 west spur, across and including replacement of the American Legion Bridge, and continuing on the I-270 west spur to I-370. Future phases of the project would eventually continue north on I-270 to I-70, and around the Beltway to the Woodrow Wilson Bridge.



The list of the project’s fatal flaws and risks is long and still growing. Here are some of the most serious and critical concerns that have been expressed:

- It fails to address the original “purpose and need”: To relieve traffic congestion
- It doesn’t deliver significant savings in reduced travel times, only a few minutes at most
- Congestion will continue on the “free” lanes
- Tolls to use the express lanes will be costly during peak rush hours
- The viability of the project is questionable without public funding, which contradicts original assurances
- It shifts financial risk from the private sector to the State, with taxpayer subsidies that could count against the State’s debt limit
- It would reduce the State’s fiscal capacity for investment in rail transit and other multi-modal infrastructure
- Future toll revenues are unknown
- Construction costs are incomplete and likely to exceed estimates
- Moving WSSC water and sewer infrastructure in the project’s path would cost an additional \$1-2 billion
- There will be loss of protected parklands, and impact on 1,500 properties
- “Limits of disturbance” will need to be expanded
- There will be a significant increase in stormwater runoff to rivers and streams
- There is no standalone transit option; Public transit alternatives were eliminated from consideration
- Details of the “Capital Beltway Accord” between the Governors of Maryland and Virginia are unknown; No written agreement has been made public
- There is no provision for accommodating rail transportation on the new American Legion Bridge

- Rush-hour traffic north on I-270 would be worse, not better; Travel times to Frederick for all alternatives would be worse
- Upper I-270 is included in Phase 1 of the 495-270 P3 project, but is excluded from this Draft Environmental Impact Statement
- The toll lanes will impact local road networks, where there may be no excess capacity or potential for expansion, leaving fixes up to local governments
- Increasing highway capacity on I-495, I-270, and connected arterial roads, will increase long-term traffic demand
- A State plan that maximizes driving and perpetuates automobile-dependence for the next half-century fails to respond to the climate change crisis

In the history of bad ideas, this scheme is still just a footnote that would be quickly forgotten. My advice would be, don't make it a whole chapter, with potentially dire and long-lasting consequences for decades to come. Take a cold, hard look at the critical mass of facts, including the State's own analysis, disenthral yourselves, and let go.

This new round of hearings on the Draft EIS is merely "bouncing the rubble," to borrow a phrase from Churchill. The only thing preventing this dubious scheme from collapsing is the wreckage and debris of unconvincing justifications piled up around it. Not even the 20,000 pages and million words of the DEIS can save it. After almost three years, the fatal flaws and risks of this project have already been dissected. The *post mortem* has already been written.

This isn't the best we can do. Pouring rivers of concrete to create a magic carpet for rich people is not what we ought to be doing to put Maryland in the vanguard of America's most competitive states. A massive \$9-11 billion investment in new highway construction is not the path to Maryland's future. It would only perpetuate the unfair and inequitable gap between "haves and have nots" that we should be working to close. What we need now is a multi-modal strategy that will meet the mobility needs of all our people.

We need to put the financing of Maryland's transportation program on a solid and sustainable foundation, in spite of the federal government's failure to play its historically important role. Privatizing our interstate highways and outsourcing our State transportation program to international toll highway profiteers is not the answer. We don't ever want our Secretary of Transportation flying to Australia to get his marching orders, or to find out what projects he can put in the State's new six-year capital program.

Many steps remain before the NEPA process is completed and the project moves toward implementation: Responding to comments on the DEIS, getting federal concurrence on the Final EIS (possibly during a Presidential transition), writing the

Record of Decision. Assuming the normal slippage in the schedule of a project of this size and complexity, it's not hard to imagine that the procurement process, selecting the contractor, negotiating the P3 deal to build, operate and maintain the toll lanes, setting limits on future tolls, the required legislative review and Board of Public Works approval, will leave many critical decisions looming in the run-up to Maryland's 2022 election.

The cornerstone of the first phase of the 495-270 project is the American Legion Bridge, a huge and expensive undertaking by itself. A written bi-state agreement between Maryland and Virginia covering the details of the plan to replace the Bridge is crucial. If the "Capital Beltway Accord" is more than a handshake, and a written agreement exists, its contents have not been made public.

If this project is allowed to advance, the implementation and construction phase will land squarely on the desk of the next Governor. It would be unfortunate if the unintended consequences, collateral damage and financial risks of this misguided venture were to hang like an albatross around the neck of the State's next chief executive, diverting attention and resources from more vitally important priorities.

Investments in transportation infrastructure are some of the most consequential the State makes, with far reaching impact on our future economy, growth and development. After a promising start a half-century ago with the construction of the Washington metrorail system, Maryland has become more automobile-dependent than ever. The full potential of MARC commuter rail, and the promise of the Purple Line and Southern Maryland Rapid Transit project has not yet been realized. A successful mobility strategy for the 21st century will require new investment in seamless rapid rail transit network connecting communities and jobs that's fast, safe, and accessible.

Let's clear the decks for action and build the modern transportation system our people need and deserve, not make highway-building the default setting for our capital infrastructure investments. Let's restore Maryland's tradition of collaboration and consultation between the State, the counties, and affected local governments, as mutually respected partners.

If the 495-270 P3 project moves forward, in years to come we won't find any consolation in knowing that we were right to oppose it, when we consider how much progress we could have made working together on a bold new vision for Maryland's future.



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The writer is president of Regional Policy Advisors, Vice Chair of the Maryland Transit Opportunities Coalition and a former Charles County Commissioner, executive director and chairman of the Tri-County Council for Southern Maryland. He has been engaged in State and regional transportation projects, programs and advocacy for 50 years, as a planner, an appointed and elected public official, consultant, and citizen activist.

This is his third in a series of essays published in Maryland Matters on the proposed 495-270 P3 plan announced by Governor Hogan and former Transportation Secretary Pete Rahn on September 21, 2017.

His previous two essays were “Pete Rahn’s Return to ‘Hip Pocket’ Government,” April 23, 2018; and “‘Largest P3 Traffic Relief Project in the World’ Needs More Scrutiny, Not Less,” March 8, 2019