
January 26, 2021

The Honorable Delores G. Kelley
Chair, Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis MD 21401

Re: Letter of Information – Senate Bill 23 – Equity in Transportation Sector – Guidelines and Analyses

Dear Chair Kelley and Committee Members:

The Maryland Department of Transportation (MDOT) takes no position on Senate Bill 23 but offers the following information for the Committee's consideration.

Senate Bill 23 would require MDOT to consider ways to achieve equity in the transportation sector when developing the State Transportation Goals as part of the Maryland Transportation Plan (MTP). Achieving equity in transportation is inherent to MDOT's mission statement and our long-range goals and objectives, which require a collaborative and comprehensive outreach process to State, regional, and local stakeholders.

The MDOT would like to note for the Committee that it has engaged in conversations with the bill sponsor about areas of concern in the bill, as drafted, as well as common goals. The MDOT looks forward to continuing its working relationship with the bill sponsor in the hope of reaching a consensus on bill language.

Senate Bill 23 would create a new Commission on Transportation Equity (CTE) staffed by MDOT, which would hold quarterly meetings, and one annual town hall meeting. The CTE is tasked with working with MDOT to develop policies on performance measures and advising the Department on how the State's transportation system can address disparities; currently, and in accordance with federal guidance, the Secretary of Transportation and the administrators of the Transportation Business Units (TBUs) are responsible for these policy decisions. The CTE would also advise the MDOT Maryland Transit Administration (MDOT MTA) on certain transit methodologies, Title VI requirements, transit equity analysis policies and guidelines, and outreach to minority communities. Finally, the legislation requires that the CTE produce an annual report. Some of the analysis and reports required by the CTE are already underway at MDOT, including equity analyses for service and fare changes, as well as additional Title VI analyses to meet federal requirements, and assessment of statewide policies and performance measures, which is typically done through the State long-range transportation plan process and then reviewed by the Governor's Attainment Report Advisory Committee.

As drafted, beginning with the 2023 Attainment Report, Senate Bill 23 would require MDOT to consult with the CTE to recommend measurable transportation indicators that can be evaluated for racial and ethnic disparities and impacts on persons with disabilities. The performance measures are selected through the state and federally mandated long-range plan every 4-5 years, in consultation with the Governor's Attainment Report Advisory Committee. As long as the newly required data is available, MDOT could assess these indicators and consider metrics that align with the goals and objectives developed in the long-range plan, ensuring that all performance measures are SMART measures, meaning they are specific, measurable, achievable, realistic, and timely. While some of these proposed performance indicators are included in the AR, not all are included.

Prior to each transit service change, Senate Bill 23 would require the MDOT MTA to conduct a transit equity analysis in accordance with the guidelines advised by the CTE, perform a cost-benefit analysis of impacts on economic development, employment, education, and health, and consult with members of affected communities. If the studies determine there is a disparate impact, Senate Bill 23 would require MDOT MTA to develop alternatives, conduct equity analyses on those alternatives, then compare the impacts of those alternatives and select the alternative that causes the least disparate impact. Additionally, the bill requires that MDOT MTA publish the equity and cost-benefit analyses on the agency's website before the public hearings on the proposed changes and then complete a report after the hearings, adding a community outreach report and additional components. MDOT MTA currently conducts Title VI equity analyses for service changes and consults with the public as specified in its Title VI Program, which is updated every three years through a process that involves public comment. Under the current service change process, demographic factors for transit riders and areas served by routes are considered in the development of service proposals in order to consider equity early in the service proposal process. Comments received during a public comment period include comments made in public hearings, which are then incorporated into final service proposals. After this, completed Title VI equity analyses are posted on MDOT MTA's website in a timely manner, once finalized, reviewed, and approved.

Per MDOT MTA's Collective Bargaining Agreement, service changes are completed three times per year; planning for these major service changes typically takes 12 months. The Senate Bill 23 requirement to complete Title VI equity analyses and cost benefit analyses prior to public hearings will likely add six months to each service change to examine the impacts, the alternatives, and subsequent impacts from the alternatives, before the schedule development process can begin. This additional time will make it difficult for MDOT MTA to respond to changes in ridership, new employment centers, and new developments. It will also make it difficult to meet customer transportation needs in a timely and effective manner. By requiring that equity analyses be completed and published prior to public hearings, Senate Bill 23 would prevent comments registered during public hearings and ensuing public comment period from being included within the Administration's formal equity analysis.

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In addition, this extended timeline could also impact safety-related stop changes depending on the thresholds set with the advice of the CTE, which may trigger a “major service change” for modifications that currently fall under a minor service change according to MDOT MTA’s Title VI Program.

The Federal Transit Administration is in the process of updating the Title VI Circular and MDOT MTA anticipates that there will be new federal Title VI guidance available later this year. Thus, the federal Title VI landscape for equity analyses, capital projects, service changes, and how calculate Disparate Impact and Disparate Burden are calculated could change before the June 2022 service change. With the possibility of a regulatory landscape change early in 2022, it is possible that this legislation could be preempted or superseded by new federal guidance and regulations. Adopting new state requirements as the federal requirements are being updated could result in conflicts, inconsistencies, or other unintended consequences.

Senate Bill 23 would require Title VI equity analysis and cost-benefit analysis for cancellation or reduction of a capital project under guidelines advised by the CTE. Equity analysis of reductions in capital projects falls outside the federal Title VI equity analysis paradigm. The Federal Transit Administration does not have a process, currently, whereby an analysis would be conducted for capital projects that are cancelled or for investments not occurring, and there is not an industry approach for conducting such an analysis on the wide range of capital projects that MTA carries out. Title VI requires a facility location equity analysis for some types of maintenance facilities, but the guidance does not have a process for when those facilities are canceled. The creation of a new methodology for conducting analyses for canceled or reduced capital projects would require additional time and resources for staff to research and implement.

The Maryland Department of Transportation respectfully requests that the committee consider this information when deliberating Senate Bill 23.

Respectfully submitted,

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