



Public Hearing – Proposed Regulation

Maryland Department of Transportation – Office of the Secretary

Major Transportation Project Scoring and Ranking System:

COMAR 11.01.18.01 and .02

Date: November 18, 2016

To: AELR Committee

From: Barbara Zektick and Michael Sanderson

The Maryland Association of Counties (MACo) submits these comments on above-mentioned regulations filed by the Maryland Department of Transportation (MDOT), pursuant to the Maryland Open Transportation Investment Decision Act of 2016.

The narrowly-drafted regulations do not detail much of the process ahead. MACo understands from the Department that it intends to follow up these formal regulations with additional policy and implementation documents. We remain hopeful that this forthcoming process can be collaborative and productive, as counties have a variety of concerns on how this new law will be implemented.

These comments focus on the proposed regulations themselves, but we acknowledge that the Department may have latitude to address county and other concerns through other means.

Defining a Project's "Area Served"

The law tasks MDOT with defining the "area served by the project" to determine the population included within that area and benefitting from that project. This number dramatically affects a project's eventual score.

MACo argued during legislative hearings on this legislation that the term "area served by the project" would allow useful flexibility and a more accurate assessment of a project's scope than simply using the host county's population. This recognizes that some projects serve populations across a region, and others may serve only a segment of a given county. The General Assembly agreed, and amended the legislation to include that phrasing.

The Department's proposed regulations bypass this opportunity, and simply cement the definition as the host county's population. MACo believes this narrow definition needlessly restricts a fair assessment of projects across jurisdictions of differing size.

Weighting System

The law also tasks MDOT to “develop the weighting metrics for each goal and measure” listed in the law. However, MDOT provides no weighting metrics for the nine goals in these regulations, and only provides one set of weighting metrics for the 23 measures. Implicitly, this sets forth each of the nine goals as equally weighted for each project, regardless of its mode, nature, or location.

The failure to consider differential weighting of the several goals, or even a multi-tiered weighting system as is used in the state of Virginia’s scoring system, represents a missed opportunity to improve the law’s implementation. A more robust weighting system that considers various measures differently could enhance the credibility and utility of this scoring system.

Analytical Burden

Counties also are concerned that the proposed process may yield an unreasonable shift of analytical responsibility from the Department to local governments. This is not addressed specifically in the proposed regulations – which are silent on administrative details. However, communications earlier this year suggest a potential tension.

In its letter sent to county chief elected officials dated July 28, 2016, MDOT announced its intention to require county governments, rather than the State, to make a wide variety of analyses for proposed major transportation projects. The sudden change in policy left county governments unclear on how to accomplish the lofty and ambitious request – especially since the lengthy list of analyses was to be received within a matter of weeks.

Maryland counties have enjoyed cooperative relationships with MDOT for decades, and look forward to continuing in that vein. Counties are certainly willing to provide MDOT with locally-generated or locally-collected information necessary for scoring projects under the law. However, they simply do not have access to the data or technical expertise essential for conducting the full analysis of MDOT’s projects. A reasonable assignment of responsibility must be sought.

Whether the solution to these concerns lies in amended or additional regulations, or a less formal policy document, MACo would request that these State/county responsibilities align with the parties’ actual technical capabilities. MACo and county public works professionals would be eager to work with MDOT to refine that process as appropriate.

Regulations and Beyond

Traditionally, the Department seeks each jurisdiction’s proposed projects in the month of April. The spring of 2017 will be the first cycle in which this scoring system is used. In advance of that deadline, all parties should fully understand the scoring system and its weightings, and the information sought from local governments to inform that process.

A set of well-conceived regulations, and any accompanying implementing documents, are essential tools toward making any scoring system effective. MACo and local public works professionals look forward to a collaboration with MDOT on the entire effort ahead.