The Maryland Public Policy Institute

BIG PROBLEMS WITH CHAPTER 36

Transportation project scoring should focus on efficient mobility

The Maryland Public Policy Institute

Published by
The Maryland Public Policy Institute
One Research Court, Suite 450
Rockville, Maryland 20850
240.686.3510
mdpolicy.org

BIG PROBLEMS WITH CHAPTER 36

Transportation project scoring should focus on efficient mobility

BY PETER SAMUEL

ABSTRACT

Prioritizing proposed transportation projects using an objective, analytical scoring system makes good sense in principle. But Maryland's new scoring law, Chapter 36, constitutes a misuse of this principle. In their zeal to emphasize a few questionable policy goals in the scoring system, Maryland lawmakers lost sight of the central rationale for transportation projects, namely to support efficient mobility, enabling us to get ourselves and our belongings where they need to go speedily, conveniently, reliably, and efficiently. Chapter 36's scoring system is heavily biased toward a small number of commuter-oriented transit trips at the expense of roads, which serve about 90 percent of the trips taken in Maryland. Further distortions are introduced by the law's requirement that projects be weighted by the populations of the counties in which the projects would take place. This would concentrate virtually all of Maryland's transportation money in just four of the state's 24 political jurisdictions.

INTRODUCTION

Transportation project scoring continues to be a highly divisive issue in Annapolis. Republican Gov. Larry Hogan and his supporters have dubbed Maryland's new Chapter 36 law "the Road Kill Bill" because it would block funding to scores of road projects around the state in favor of a handful of big-city transit projects of debatable value. Chapter 36 supporters, including most Democratic legislators, respond that the law promotes good government, laying out a set of state goals and scoring proposed major capital projects, prioritizing the most deserving. They argue the law brings transparency and rationality to choosing major transportation projects. And if the scoring puts transit ahead of roads, then that's what the "analytics" call for.

To Chapter 36 critics, predominantly Republicans, the law is little more than a scheme to concentrate big spending in solidly Democratic districts. Their Democratic opponents reply that the governor has the final say on transportation funding: he can disregard the scored priorities and elevate specific projects by simply explaining in writing the "rational basis" for those elevations. Hogan and his backers respond that this provision is meaningless because any such efforts would almost certainly be challenged in court.

As this paper goes to press, Governor Hogan and legislative leaders have struck a deal that would delay the use of the Chapter 36 process to allocate transportation money so that state officials can study the system more carefully and propose amendments. This is a good thing because, as we will see, Chapter 36 as currently written will yield poor project selections.

THE PREVIOUS SYSTEM

Prima facie, Chapter 36 seems justified. Historically, Maryland's transportation funding has been divvied up through political deal-making, and such logrolling often leads to inefficiency and sometimes even ethical violations. Replacing that system with a transparent, analytic system of prioritizing state transportation projects would seem to be a significant step toward better government—assuming, of course, that the new system is reasonable.

In truth, though, Maryland's historical "politicized" system generally yielded good results. For a start, it was reasonably transparent. I was a participant in the Frederick Area Committee on Transportation, one of 24 groups around the state representing the 23 counties plus Baltimore City. These local groups assembled lists of priority projects, produced through a series of open public meetings attended by engineers, planners, local elected officials, local businessmen, and interested citizens. The lists were forwarded to the Maryland Department of Transportation (MDOT) with requests for funding. Those requests were considered and culled, resulting in a statewide Consolidated Transportation Program that reflected priorities set locally.

I'm sure there were times when behind-the-scenes collusion with special interests resulted in some projects wrongly being prioritized over others.

The whole exercise was certainly imperfect. I'm sure there were times when behind-the-scenes collusion with special interests resulted in some projects wrongly being prioritized over others. And sometimes the state stalled and stalled on projects of high local importance because they did not find favor in Annapolis for some reason or another. But overall, Maryland transportation funding decisions were made in accordance with locally decided priorities via a reasonably open political process.

HOW CHAPTER 36 WORKS

Nonetheless, that system is being replaced by Chapter 36. But, as noted above, the new "analytic" system is only as good as it is reasonable. So how reasonable is Chapter 36?

The devil is in the detail of the scoring system of Chapter 36. It is based on nine declared "State Transportation Goals":

- Safety and Security
- System Preservation
- Quality of Service
- Environmental Stewardship
- Community Vitality
- Economic Prosperity
- Equitable Access to Transportation
- Cost Effectiveness and Return on Investment
- Local Priorities and Planning

Each of those goals is then broken down into a number of sub-goals, resulting in 23 separate criteria by which a project is judged. Proposed projects can score a maximum of 100 points on each goal, for a maximum initial point score of 900. As explained in a later section of this paper, that score is then adjusted according to "population weighting."

The rest of this section examines the nine goals, the 23 sub-goals, and the details of the scoring system. Table 1 summarizes this initial scoring system.

1. Safety and Security This first goal has two sub-goals: (1a) awards a maximum of 67 points for "expected reduction in total fatalities and severe injuries" from the project, while (1b) awards up to 33 points for the extent to which the project implements a "complete streets" program.

There are problems with both of these sub-goals. Scoring (1a) is going to be largely speculative. It is difficult enough to conclude *after* a high-

TABLE 1. CHAPTER 36 SCORING BY GOAL AND SUB-GOAL	Points
1. Safety & Security	
1a. Reduction in Fatalities	67
1b. Complete Streets	33
Subtotal	*100*
2. System Preservation	
2a. Increases lifespan of facility	40
2b. Increases functionality	30
2c. Adds to resiliency	30
Subtotal	*100*
3. Quality of Service	
3a. Addition to job accessibility	50
3b. Improves travel time reliability	20
3c. Intermodal, or adds modes	30
Subtotal	*100*
4. Environmental Stewardship	
4a. Reduces emissions	30
4b. Spares state resources	30
4c. Advances state environmental goals	40
Subtotal	*100*
5. Community Vitality	
5a. Increases walking and bike transit	34
5b. Enhances existing community assets	33
5c. Furthers revitalization plans	33
Subtotal	*100*
6. Economic Prosperity	
6a. Addition to job accessibility in 60 minutes	40
6b. Enhances access to freight intermodal	30
6c. Non-speculative development strategies	30
Subtotal	*100*
7. Equitable Access	
7a. Addition to job accessibility of disadvantaged	50
7b. Economic development impact on the poor	50
Subtotal	*100*
8. Cost-Effectiveness and Return on Investment	
8a. Travel time savings per dollar of project cost	34
8b. Leveraging of federal, state, local, and private money	33
8c. Increases transportation alternatives and redundancy	33
Subtotal	*100*
9. Local Priorities and Planning	*100*
TOTAL	**900**

way improvement program has been completed how much the program contributed to a reduction in fatalities and severe injuries because of other safety factors changing at the same time—for example, the intensity of police activity, enforcement of impaired-driving laws, and vehicle safety innovation. To *prospectively* estimate such killer crashes and the proportion attributable to a future highway improvement is more difficult still. Similar to rail transit, safety is usually related to post-construction practices, e.g., maintenance, operations, and the management of staff.

(1b) refers to street projects that provide for pedestrians and cyclists as well as motor vehicles. These "complete streets" are usually associated with an urban neo-traditional streetscape, with a "wall" of mixed-use buildings, retail, and services at street level and commercial or residential space above, plus curbside parking and street trees.

This provision biases the scoring against rural and suburban streets and also against major highway projects where it is unsafe and unappealing to provide for bikers and walkers within the one right of way. Major highways therefore fail the "complete streets" test because the complete streets prescription only makes sense for local and very urban streets. Where traffic volumes are high, separate facilities work better for all—motorists, bikers, and pedestrians.

2. System Preservation This goal awards a maximum of 40 points (2a) for "the degree to which the project increases the lifespan of the affected facility," 30 points (2b) for "the degree to which the project increases the functionality of the facility," and 30 points (2c) for "the degree to which the project renders the facility more resilient."

Concerning (2a), rough estimates can be made of the structural lifespan of highways, bridges, railroads, and canals, but much depends on the frequency and extent of maintenance, which is outside this capital-focused scoring system. Also, facilities frequently become functionally obsolete before they become structurally unsound. The effective lifespan is therefore difficult to predict and provides no firm basis for scoring.

The meaning of (2b) is uncertain. Perhaps it just means making the road work better. Hopefully all but the most exceptionally ill-conceived projects rise to the level of making things work better. But how does one measure increased "functionality"?

(2c) makes some sense conceptually. There's value in the ability of a bridge, highway, or rail line to resist the ravages of, say, a flood by being raised higher or spanning a floodplain more fully. Breakdown shoulders added to a highway make it more resilient in case of crashes, allowing emergency services better access. Traffic flow may be restored more quickly. But is there any objective way to measure improved resiliency and to assign points?

The real issue with providing "resilience" and other nice-to-have properties is that they often cost a lot of upfront money. And when it gets to detailed design, it is always hard to justify capacity that is only going to be used rarely. In the case of urban highways, providing resiliency often means a taking of expensive private property for a breakdown lane. Chapter 36 hardly anywhere actually considers such tradeoffs, which don't easily fit such scoring systems.

3. Quality of Service Under this goal, a maximum of 50 points are to be assigned (3a) for "the expected change in cumulative job accessibility within an approximate 45-minute commute for highway projects or an approximate 60-minute commute for transit projects," 20 points (3b) for "the degree to which the project has a positive impact on travel time reliability," and 30 points (3c) for the extent a project supports connections between different modes and provides multiple mode choices.

Improved work accessibility (3a) is a valid objective on commuter routes. But by far the most cost-effective way to achieve this objective is via new toll-managed lanes in which commuter buses can be guaranteed free-flow travel. These lanes can double or triple job accessibility compared to the heavily congested lanes they replace, but toll projects are excluded from consideration in this bill.

(3b) was a late addition to the final legislation for Chapter 36. It should help projects that enhance capacity, provide resiliency and redundancy, and help manage traffic. This favors toll express lanes.

Concerning (3c), multimodal and intermodal (transfer) arrangements can provide an important service to travelers in some settings, but facilities providing door-to-door travel in a single mode can also often serve travelers best. This sub-goal suffers the same problem as the "complete streets" sub-goal: there is simply no *a priori* justification for treating multimodal as inherently superior and awarding it points not available to unimodal projects. This doesn't apply only to highway/transit park-and-rides; simply walking or biking all the way to work is just as valid a transportation mode as multimode travel, and projects providing such transportation likewise should not be disadvantaged by special points for multimode facilities.

4. Environmental Stewardship Under this goal, a maximum of 30 points (4a) are awarded for "the potential of the project to limit or reduce harmful emissions," 30 points (4b) for "the degree to which the project avoids impacts on state resources in the project area and adjacent areas," and 40 points (4c) for "the degree to which the project advances the environmental goals of the state."

The real issue with providing "resilience" and other nice-to-have properties is that they often cost a lot of upfront money.

Concerning (4a), harmful emissions are mostly a product of fuel used by vehicles and power stations. They are considerably affected by tailpipe and smokestack filtering of exhaust gases. Air quality is little affected by the infrastructure projects being scored.

(4b) hinges on the term "state resources," yet the legislation provides no definition for the term and various definitions that come to mind seem problematic. Maybe it means state-owned land. If the land is park land or land for a school, then certainly the project deserves points for avoiding such "state resources." But state land or buildings may have been originally purchased or set aside with the intention of providing right-of-way for a highway, in which case it makes no sense to score the project negatively for using such "state resources." Without a specific definition, "state resources" provides opportunity for all kinds of manipulation by those with an agenda.

Concerning (4c), state environmental goals can be interpreted to mean so-called "smart growth" land use patterns, suppression of vehicle

miles traveled, and encouragement of rail transit. This means *another* 40 points can go to a big loss-making rail project over a highway project.

5. Community Vitality The fifth goal offers a maximum of 34 points (5a) to the degree the project will increase walking, biking, and transit, 33 points (5b) for the "degree to which the project enhances existing community assets," and 33 points (5c) for the "degree to which the project furthers the community's and the state's plans for revitalization."

(5a) provides more points for non-road modes that cater to about 10 percent of trips as opposed to roads that cater to 90 percent. (5b) hinges on yet another woolly concept, "community assets," that is capable of many interpretations. How much of an asset is a facility that can only be sustained in the years ahead with huge ongoing subsidies?

(5b), as well as (4c) above, point to a significant problem with Chapter 36: At no point in this scheme is there any scoring on the huge issue of financial sustainability. Community vitality can be seriously sapped by the taxes needed to sustain, for example, a neat-looking but costly light rail. When project selection fails to factor in ongoing obligations, flashy capital projects can prove to be a community liability as much as a community asset. Chapter 36 totally ignores the huge matter of financial sustainability. This is amazing given the years of financial crisis with the Washington area Metrorail system.

Concerning (5c), transportation projects can help revitalization, but they are usually just one of many necessary components. Security from crime, good location, reasonable tax levels, accommodating regulations, available labor, local entrepreneurship, and the like are usually far more important. So the extent to which a road or rail project can help "revitalization" will be quite speculative. You build the transportation project and sometimes the revitalization benefits come; sometimes they don't.

6. Economic Prosperity Under this head, a maximum of 40 points (6a) can be awarded based on "the projected increase in the cumulative job accessibility within an approximately 60-minute commute," 30 points (6b) for the extent the project could be expected to "enhance access to critical intermodal locations for the movement of goods and services," and 30 points (6c) for the "projected increase in furthering non speculative local and state economic development strategies in existing communities."

Concerning (6a), the awarding of points based on a project's expected improvement of work commuting is a good, simple idea, even if it is expressed in clumsy, redundant prose. However, isn't this a repeat of (3a), which allocated 50 points for the same criterion under the goal of higher quality of service?

In (6a)'s favor, this is one of the few criteria that award points for projects that will actually enhance mobility and improve the life of commuters. On the other hand, any forecast of the extent of the improvement is bound to be speculative, as outlined earlier. And numeric scores are liable to give a false sense of the certainty attached to the project's potential as compared to common sense.

(6b) is a reference to upgrading connections to intermodal facilities, e.g., ports, airports, railroad transfer yards. Such access upgrades may produce net benefits but costs may exceed benefits, in which case the project is wasteful. This scoring therefore favors projects simply because they fall into the multimodal category and sup-

Community vitality can be seriously sapped by the taxes needed to sustain, for example, a neat-looking but costly light rail.

ports equally beneficial and wasteful projects. It makes no sense.

(6c) offers yet another example of confusing verbiage: what is a "projected increase in furthering"? And what is a "non speculative local and state economic development" strategy? Harking back to (4c) and (5b), this sounds like code for government-subsidized development, which is almost always less productive and successful than so-called "speculative" or investor-financed development. This looks like points for boondoggle projects!

7. Equitable Access Under this section, a maximum of 50 points (7a) are awarded to projects that improve transportation access for "disadvantaged

populations," and 50 points (7b) for projects that improve access for "low income communities."

Call this "transportation welfare." As with other welfare programs, this goal has many problems. One of them is that the demand for transportation services is least among the disadvantaged, so projects oriented to them will be less utilized on average. Government-run paratransit often runs at costs of $60 per trip; other forms of support for the disadvantaged are likely to be more efficient and helpful uses of public resources.

8. Cost Effectiveness and Return on Investment Under this goal, a maximum of 34 points (8a) can be allocated based on the estimated travel time savings divided by project cost, 33 points (8b) for "the degree to which the project leverages additional federal, state, local and private sector transportation investment," and 33 points (8c) for the degree to which a project "increases transportation alternatives and redundancy."

At last, (8a) gives some attention to the core rationale for transportation. This measure ranks projects in terms of improved service to travelers relative to capital cost. But there's a problem. This works only for comparison of projects with similar operating costs. So, for example, roads that have comparable operating costs can sensibly be prioritized according to time savings per dollar of capital cost. But once modes like rail transit that routinely require significant subsidies toward their operating budgets enter the picture, this criterion loses its logic. Only like should be compared with like if operating results are to be left out of the equation.

Concerning (8b), private sector money is attracted by projects with a prospective return on investment by way of a surplus of fees-for-use over cost. Toll roads, bridges and tunnels, freight railroads, ports and airports, and long-distance bus are cases in point. Government policy should allow such financially self-supporting projects to proceed with their own funding, but it isn't clear why they should be prioritized to get state funds as well. From a state budgetary standpoint, strong project backing from the federal and local levels is a plus. Of course, from a local standpoint, the more state and federal money a project garners, the better. This should hardly recommend a project to state legislators.

(8c) gives 33 points for the "degree to which the project will increase transportation alternatives and redundancy." These are points for projects purporting to provide alternatives to the private automobile: commuter rail, Metro rail, light rail, and bus rapid transit. The problem is that, for decades, billions of dollars have been poured into these fixed-route transit projects on the promise that they would provide alternatives to the car, but they have failed to prove attractive enough to perform as alternatives. Private automobiles have maintained or slightly increased their mode share. Redundancy is most efficiently provided with road improvements such as shoulder lanes that can be temporarily used as travel lanes and improvements to parallel routes. Similar redundancy for rail would involve third tracks and new stations, which unfortunately are astronomically expensive.

9. Local Priorities and Planning This goal allocates a maximum of 100 points for "the degree to which the project supports local government land use plans and goals." Yet the criterion does not fit the goal. Many localities prioritize projects according to congestion and safety concerns that bear little if any relationship to any land use plans and goals. It is foolish to use this as the sole criterion for measuring local priorities, when localities are accustomed to generating their own list of priorities each year based on what is important to their citizens.

The problem is that, for decades, billions of dollars have been poured into these fixed-route transit projects on the promise that they would provide alternatives to the car, but they have failed to prove attractive enough to perform as alternatives.

POPULATION WEIGHTING

Given the nine declared goals, the maximum a project can score is 900 points. The law then

TABLE 2. COUNTY MULTIPLIERS	
	Multiplier
Allegany	1.012
Anne Arundel	1.094
Baltimore City	1.104
Baltimore County	1.138
Calvert	1.015
Caroline	1.005
Carroll	1.028
Cecil	1.017
Charles	1.026
Dorchester	1.005
Frederick	1.041
Garrett	1.005
Harford	1.042
Howard	1.052
Kent	1.003
Montgomery	1.173
Prince George's	1.152
Queen Anne's	1.008
Somerset	1.004
St. Mary's	1.018
Talbot	1.006
Washington	1.025
Wicomico	1.017
Worcester	1.009

instructs the rating officials to "multiply the total combined score of each major capital project with a weighting factor" related to the population of the project area relative to the state population.

This last procedure introduces a significant bias in favor of mega-projects that can claim a large "project area" and a bias against small, simple projects.

Often it makes most sense to develop a highway in an incremental manner, section by section, the priority determined by the severity of bottlenecks and funds available. However, since the weighting by project area will be so critical to the final ranking of projects under Chapter 36, the commonsense way of organically upgrading a highway will not attract state funding.

As a result, the scoring system incentivizes the bundling of work into mega-projects with a large "project area." Such projects are more difficult to manage, which often results in waste. Officials along the route will calculate that they are only going to get one shot in a generation at a long highway upgrade or transit line, and they will load it up with features catering to possible future needs instead of just present, demonstrated needs.

In its first shot at ranking projects, MDOT is using its discretion to define "project area" as the county or counties in which the project is located, Baltimore City being treated as a county. This introduces a new bias.

To appreciate this, consider two proposed interchanges on I-270, one at Watkins Mill Road in Montgomery County, the other at Crestwood Boulevard/Spectrum Drive in Frederick. Both affect a similar project area of several square miles on either side of the interstate. Similar in distance from the nearest existing interchange, similar in nearby land use and population density, one would expect their initial scores would be much the same, say 520 out of 900. But with the project area defined as the whole of the county, Watkins Mill Road interchange gets the Montgomery County multiplier of 1.173, resulting in a final score of 520 × 1.173 = 610. The Crestwood/Spectrum interchange gets the Frederick multiplier of only 1.041, resulting in a final score of 520 × 1.041 = 541.

Table 2 presents the multipliers that MDOT has calculated for each of Maryland's 24 jurisdictions, based on 2015 population estimates.

There's a major scoring advantage under the MDOT interpretation in cobbling together multicounty projects to get big multipliers and high rank. The six counties traversed by I-70, for example, have 29.6 percent of the state's population, so an I-70 project would get a multiplier of 1.296 versus multipliers in the range 1.012 (Allegany) to 1.138 (Baltimore Co) for projects in individual counties along the way. Any Montgomery County/Prince George's County combined project would get a 1.325 multiplier, whereas confined within each county as separate projects the multipliers would be 1.173 (Montgomery) and 1.152 (Prince George's.)

It probably wasn't the intent of most legislators, but Chapter 36's weighting of scores by population puts a premium on making projects huge and unwieldy. That effect would grow over time as localities discover the only way to get a high enough ranking is to game the system by extending their projects over county lines.

TABLE 3. TOP-RANKED PROJECTS

Rank	Project	Project Type	Location
1	Bus Rapid Transit along U.S. 29 corridor	Transit	Montgomery & Howard
2	Bus Rapid Transit from Rockville Metro to Wheaton Metro	Transit	Montgomery
3	Rapid Transit along part of US-301	Transit	Prince George's & Charles
4	I-95 / I-495 widening to add managed lanes	Highway	Montgomery & Prince George's
5	Corridor Cities Transitway Project	Transit	Montgomery
6	US-1 Reconstruction, along with MD-193 and I-95	Highway	Prince George's
7	Bus Rapid Transit along MD 355 (Rockville Pike)	Transit	Montgomery
8	Fixed Guideway Construction, Green Line Extension to Morgan State University	Transit	Baltimore City
9	Fixed Guideway Construction, Bayview MARC to Shot Tower Metro	Transit	Baltimore City
10	MD-28 / MD-198 improvements between MD-97 and I-95	Highway	Montgomery & Prince George's

"ROAD KILL BILL"

Governor Hogan has called Chapter 36's legislation "the Road Kill Bill" and it will certainly kill a lot of road projects.

In October 2015, MDOT used an early version of the legislation, HB1013, to score a number of proposed projects, assuming a state transportation budget of $1.6 billion. The scoring resulted in 96.2 percent ($1.53 billion) of the funding going to transit projects in Montgomery County and the remaining 3.8 percent ($60 million) going to transit projects in Baltimore City. There would have been no money for any road projects anywhere in the state or for other transportation projects anywhere else in the state because all other projects were too far down in the rankings.

The final version of Chapter 36 results in only slightly more reasonable scoring. MDOT has prepared a huge spreadsheet of the scoring of some 73 proposed capital projects under Chapter 36. The three top-rated projects are bus rapid transit and light rail projects: one along the US-29 corridor, one along MD 586/28 from the Rockville Metro Station to the Wheaton Metro Station, and one along US-301 from the Branch Ave. Metro Station to Waldorf. The fourth-ranked project is the widening of I-95/495, the Capital Beltway, with toll-managed lanes.

Of the top 10 projects, listed in Table 3, seven are transit and only three are road improvements. Of those latter three, one is the aforementioned Beltway widening. The second is reconstruction of US-1 and some other roads in Prince George's County. The third is an improvement of MD 28/198 Georgia Ave to I-95 that would merely add an odd center-turn lane, a roundabout, and a bike/walking path, but wouldn't actually expand the heavily trafficked two-lane route. These 10 projects benefited heavily from the weighting by population in the project area.

The top 40 projects on the list are all in (or partly in) Maryland's four largest counties (and Democratic strongholds): Montgomery, Prince George's, and Baltimore counties, and Baltimore City. The state's other jurisdictions would only get transportation money after those 40 projects have been funded. Unfortunately for the rest of the state, MDOT estimates that transportation capital project funds will run out well before that point.

Interstate-270, the state's busiest and most congested highway, doesn't appear on the list except for a single interchange at Watkins Mill Road. Various projects on I-70, I-81, and US-15, each of which also suffer from congestion, rank well down the list. So does the huge bottleneck on the Baltimore Beltway near the end of I-70, the old four-level single-lane "stack" interchange.

THE RATIONAL BASIS "OUT"

To anyone who objects to the ranking of projects, Chapter 36 proponents cite a clause in the law that we'll call the "rational basis out." It provides that MDOT may elevate a lower-scored project if the agency "provides in writing a rational basis for the decision." Supporters of Chapter 36 envisage this "out" will only be used on odd occasions. Others think the provision should be used often because the Chapter 36 scoring would otherwise eliminate many straightforward, important projects and starve so much of the state of funding. So far, Ho-

gan administration officials have dismissed the rational basis out, arguing in essence that if Chapter 36 doesn't produce a rational set of priorities, then the law is without a legitimate purpose.

The law insists that the score of a project "shall be based solely on the goals and measures" laid down in the legislation. And those scores should normally generate the list of priorities for state funding, the law states. Any attempt to use this rational basis claim for disregarding a score would prompt fierce controversy and could spawn a whole new class of litigation.

Opponents of an elevated project would likely have the upper hand in challenging rational basis efforts to circumvent the scoring. MDOT's attorney would have to argue the department was doing the scoring of projects conscientiously under Chapter 36 and developing a priority list in accordance with state goals and state law. Then MDOT would have to argue that a different approach not recognized in the law was a rational basis for disregarding the official priority list. This seems like a major legal stretch.

MOBILITY IS THE THING, BUT CHAPTER 36 FORGETS

The trouble with Chapter 36 is rooted in its stated goals. They elevate simplistic, "politically correct" slogans into dubious policy goals, while only occasionally offering a sop to the purpose of transportation infrastructure: supporting efficient mobility and enabling us to move ourselves and our belongings around efficiently. Civilization—life itself, some would say—depends on the efficiency with which we move around.

Nate Wessel, a geographer and urban planner from Cincinnati, Ohio, put it well:

> *Transportation is one of our most basic human needs. Without it, we would die pretty quickly. Transportation is the act of moving something from one place to another. We need transportation because all of life's necessities and pleasures can't possibly fit within the reach of our static bodies … from birth to death. We either have to move ourselves to things or have things moved to us.*[1]

A good standard of living and quality of life depends on productivity, specialization, and a wide range of discrete services and specialized jobs tied together or made accessible by top-quality transportation. Congestion on the roads or loss of free-flow traffic is the simplest measure of the degree to which transportation is substandard because roads are the dominant transportation mode. Amazingly, free-flow traffic *does not appear at all* in the Chapter 36 list of goals.

This legislation represents in considerable degree the embrace of a green/liberal agenda, an agenda that is not really about transportation. It is much more about certain (questionable) conceptions of environmental policy, land use control, energy policy, and social justice, all being pushed under the mantra of "transportation" and in most cases at the expense of mobility.

The first version of Chapter 36, HB1013, was explicit in proposing to reward suppressing vehicle miles traveled, while the final law merely implies it. The effort to suppress traffic, rather than cater to it, has a long heritage. At root, it reflects the notion that a ruling elite—whether aristocrats or planners—knows best how much travel and what kind of travel is warranted.

These conceptions of environmentalism have become the scourge of popular indulgences. Car travel and truck movement—the popular road "mode"—have been declared bad. Therefore, projects catering to such traffic are to be avoided or at least downgraded relative to the preferred, "politically correct" modes of rail, biking, and walking. Or just stay home.

We need transportation because all of life's necessities and pleasures can't possibly fit within the reach of our static bodies … from birth to death.

Moderate supporters of Chapter 36 say that investing in "alternative" modes (rail, bike, walking) will help relieve congestion on the roads. The trouble is that for much of road travel there is no realistic alternative, nothing that can provide the same convenience, speed, and economy of movement. Despite huge public investments in "alternatives," road predominance has remained and even grown. In Maryland during the rush-hour commute, a time and place where transit has the

best chance of competing, private vehicles still provide 83 percent of trips while transit provides just 9 percent. Since over half of transit is by bus, 88 percent of Marylanders commute on the state's roadways as compared to just 4 percent over rail. Concerning non-commute travel—freight, work travel, shopping, sports, tourism, etc.—the road dominance is over 90 percent. In the future, automated vehicles and electric vehicles will enhance the competitive advantage of pavement over rails.

A scoring and ranking system like Chapter 36 that biases investment heavily to relatively little-used modes such as rail is a formula for failure. It won't improve Maryland's mobility or relieve the gridlocked state's congestion.

NEEDED: A TRANSPORTATION POLICY FOR EFFICIENT MOBILITY

Three years ago, prominent transportation policy analysts Ronald Utt and Wendell Cox described Maryland's approach to transportation as follows:

> *The essence of a transportation choice program is that government is obligated to provide travelers with a variety of modal choices such as cars, bicycles, trolley cars, and commuter rail, regardless of cost, efficiency, or impact on congestion, air quality, safety, or infrastructure preservation. The net effect of these measures has been to increase traffic congestion, which retards economic growth, job creation, and regional competitiveness.*[2]

Chapter 36 takes the state even further in this costly and counterproductive direction, chasing the mirage of "alternatives."

Maryland needs a project scoring system with the single goal of efficient mobility. Neutral as to mode, it would rank projects according to their cost-effectiveness in enhancing mobility. This requires looking at all costs—not just capital cost, but capital plus operating cost net of revenues. Projects would then be ranked by efficiency in improving travel times and reducing congestion. To meet environmental standards, the mobility-ranked projects would still be subject to environmental review and modification via the well-established federal process implemented by the National Environmental Policy Act.

A Mobility for Maryland bill should provide that the state aim to arrive eventually at self-financing transportation in which users pay as directly as possible for the facilities they use, the extent of transportation services then being governed by the value that users place on specific mobility projects as measured by the amount they pay to use it. With the move to hybrid and electric vehicles, as well as the use of more fuel-efficient conventional vehicles, the state's use of gas tax revenue is becoming increasingly ineffective as the principal funding source for roads. Implementation of new means for financing transportation will be an ever more pressing issue.

Some kind of fee-for-use or toll, collected electronically, seems the logical substitute for the gas tax. But the new source will need to evolve into place, adopted where the benefits are clear-cut and where it is politically acceptable. Federal law suggests a good approach: it allows tolls for any new bridge or tunnel and for funding of new road capacity—extra lanes, for instance.

With the move to hybrid and electric vehicles, as well as the use of more fuel-efficient conventional vehicles, the state's use of gas tax revenue is becoming increasingly ineffective as the principal funding source for roads.

An oversight in Chapter 36 is that it doesn't make any provision at all for toll projects, as if toll facilities are a completely distinct mode and not to be mixed in any way with state-funded roads. This is odd because in many metropolitan areas around the country—including major northern Virginia highways (I-495, I-95, I-395, I-66)—a judicious mix of toll-managed and untolled lanes is being used effectively to improve mobility on the biggest and busiest of highways. A truly pro-transportation scoring scheme would recognize the positive value of projects that fund themselves and that employ dynamic pricing to provide free flow, as opposed to building more "free" roads that get overloaded and degenerate to stop-and-go congestion.

This Mobility for Maryland proposal could set aside a certain portion of funds to be distributed to each of the state's 24 jurisdictions according to population, to be used toward locally determined priorities. The approach to funding embodied in Chapter 36 is not only wrong, it won't fly politically. A ranking system that disburses money collected from all over the state to only four of the 24 jurisdictions will have 20 jurisdictions up in arms.

A system that takes from motorists and gives mostly to transit riders won't fly either. A Goucher Poll[3] of Marylanders this past February found 59 percent favor a greater focus on improving roads and highways against 35 percent wanting the focus on public transportation. Catering to a dubious environmental agenda that leaves the highways to degenerate into ever worsening congestion as presaged by Chapter 36 is a sure formula for political defeat.

PETER SAMUEL *is an adjunct fellow of the Maryland Public Policy Institute. A native of Great Britain, he obtained an honors degree in economics from the University of Melbourne, Australia in 1962. He has been an economics correspondent, editorial writer, columnist, defense reporter and public affairs correspondent for dailies, weeklies, journals, and newsletters, working out of Canberra, Australia, New York City, and Washington, D.C. From 1996 to 2013 he published* Toll Roads Newsletter *and* tollroadsnews.com. *He is currently following city issues in Frederick, Md., where he has lived since the mid-1990s.*

1. Nate Wessel. "What Is Transportation? Why Do We Need It?" *Cincinnati Transit Blog*, September 30, 2012. http://cincymap.org/blog/what-is-transportation/
2. Wendell Cox and Ronald D. Utt. *A New Transportation Plan for Maryland*. Rockville, Md.: Maryland Public Policy Institute, March 18, 2013.
3. Goucher Poll, Sarah T, Hughes Field Politics Center, Goucher College, Baltimore, Feb. 27, 2017.

ABOUT THE MARYLAND PUBLIC POLICY INSTITUTE

Founded in 2001, the Maryland Public Policy Institute is a nonpartisan public policy research and education organization that focuses on state policy issues. Our goal is to provide accurate and timely research analysis of Maryland policy issues and market these findings to key primary audiences.

The mission of the Maryland Public Policy Institute is to formulate and promote public policies at all levels of government based on principles of free enterprise, limited government, and civil society.

In order to maintain objectivity and independence, the Institute accepts no government funding and does not perform contract research. The Maryland Public Policy Institute is recognized as a 501 (C) (3) research and education organization under the Internal Revenue Code.

The Maryland Public Policy Institute

One Research Court | Suite 450 | Rockville, Maryland 20850 | mdpolicy.org