

MEMORANDUM

July 26, 2013

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Introduction:** Bill 24-13, Streets and Roads – Authorization of Construction – Amendments

Bill 24-13, Streets and Roads – Authorization of Construction – Amendments, sponsored by Councilmembers Berliner, Floreen, and Riemer, is scheduled to be introduced on July 30. A public hearing is tentatively scheduled for September 10 at 1:30 p.m.

Bill 24-13 would:

- continue to require the Executive to hold a public hearing before authorizing an assessment of costs for constructing a road;
- repeal the requirement that the Executive authorize the construction of a road before beginning construction; and
- require the Director of Transportation to hold a hearing to receive comments on the design of a road before beginning construction.

A County road construction project must be approved in the County's Six-Year Capital Improvements Program (CIP). Construction cannot begin until the road project is funded in the County's Capital Budget. Charter §304 requires the Council to hold public hearings on the proposed budget and the proposed CIP before final approval. Many County road projects are also a "special capital improvement project" that must be authorized by separate legislation after a public hearing and may also be petitioned to referendum before the voters. Despite these opportunities for public input during the CIP and budget process, current law also requires the Executive to hold a public hearing and authorize a road construction project that is already included in the approved CIP before beginning construction.¹ Bill 24-13 would eliminate this duplicative step in the process.

The Bill would continue to require the Executive to conduct a hearing before authorizing an assessment against adjoining properties to finance the road project where the affected property owners can challenge the proposed assessment. Although the Executive often receives comments from the public on the design of the project at the authorization hearing, the Bill would require the DOT Director to hold a public hearing just to receive comments on the design before beginning construction.

¹ The Executive recently exercised this authority to prevent the construction of a road project that was already included in the CIP and fully funded in the capital budget.

This packet contains:

Bill 24-13

Legislative Request Report

Circle #

1

5

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Bill No. 24-13
Concerning: Streets and Roads -
Authorization of Construction -
Amendments
Revised: July 24, 2013 Draft No. 8
Introduced: July 30, 2013
Expires: January 30, 2015
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Berliner, Floreen, and Riemer

AN ACT to:

- (1) require the Executive to hold a public hearing before authorizing an assessment of costs for constructing a road;
- (2) repeal the requirement that the Executive authorize the construction of a road before beginning construction of the road;
- (3) require the Director of Transportation to hold a hearing to receive comments on the design of a road before beginning construction of the road; and
- (4) generally amend the law governing the construction of streets and roads.

By amending

Montgomery County Code
Chapter 49. Streets and Roads
Sections 49-52, 49-53, and 49-54

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 49-52, 49-53, and 49-54 are amended as follows:

49-52. An assessment of costs for road [Road] construction to be authorized by County Executive; Council to assess benefits.

(a) The County must not [build] assess the cost of constructing any road as a benefit to adjacent property unless the [County] Executive has issued an order authorizing the [construction] assessment. After the Executive has authorized the [road] assessment, the County Council may assess the cost of construction by resolution as a benefit to all property adjacent to the road’s right-of-way and specially benefited by its construction as provided in this Section.

* * *

49-53. Public hearing; notice.

(a) Before [any] an assessment for road construction [or assessment] is authorized, the County Executive or a designee must hold a public hearing. Any person who would be subject to an assessment or otherwise affected by the location or construction of the road is entitled to be heard at the hearing. Notice of the hearing must be sent by certified or registered mail, at least 2 weeks before the scheduled date of the hearing, to the owners of each property that would be subject to an assessment, as listed in the records of the Department of Finance.

* * *

[(d) A public hearing need not be held under this Section before a sidewalk or shared use path is constructed if:

- (1) the sidewalk or path can be constructed entirely in one or more existing public rights-of-way without a detailed engineering design;

- 27 (2) (A) a civic association, homeowner's association, or other
 28 organization, which includes a substantial number of
 29 owners of property located on the proposed route of the
 30 sidewalk or path, has filed a notice of its support for the
 31 sidewalk or path with the Executive or a designee; or
 32 (B) if no such organization has filed a notice of support, a
 33 petition signed by a majority of owners of property located
 34 on the proposed route of the sidewalk or path has been
 35 filed with the Executive or a designee; and
 36 (3) the Executive finds, after the Executive's designee has given
 37 notice to and met with residents of the area, that no significant
 38 controversy has arisen that would require a public hearing to be
 39 held.]

40 **49-54. Authorization of an assessment of costs for construction;**
 41 **recommendation of assessments to Council.**

- 42 (a) If, after the hearing, if any, required by Section 49-53 is held, the
 43 [County] Executive finds that the public interest requires [all or part of
 44 any] the [road construction project] assessment under consideration to
 45 be carried out, the Executive must authorize the [road to be built]
 46 assessment as required in this Chapter.
 47 (b) As soon as practicable after the Executive authorizes [the] an
 48 assessment of costs for road construction [road] under this Section, and
 49 after the hearing, if required, is held under Section 49-53, the [County]
 50 Executive must forward to the [County] Council a written report
 51 recommending any proposed assessments based on the estimated cost of
 52 building the road. The report must describe the work to be done and
 53 state, with particularity, what portion of the cost of the construction, if

54 any, should be paid by the adjacent properties and what portion, if any,
55 of the cost should be paid by the County under this Chapter.

56 (c) The recommendations must be based on the actual costs of publishing
57 notices, conducting hearings, advertising for bids, and engineering, and
58 the anticipated costs of financing to be incurred before the Council
59 adopts the assessment resolution. Each cost assessment must be
60 computed on the basis of linear frontage of adjacent properties, except
61 as otherwise provided in this Chapter. The report must also estimate the
62 dollar amount of the cost share to be paid by adjacent properties.

63 (d) Prior to beginning construction of any road, the Director of
64 Transportation, or his or her designee, must hold a public hearing to
65 receive comments on the proposed design of the road.

66 *Approved:*

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Nancy Navarro, President, County Council Date

68 *Approved:*

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Isiah Leggett, County Executive Date

70 *This is a correct copy of Council action.*

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Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 24-13

Streets and Roads – Authorization of Construction – Amendments

DESCRIPTION: The Bill would continue to require the Executive to hold a public hearing before authorizing an assessment of costs for constructing a road and repeal the requirement that the Executive authorize the construction of a road before beginning construction. The Bill would also require the DOT Director to hold a hearing to receive comments on the design of a road before beginning construction.

PROBLEM: Requiring the Executive to hold a public hearing before authorizing the construction of any road adds a duplicative step for a County road construction project because a County road project is already subject to a public hearing before it is approved as part of the County's Capital Improvements Program and funded in the capital budget.

GOALS AND OBJECTIVES: Eliminate a duplicative step for a County road project.

COORDINATION: Department of Transportation

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Robert H. Drummer, Senior Legislative Attorney, Glenn Orlin, Deputy Council Administrator

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: None

5