

**MEMORANDUM**

TO: Transportation, Infrastructure, Energy, and Environment Committee

FROM: *MF* Michael Faden, Senior Legislative Attorney  
*GO* Glenn Orlin, Deputy Council Administrator

SUBJECT: **Worksession 2: Bill 2-13, Streets and Roads – Reconstruction - Coordination**

Bill 2-13, Streets and Roads – Reconstruction - Coordination, sponsored by Councilmembers Leventhal, Riemer, Elrich, Berliner, and Rice was introduced on January 15, 2013. A public hearing was held on February 5, at which no speakers appeared (but see Western Montgomery County Citizens Advisory Board letter on ©8-9). A Transportation, Infrastructure, Energy, and Environment Committee worksession was held on July 29, at which the Committee discussed the Bill after reviewing the Office of Legislative Oversight report cited below, but did not adopt any recommendations.

Bill 2-13 would

- require the Director of Transportation to adopt a 5-year schedule of reconstruction, rehabilitation, and resurfacing to County sidewalks, streets, and roads, and to publicize that schedule; and
- direct the Department to take all feasible steps to coordinate the County's reconstruction, rehabilitation, and resurfacing activities with those of other government agencies, public utilities, and other entities, and in so doing to assist in locating utility transmission facilities underground when feasible.

Office of Legislative Oversight Report 2013-5, Coordinating Utility and Transportation Work in County Rights-of-Way (also reviewed by the Committee July 29) focuses on this topic and provides helpful background. OLO staff participated in the Committee's review of this bill. Committee members might want to bring this report, or OLO's summary of it, to this worksession.

**Issues and amendments**

1) **Schedule** Is 5 years too long to forecast? Should the schedule in the first 2 years be in quarterly or semi-annual increments?

**Council/OLO Staff Amendment:** insert on ©2, line 7: expenditure schedules in. While retaining the 5-year outline, this would tie the forecast more closely to the Council's actual appropriation and spending decisions.

2) **Publicity** Should the construction schedule be required to be posted on the County website instead of, or in addition to, being published in the County Register?

**Council/OLO Staff Amendment:** Insert and shown on the County's web site after January on ©2. line 11.

3) **Map** Should the construction schedule be required to be published and disseminated in map form, along with or instead of as a list?

**Council/OLO Staff Amendment:** Insert the following sentences after the period on line 11, reletter the rest of subsection (b) as subsection (c), and reletter later subsections:

The web site must be promptly updated to reflect changing information, and must include a street map displaying the location of street, road and sidewalk reconstruction, rehabilitation, and resurfacing work included in the adopted 5-year schedule. The Director must take all feasible steps to include on this map the location of construction work undertaken or planned by public utilities in County rights-of-way.

4) **Coordination** In its July 29 review of the OLO report, the Committee discussed with representatives of Washington Suburban Sanitary Commission and other public utilities (Pepco, Washington Gas) specific ways to better coordinate the various work schedules in County rights-of-way.

**Council/OLO Staff Amendment:** To achieve and institutionalize better coordination by the County with public utilities, as recommended in the OLO report and endorsed by Councilmember Leventhal, insert the following new subsection after © 3, line 29, and reletter later subsections:

(d) The Chief Administrative Officer, after consulting with Washington Suburban Sanitary Commission, other public utilities, and appropriate County municipalities, must develop, maintain, and use an automated information sharing and mapping system covering planned construction projects in County rights-of-way. This should be accomplished, to the extent feasible, by developing a standardized interagency GIS-based data repository and application to access and view real-time information about all planned right-of-way construction and maintenance activities. The GIS-based data and application should allow mapping of recently-completed, current, and planned projects, and should provide County and utility staff with direct links to up-to-date information such as project location, scope, design plans, permit status, schedule, cost, moratorium status, and points of contact.

5) **Underground utilities** To preclude a misinterpretation, Council staff recommends replacing subsection (d) on ©3, lines 30-33 with this version of an amendment suggested by Pepco:

(d) In coordinating its activities under subsection (c), the Department must collaborate with the applicable public utility, cable communications provider, or other entity to determine whether it will be economically and practically feasible to locate distribution facilities underground.

While it was not the drafters' intent, some had interpreted subsection (d) as possibly requiring the County DOT to take the lead in locating utilities underground. In addition, subsection (d)'s reference to transmission facilities was technically incorrect.

6) **Other Departments** As suggested by WMCCAB (see ©8-9) and endorsed by chief sponsor Councilmember Leventhal, the County Department of Environmental Protection should be added to the list of recipients of the 5-year schedule (see ©2, lines 11-21). Council staff also suggests that the Office of Management and Budget and Department of Permitting Services also be mentioned if any other County Departments are explicitly listed.

7) **Permit authority** At the July 29 worksession, Committee members discussed if and how to use the County's right-of-way permitting authority under County Code §49-35 (most recently amended by Bill 41-12, the roadside tree bill) to achieve better coordination with public utilities and other permit applicants. Council and OLO staff have not proposed any amendments toward this end, but recommend that this subject be further explored with the appropriate County departments.

This packet contains:	<u>Circle #</u>
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Bill No. 2-13  
Concerning: Streets and Roads -  
Reconstruction - Coordination  
Revised: 1-8-13 Draft No. 2  
Introduced: January 15, 2013  
Expires: July 15, 2014  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Councilmembers Leventhal, Reimer, Elrich, Berliner, and Rice

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**AN ACT** to:

- (1) require the Director of Transportation to adopt a schedule of reconstruction, rehabilitation, and resurfacing to County sidewalks, streets, and roads, and to publicize that schedule;
- (2) direct the Department to take all feasible steps to coordinate the County's reconstruction, rehabilitation, and resurfacing activities with those of other government agencies, public utilities, and certain other entities, and in so doing to locate utility transmission facilities underground when feasible; and
- (3) generally amend the law governing the reconstruction, rehabilitation, and resurfacing of County streets and roads.

By amending

Montgomery County Code  
Chapter 49, Streets and Roads  
Section 49-42

<b>Boldface</b>	<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:*

1           **Sec. 1. Section 49–42 is amended as follows:**

2   **49-42.       [Reserved.] Reconstruction, rehabilitation, and resurfacing**  
 3 **schedule; coordination with other government agencies and private parties.**

4           (a)   The Director of Transportation must annually adopt a 5-year schedule  
 5               for the reconstruction, rehabilitation, and resurfacing of sidewalks,  
 6               streets, and roads that the County controls or maintains. That schedule  
 7               must be based on the approved County Capital Improvements Program  
 8               and on consultations with other government agencies and public  
 9               utilities.

10          (b)   The 5-year schedule must be published in the County Register each  
 11               January. The Director must send the schedule annually to:

12               (1)   the State Highway Administration;

13               (2)   each municipality in the County;

14               (3)   each public utility, and each cable communications franchisee,  
 15               that operates in the County;

16               (4)   the Washington Suburban Sanitary Commission;

17               (5)   the County Planning Board;

18               (6)   civic, business, and community organizations active in the  
 19               County; and

20               (7)   any other agency, organization, or person that would benefit from  
 21               that information.

22          (c)   In adopting and implementing a 5-year schedule under subsection (a),  
 23               the Director must take all feasible steps to coordinate the Department's  
 24               reconstruction, rehabilitation, and resurfacing activities with those of  
 25               other government agencies, public utilities and cable communications  
 26               providers, and any other entity authorized to reconstruct, rehabilitate, or  
 27               resurface sidewalks, streets, or roads, to avoid conflicting or duplicative

28 activities and to minimize the number of times that a given sidewalk,  
29 street, or road will be unavailable for unimpeded public use.

30 (d) In coordinating its activities with those of public utilities and cable  
31 communications providers, the Department must make every effort to  
32 locate or aid the location of transmission facilities underground where  
33 feasible.

34 (e) The adoption of a schedule under this Section does not limit the  
35 Department's authority to respond to any emergency.

36 *Approved:*

37

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Nancy Navarro, President, County Council

Date

38 *Approved:*

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Isiah Leggett, County Executive

Date

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

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Linda M. Lauer, Clerk of the Council

Date

## LEGISLATIVE REQUEST REPORT

Bill 2-13

### *Streets and Roads – Reconstruction - Coordination*

<b>DESCRIPTION:</b>	Requires the Director of Transportation to annually adopt a 5-year schedule for the reconstruction, rehabilitation, and resurfacing of sidewalks, streets, and roads that the County controls or maintains. The schedule must be based on the approved County CIP and on consultations with other government agencies and public utilities. Directs the Department to take all feasible steps to coordinate the County's reconstruction, rehabilitation, and resurfacing activities with those of other government agencies, public utilities, and certain other entities, and in so doing to locate utility transmission facilities underground when feasible.
<b>PROBLEM:</b>	Frequently County roads and streets are repeatedly torn up when better coordination would reduce the disruption of public use.
<b>GOALS AND OBJECTIVES:</b>	To better coordinate reconstruction, rehabilitation, and resurfacing of County streets and roads and minimize public expense and inconvenience.
<b>COORDINATION:</b>	Department of Transportation, Department of Permitting Services, State highway Administration, Planning Board
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched. The Office of Legislative Oversight is currently conducting a study of this topic.
<b>SOURCE OF INFORMATION:</b>	Michael Faden, Senior Legislative Attorney, 240-777-7905 Glenn Orlin, Deputy Council Staff Director, 240-777-7936
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	To be researched.
<b>PENALTIES:</b>	Not applicable.

**Fiscal Impact Statement**  
**Council Bill 2-13, Streets and Roads - Reconstruction - Coordination**

**1. Legislative Summary.**

This legislation would:

- Require the Director of Transportation (DOT) to annually adopt a 5-year schedule for the reconstruction, rehabilitation, and resurfacing of sidewalks, streets, and roads that the County controls or maintains. The schedule must be based on the approved County CIP and on consultation with other government agencies and public utilities.
- Directs the Department to take all feasible steps to coordinate the County's reconstruction, rehabilitation, and resurfacing activities with those of other government agencies, public utilities, and certain other entities, and in so doing to locate utility transmission facilities underground when feasible.

**2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

This proposed Bill places an additional burden and associated costs on the current protocol of utility coordination by requiring the Director of the Department of Transportation to locate, where feasible, all underground utilities including communication lines, transmission lines, water, sewer, etc. This will require advance utility investigations of up to 5 years prior to project implementation. A Utility Coordinator position will be required to attend to this level of advance planning and detail.

Proposed Council Bill 2-13 will require hiring a full time Utility Coordinator in the Department of Transportation, grade 25 or 26, at an annual cost of approximately \$133,900 including salary, benefits, and vehicle.

**3. Revenue and expenditure estimates covering at least the next 6 fiscal years.**

No revenues. Expenditures are related to a new full time position, vehicle capital cost, and ongoing vehicle operating cost. This cost is estimated to be \$678,400.

**4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

Not applicable.

**5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

No revenues are generated. With respect to expenditures, the cost of the full time position will increase as affected by annual salary adjustments.

**6. An estimate of the staff time needed to implement the bill.**

This Bill will necessitate an additional full time position in the Department of Transportation at an approximate cost of \$105,000.

**7. An explanation of how the addition of new staff responsibilities would affect other duties.**

As noted above, a new position will be required; therefore, the staff responsibilities of current personnel should not change.

**8. An estimate of costs when an additional appropriation is needed.**

The initial estimated cost is \$133,900. The estimated on-going cost is \$108,900.

**9. A description of any variable that could affect revenue and cost estimates.**

No new revenue will be generated. The estimated cost of one additional position should be sufficient to address variances in schedules and workload.

**10. Ranges of revenue or expenditures that are uncertain or difficult to project.**

None.

**11. If a bill is likely to have no fiscal impact, why that is the case.**

Fiscal impact is noted.

**12. Other fiscal impacts or comments.**

None.

**13. The following contributed to and concurred with this analysis:**

Keith Compton, Department of Transportation  
Brady Goldsmith, Office of Management and Budget

  
\_\_\_\_\_  
Jennifer A. Hughes, Director  
Office of Management and Budget

2/4/2013  
Date

**Economic Impact Statement**  
**Bill 2-13, Streets and Roads – Reconstruction - Coordination**

**Background:**

This legislation would:

- Require the Director of Transportation (DOT) to annually adopt a 5-year schedule for the reconstruction, rehabilitation, and resurfacing of sidewalks, streets, and roads that the County controls or maintains. The schedule must be based on the approved County CIP and on consultation with other government agencies and public utilities.
- Directs the Department to take all feasible steps to coordinate the County's reconstruction, rehabilitation, and resurfacing activities with those of other government agencies, public utilities, and certain other entities, and in so doing to locate utility transmission facilities underground when feasible.

**1. The sources of information, assumptions, and methodologies used.**

Based on discussions with DOT, most of the activities required under the proposed legislation are currently being performed by the department with the exception noted in the Fiscal Impact Statement (FIS).

**2. A description of any variable that could affect the economic impact estimates.**

The impact of the bill is mainly on the County DOT operations, most of which are currently being performed, so there should not be an impact on the County's economy.

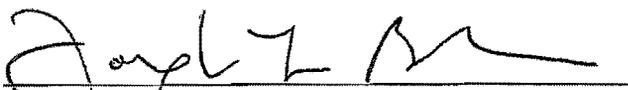
**3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.**

For the reasons noted above, the bill should not have an economic impact on employment, spending, savings, investment, and property values the County.

**4. If a Bill is likely to have no economic impact, why is that the case?**

Not applicable, see above.

**5. The following contributed to and concurred with this analysis: Al Roshdieh, Transportation; David Platt and Mike Coveyou, Finance.**

  
\_\_\_\_\_  
Joseph F. Beach, Director  
Department of Finance

2/1/13  
\_\_\_\_\_  
Date

## Trombka, Aron

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**From:** Leventhal's Office, Councilmember  
**Sent:** Friday, May 31, 2013 4:24 PM  
**To:** Hartman, Ken; mkorman@gmail.com  
**Cc:** #CCL.Leventhal Staff; Trombka, Aron; Levchenko, Keith; Faden, Michael  
**Subject:** RE: WMCCAB letter re: Bill 02-13

Dear Marc and Ken,

Excellent! Delighted to get such a strong letter of support for this bill. Thanks very much.

I agree with your suggestion that DEP should be included in the bill.

Best,  
George

-----Original Message-----

From: Hartman, Ken  
Sent: Fri 5/31/2013 2:25 PM  
To: Navarro's Office, Councilmember  
Cc: Leventhal's Office, Councilmember; Andrews's Office, Councilmember; Elrich's Office, Councilmember; Ervin's Office, Councilmember; Floreen's Office, Councilmember; Berliner's Office, Councilmember; Rice's Office, Councilmember; Riemer's Office, Councilmember; Ike Leggett  
Subject: WMCCAB letter re: Bill 02-13

<<WMCCABLetterBill0213.pdf>> Dear Council President Navarro,

Please see the attached letter from the Western Montgomery County Citizens Advisory Board concerning Bill 2-13.

Ken Hartman  
240-777-8206

May 31, 2013

The Honorable Nancy Navarro  
President, Montgomery County Council  
100 Maryland Ave.  
Rockville, Maryland 20850

Dear Council President Navarro and Council:

The Western Montgomery County Citizens Advisory Board (WMCCAB) would like to take the opportunity to express our support for Councilman Leventhal's proposed Bill 2-13 aimed at improving coordination of road reconstruction projects. While we commend the efforts of the County Department of Transportation (DOT) and Washington Suburban Sanitary Commission (WSSC) in coordinating project schedules to save time and money, we see great value in taking this level of coordination further. We respectfully offer the following comments and suggested changes to the bill language.

In particular, we suggest adding the County Department of Environmental Protection (DEP) to the list of agencies DOT must send the 5 year project schedule (Section 1(b) of the proposed legislation). Given DEP's central role in stormwater management, knowledge of upcoming projects would allow DEP to identify opportunities to implement road improvements that allow for stormwater infiltration. Cities and counties are increasingly putting such green infrastructure in place, particularly when it can also be used to enhance pedestrian and cyclist safety. Upcoming road projects create the most cost effective opportunities to implement such dual benefit road improvements.

Creating a mechanism to incorporate residential street resurfacing projects that fall

below the threshold for incorporation into the Capital Improvements Program would also be helpful. It would seem like a missed opportunity to not include such projects. For example, on residential streets serving as key cut through routes for cyclists accessing the County's trail network, resurfacing projects are an ideal time to add "shared lane" markings and other low cost safety enhancement techniques.

It is our understanding that the legislation would encourage or require DOT to put in place a database to facilitate this coordination. We support this and efforts by Council staff to identify open source Geographic Information System software or another low cost alternative that would create a shared database to facilitate project coordination.

We commend the efforts of County departments already working to coordinate road projects, but believe that more can be done to formalize and deepen the level of coordination. This bill would help the County ensure we are get the most out of every public and private dollar spent on road related infrastructure. While the systems put in place to facilitate such coordination should themselves be cost effective, opportunities to put new systems in place seem to be available.

Thank you for this opportunity to provide our input as the Council considers this bill.

Sincerely,  
Marc Korman  
Chair

cc: The Honorable Isiah Leggett, County Executive