

MEMORANDUM

TO: County Council

FROM: ^{MF} Michael Faden, Senior Legislative Attorney
~~GO~~ Glenn Orlin, Deputy Council Administrator

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

Transportation, Infrastructure, Energy, and Environment Committee recommendation: enact with amendments (3-0).

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 ©9-10).

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 of Transportation (DOT) 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.

Office of Legislative Oversight Report 2013-5, Coordinating Utility and Transportation Work in County Rights-of-Way, provides helpful background on this topic. OLO staff participated in the Committee's review of this Bill.

A Transportation, Infrastructure, Energy, and Environment Committee worksession was held on July 29, at which the Committee discussed the Bill after reviewing OLO Report 2013-5, but did not adopt any recommendations. At another Committee worksession, held on September 9, after further discussions the Committee recommended enactment of the Bill with amendments, which are shown in the Committee redraft on ©1-4.

After the Committee worksession and discussions with Council and OLO staffs, Executive branch staff submitted a set of further amendments, which are shown as redrafted by Council staff on ©11-14. Except for shortening the forecast period from 5 years to 3 years, the Executive amendments do not materially change the Bill and, in Council and OLO staff's view, tend to improve it. However, Executive staff would make one more change from those

amendments, as redrafted by Council staff: on ©13, line 47, replace develop with explore developing. Council staff does not recommend this change.

Council and OLO staff recommendation: enact the Bill with Executive amendments as shown on ©11-14.

Issues/Committee amendments/Executive 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?

Committee 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.

Executive amendment: shorten the forecast period to 3 years. Also, refer more specifically to DOT's Pavement Management System in adopting the schedule.

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? The Committee opted to add website posting to the publication requirement.

Committee 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? The Committee added specifications for a map.

Committee Amendment: Insert the sentences on ©2, lines 11-17 after the period on line 11, reletter the rest of subsection (b) as subsection (c), and reletter later subsections.

Executive amendment: clarify that the map must only include data from the public utilities to the extent that each utility makes that data available.

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) ways to better coordinate the various work schedules in County rights-of-way.

Committee Amendment: To achieve and institutionalize better coordination by the County with public utilities, as recommended in the OLO report and by lead sponsor Councilmember Leventhal, insert new subsection (e) after ©3, line 39.

5) **Underground utilities** To preclude a misinterpretation, the Committee adopted Council staff's recommendation to replace the original subsection (d) (see ©4, lines 54-57) with a version of an amendment proposed by Pepco. While it was not the drafters' intent, some had

interpreted the original subsection (d) as possibly requiring County DOT to take the lead in locating utilities underground. Subsection (d)'s reference to transmission facilities was also technically incorrect.

Committee amendment: replace subsection (d) with new subsection (f) on ©4, lines 58-61.

Committee Chair Berliner amendment: Committee Chair Berliner may offer an amendment to clarify the County's purpose regarding locating utility distribution facilities underground. His amendment on ©14, lines 65-66, would replace [[provide each utility the opportunity to determine whether it will be economically and practically feasible to locate]] with: advance locating.

6) **Other Departments** As suggested by WMCCAB (see ©9-10) and endorsed by chief sponsor Councilmember Leventhal, the County Department of Environmental Protection could be added to the list of required recipients of the 5-year schedule (see ©2-3, lines 18-29). The Office of Management and Budget and Department of Permitting Services could also be included if any other County departments are listed. Because no County departments are specifically included in that list, the Committee opted not to amend the Bill to mention these departments and office.

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 did not propose any amendments toward this end, but suggested that this subject be further explored with the appropriate County departments. The Committee did not recommend any amendments on this topic.

This packet contains:	<u>Circle #</u>
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Bill No. 2-13
Concerning: Streets and Roads -
Reconstruction - Coordination
Revised: 10-7-13 Draft No. 3
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

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

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

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:

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 expenditure schedules in the approved County Capital
8 Improvements Program and on consultations with other government
9 agencies and public utilities.

10 (b) The 5-year schedule must be published in the County Register each
11 January and shown on the County’s web site. The web site must be
12 promptly updated to reflect changing information, and must include a
13 street map displaying the location of street, road and sidewalk
14 reconstruction, rehabilitation, and resurfacing work included in the
15 adopted 5-year schedule. The Director must take all feasible steps to
16 include on this map the location of construction work undertaken or
17 planned by public utilities in County rights-of-way.

18 (c) The Director must send the schedule published in the County Register
19 annually to:

20 (1) the State Highway Administration;

21 (2) each municipality in the County;

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

24 (4) the Washington Suburban Sanitary Commission;

25 (5) the County Planning Board;

26 (6) civic, business, and community organizations active in the
27 County; and

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

30 [[c)] (d) In adopting and implementing a 5-year schedule under subsection
31 (a), the Director must take all feasible steps to coordinate the
32 Department's reconstruction, rehabilitation, and resurfacing activities
33 with those of other government agencies, public utilities and cable
34 communications providers, and any other entity authorized to
35 reconstruct, rehabilitate, or resurface sidewalks, streets, or roads, to:

36 (1) avoid conflicting or duplicative activities; and

37 (2) [[to]] minimize the [[number of times]] time that [[a given]] any
38 sidewalk, street, or road will be unavailable for unimpeded public
39 use.

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

54 [[d) In coordinating its activities with those of public utilities and cable
55 communications providers, the Department must make every effort to
56 locate or aid the location of transmission facilities underground where
57 feasible.]]

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

62 [[e)] (g) The adoption of a schedule under this Section does not limit the
63 Department's authority to respond to any emergency.

64 *Approved:*

65

Nancy Navarro, President, County Council Date

66 *Approved:*

67

Isiah Leggett, County Executive Date

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

69

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 2-13

Streets and Roads – Reconstruction - Coordination

DESCRIPTION: 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.

PROBLEM: Frequently County roads and streets are repeatedly torn up when better coordination would reduce the disruption of public use.

GOALS AND OBJECTIVES: To better coordinate reconstruction, rehabilitation, and resurfacing of County streets and roads and minimize public expense and inconvenience.

COORDINATION: Department of Transportation, Department of Permitting Services, State highway Administration, Planning Board

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched. The Office of Legislative Oversight is currently conducting a study of this topic.

SOURCE OF INFORMATION: Michael Faden, Senior Legislative Attorney, 240-777-7905
Glenn Orlin, Deputy Council Staff Director, 240-777-7936

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: 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.

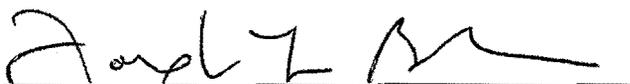
3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.

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

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

Bill No. 2-13
Concerning: Streets and Roads -
Reconstruction - Coordination
Revised: 10-15-13 Draft No. 4
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

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

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- (3) generally amend the law governing the reconstruction, rehabilitation, and resurfacing of County streets and roads.

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* * *	<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]] 3-year
 5 schedule for the reconstruction, rehabilitation, and resurfacing of
 6 sidewalks, streets, and roads that the County controls or maintains. That
 7 schedule must be based on:

- 8 (1) expenditure schedules in the approved County Capital
 9 Improvements Program;
- 10 (2) the evaluation of the Department of Transportation’s Pavement
 11 Management System; and [[on]]
- 12 (3) coordination and consultations with other government agencies
 13 and public utilities.

14 (b) The [[5]] 3-year schedule must be published in the County Register
 15 each January and shown on the County’s web site. The web site must
 16 be promptly updated to reflect changing information, and must include a
 17 street map displaying the location of street, road and sidewalk
 18 reconstruction, rehabilitation, and resurfacing work included in the
 19 adopted [[5]] 3-year schedule. The Director must take all feasible steps
 20 to include on this map the location of construction work undertaken or
 21 planned by public utilities in County rights-of-way to the extent that
 22 each public utility makes this data available for County use.

23 (c) The Director must send the schedule published in the County Register
 24 annually to:

- 25 (1) the State Highway Administration;
- 26 (2) each municipality in the County;

- 27 (3) each public utility, and each cable communications franchisee,
- 28 that operates in the County;
- 29 (4) the Washington Suburban Sanitary Commission;
- 30 (5) the County Planning Board;
- 31 (6) civic, business, and community organizations active in the
- 32 County; and
- 33 (7) any other agency, organization, or person that would benefit from
- 34 that information.

35 [[c)] (d) In adopting and implementing a [[5]] 3-year schedule under

36 subsection (a), the Director must take all feasible steps to coordinate the

37 Department’s reconstruction, rehabilitation, and resurfacing activities

38 with those of other government agencies, public utilities and cable

39 communications providers, and any other entity [[authorized]] permitted

40 to reconstruct, rehabilitate, or resurface sidewalks, streets, or roads, to:

- 41 (1) avoid conflicting or duplicative activities; and
- 42 (2) [[to]] minimize the [[number of times]] time that [[a given]] any
- 43 sidewalk, street, or road will be unavailable for unimpeded public
- 44 use.

45 (e) The Chief Administrative Officer, in conjunction with Washington

46 Suburban Sanitary Commission, other public utilities, the State, and

47 appropriate County municipalities, must develop an automated

48 information sharing and mapping system covering planned construction

49 projects in all public rights-of-way in the County. This system should

50 be based on a standardized interagency geographic information data

51 repository which enables geographic information system-based

52 applications to access and view current information about all planned

53 right-of-way construction and maintenance activities. The data and data

54 applications should allow access to recently-completed, current, and
55 planned projects, and should provide County, State, and utility staff
56 with direct links to up-to-date information such as project location,
57 scope, design plans, permit status, schedule, cost, moratorium status,
58 and points of contact,

59 [(d) In coordinating its activities with those of public utilities and cable
60 communications providers, the Department must make every effort to
61 locate or aid the location of transmission facilities underground where
62 feasible.]]

63 (f) In coordinating its activities under this Section, the Department must
64 collaborate with the applicable public utility, cable communications
65 provider, or other entity to provide each utility the opportunity to
66 determine whether it will be economically and practically feasible to
67 locate distribution facilities underground before resurfacing begins.

68 [(e)] (g) The adoption of a schedule under this Section does not limit the
69 Department’s authority to respond to any emergency.

70 *Approved:*

71

Nancy Navarro, President, County Council Date

72 *Approved:*

73

Isiah Leggett, County Executive Date

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

75

Linda M. Lauer, Clerk of the Council Date