

**MEMORANDUM**

September 6, 2013

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Public Hearing:** 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, was introduced on July 30. A Transportation, Infrastructure, Energy and Environment Committee worksession is tentatively scheduled for September 30 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.<sup>1</sup> 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.

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<sup>1</sup> 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

Fiscal and Economic Impact Statement

Circle #

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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

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By: Councilmembers Berliner, Floreen, and Riemer

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**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

<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:*

**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:*

67 \_\_\_\_\_  
Nancy Navarro, President, County Council Date

68 *Approved:*

69 \_\_\_\_\_  
Isiah Leggett, County Executive Date

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

71 \_\_\_\_\_  
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



ROCKVILLE, MARYLAND

MEMORANDUM

August 21, 2013

TO: Nancy Navarro, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget  
Joseph F. Beach, Director, Department of Finance *JAH*

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

Attached please find the fiscal and economic impact statements for the above-referenced legislation.

JAH:dl

Attachment

c: Kathleen Boucher, Assistant Chief Administrative Officer  
Lisa Austin, Offices of the County Executive  
Joy Nurmi, Special Assistant to the County Executive  
Patrick Lacefield, Director, Public Information Office  
Joseph F. Beach, Director, Department of Finance  
Robert Hagedoorn, Department of Finance  
Alex Espinosa, Office of Management and Budget  
Brady Goldsmith, Office of Management and Budget  
Naeem Mia, Office of Management and Budget  
Henri Apollon, Office of Management and Budget

**Fiscal Impact Statement**  
**Council Bill 24-13, Streets and Roads – Authorization of Construction - Amendments**

1. Legislative Summary.

**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.**

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.

N/A

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

N/A

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

N/A

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

N/A

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

**Under current legislation, we prepare for and hold Public Hearings with the purpose to determine if the project is needed for a public purpose. The proposed bill would also require that we prepare for and hold Public Hearings although the purpose would be to receive comments on the proposed design of a road. The staff time required for preparation and holding of the Public Hearing would be unchanged.**

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

**As noted in the response to question #6 above, there would be no change in staff time as a result of this proposed bill. Therefore, there would be no affect on other duties.**

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

N/A

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

N/A

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

N/A

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

**See response to question #6 above. There should be no fiscal impact because the staff time required should not change.**

12. Other fiscal impacts or comments.

13. The following contributed to and concurred with this analysis: Tony Alexiou, DOT and Brady Goldsmith, OMB.

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

8/21/13  
Date

**Economic Impact Statement**  
**Bill 24-13, Streets and Road – Authorization of Construction - Amendments**

**Background:**

This legislation would:

- require the County Executive (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 of the road;
- require the Director of Transportation (Director) to hold a hearing to receive comments on the design of a road before beginning construction of the road; and
- generally amend the law governing the construction of streets and roads.

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

Montgomery County Department of Transportation (MCDOT) provided information. As stated in the background section, Bill 24-13 amends the procedure that requires the Executive “to conduct a public hearing before authorizing an assessment against adjoining properties to finance the road project where the affected property owners can challenge the proposed assessment.” The assessment process would not change under Bill 24-13 and therefore there is no economic impact.

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

There is no economic impact (see paragraph #1)

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

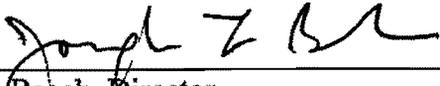
There is no economic impact (see paragraph #1).

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

Please see paragraph #1.

**5. The following contributed to and concurred with this analysis: David Platt and Rob Hagedoorn, Finance, and Al Roshdieh, Deputy Director, Department of Transportation (MCDOT);**

**Economic Impact Statement**  
**Bill 24-13, Streets and Road – Authorization of Construction - Amendments**



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

8/20/13

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Date