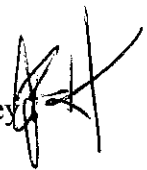


MEMORANDUM

October 12, 2018

TO: County Council

FROM: Josh Hamlin, Legislative Attorney 

SUBJECT: Expedited Bill 13-18, Taxicabs – Transportation Services Improvement Fund – Use of Fund

PURPOSE: Action on Bill – Roll call vote required

<p><b>Transportation, Infrastructure, Energy and Environment Committee</b> <b>recommendation (3-0):</b> enact Bill 13-18 with amendments</p>
--

Expedited Bill 13-18, Taxicabs – Transportation Services Improvement Fund – Use of Fund, sponsored by Lead Sponsor Council President at the request of the County Executive, was introduced on April 3, 2018. A public hearing was held on April 24 and Transportation, Infrastructure, Energy and Environment (T&E) Committee worksessions were held on May 4 and September 27, 2018.

Under current law, the Transportation Services Improvement Fund, which is funded by a charge imposed on rides provided by services such as Uber and Lyft, must be used: (1) to offset the higher operational costs of accessible taxicab services for owners and operators; or (2) to provide incentives for improving or expanding transportation options for eligible senior citizens or persons of limited income. As introduced, Bill 13-18 would expand the purpose and permissible use of the Fund to allow its use “for transportation purposes in the County.”

The T&E Committee recommends enactment of the Bill with amendments to: (1) retain and clarify the *current law’s* purpose and limitations on the uses of the Fund; and (2) clearly provide that the Fund must be used to supplement, and not supplant prior appropriated expenditures.

**Background**

In 2015, the Council enacted Bill 33-15 to impose a charge authorized by the State in its then-newly enacted law regulating “transportation network companies” (TNCs) – ride-hailing services such as Uber and Lyft. In addition to imposing the charge, Bill 33-15 created the Transportation Services Improvement Fund to receive and distribute the revenue generated by the charge. Money from the Fund is to be used to offset higher costs of operating accessible taxicabs in the County, and to provide incentives for improving or expanding transportation options for eligible senior citizens and persons of limited income. The Bill required the Executive to establish the procedure for making disbursements from the Fund by regulation.

The State law that authorized the charge imposed under Bill 33-15 was enacted by the Maryland General Assembly in its 2015 session to regulate TNCs statewide. In addition to its regulatory function, the law also authorizes a county or municipality that licensed or regulated taxicab services on or before January 1, 2015, including Montgomery County, to impose an assessment on TNC trips that originate within the county or municipality. "Assessment" means a charge imposed by a local jurisdiction on each transportation network service that includes a passenger trip. The assessment may be up to 25 cents per trip, other than in an exempt jurisdiction. The revenue generated from the assessments must be used for "transportation purposes."

The T&E Committee first considered such an assessment in its discussion of Bill 54-14, which would have regulated TNCs at the County level. The T&E Committee considered the problem that TNCs generally do not provide accessible transportation and generally do not participate in programs such as Call-N-Ride, a County subsidized taxi service program for low-income seniors (65 and older) and low-income persons with disabilities (aged 18-64). In view of the ascendancy of ride-hailing services as transportation providers, and in order to improve accessible transportation, the T&E Committee discussed the possibility of imposing a surcharge on TNCs and a creating a fund used to incentivize accessible taxicab service. When the General Assembly took up the matter of TNC regulation, Councilmember Berliner advocated on behalf of the authorization of the local charge that was ultimately included in the State law.

Under current law, the Fund must be used: (1) to offset the higher operational costs of accessible taxicab services for owners and operators; or (2) to provide incentives for improving or expanding transportation options for eligible senior citizens or persons of limited income. As introduced, Bill 13-18 would remove the existing requirements in the law that limit the purposes and uses of the Fund to offsetting additional costs associated with providing accessible transportation and providing incentives to improve or expand transportation options for eligible senior citizens and persons of limited income. It would instead allow use of the Fund for any transportation purpose in the County. The Executive's recommended FY19 operating budget reflected an additional \$1.3 million in anticipated non-restricted revenue attributable to the Fund in FY19.

The Fund's revenues and expenditures since its inception, as well as its fund balance, are as follows:

**Revenue**

Taxi Network transportation fee (FY16)	\$263,731.63
Taxi Network transportation fee (FY17)	\$1,295,383.18
Taxi Network transportation fee (FY18 YTD)	<u>\$1,340,979.61</u>
<b>Total Revenue</b>	<b>\$2,900,094.42</b>

**Expenditures**

Taxi network transportation fee FY18 spent:	\$35,882.80
Taxi network transportation fee FY18 encumbered:	<u>\$25,670.00</u>
Total FY18 YTD spent/encumbered:	<b>\$61,552.80</b>

**Fund Balance**

**\$2,838,541.62**

On April 23, the Executive requested that the Bill be withdrawn from consideration, apparently based on the view that the amendments to existing law proposed in the Bill were not necessary to use the Fund as proposed in his recommended FY19 Operating Budget.

### **Public Hearing**

There were four speakers, all opposed to the Bill, at the public hearing on the Bill held on April 24. Isabelle Schoenfeld, Chair of the Commission on Aging noted that Bill 33-15, imposing the fee and creating the Fund, was enacted in response to concerns raised by the Commission on People with Disabilities and the Commission on Aging about the impact of TNCs on the availability of accessible transportation. She added that the use of the Fund presents an ethical and moral issue and urged against use of the Fund “for other purposes than increasing the mobility of the intended beneficiaries.” Finally, she encouraged the County to improve the regulations governing disbursements from the Fund to better accomplish the Fund’s purpose (see ©11-12). Seth Morgan, Chair of the Commission on People with Disabilities, expressed the Commission’s strong opposition to the Bill, saying it “undermines the purpose and intent of the Transportation Services Improvement Fund.” He indicated that the availability of accessible taxicab service has worsened since the creation of the fund and concluded that “[c]hanging the purpose of the Fund in the face of worsening statistics is not reasonable; changing the Fund to make disbursement to promote accessible taxi availability is” (see ©13).

Commission on Aging past-Chair Elaine Binder also spoke in opposition to the Bill, saying that expanding the permissible uses of the Fund as proposed would allow funds to be spread across existing programs that do not benefit the populations that are the intended beneficiaries. She recommended the requirement of a multi-agency effort to develop creative options for use of the Fund to expand and enhance all transportation options for the Fund’s intended beneficiaries (see ©14-15). Charles Kauffman opposed the Bill, saying that expanding the permissible uses of the Fund would frustrate the implementation of the existing law’s purposes, and instead recommended a study to assure “rapid, long-term and effective and continuous implementation” to serve the law’s intended beneficiaries (see ©16-17).

### **May 4 Worksession**

At the May 4 worksession, the Committee considered whether the Fund should be used as recommended in the Executive’s FY19 Recommended Operating Budget. As of May, 2018, since the imposition of the fee began about two years earlier, the Transportation Services Improvement Fund had grown to about \$2.9 million, of which only about \$61,600 had been spent or encumbered for taxicab improvements for senior and disabled customers. The Executive assumed that the balance of these funds, as well as the roughly \$1.3 million in TNC user fees projected to be collected in FY19, would be used to support his recommended Mass Transit Fund budget. The \$4.14 million total would be used to support the Call-N-Ride, Seniors Ride Free, and Connect-a-Ride programs, freeing up an equivalent amount for uses elsewhere in the budget. (See pages 4-5 from Glenn Orlin’s packet for April 25 T&E Committee worksession on the FY19 Operating Budget: Mass Transit Fund at ©18-19).

The total FY19 recommended budget for transportation subsidies for senior citizens and persons with disabilities was as follows:

<b>Call 'n' Ride</b>	
Total Cost	\$3,948,857
State Contribution	\$ 387,911
Coupon book revenue	<u>\$ 240,000</u>
Net County Cost	\$3,320,946
<b>Seniors Ride Free</b>	
Foregone Ride On revenue	\$ 933,986
Metrobus reimbursement	<u>\$ 292,611</u>
Total subsidy cost	\$1,226,597
<b><u>Connect-a-Ride</u></b>	<b><u>\$ 153,860</u></b>
<b>Total subsidy</b>	<b>\$4,701,403</b>

The Council thus faced the decision of whether to approve the use of money from the Fund as recommended by the Executive or make cuts and/or increase tax rates accordingly. While neither option was desirable, the Committee recommended, and the Council approved, the use money from the Fund as proposed in the Executive's recommended FY19 Operating Budget, but including the following language in the Budget Resolution:

Notwithstanding the provisions of §53-801, for FY19 only, the Council appropriates \$4,146,279 from the Transportation Services Improvement Fund to fund programs associated with transportation of persons with disabilities, senior citizens, and persons of limited income through the Mass Transit Fund.

#### **September 27 Worksession – Issues and Recommendations**

##### **1. Should the existing purpose of the Fund be retained?**

Current law provides that the purpose of the Fund is created to improve the delivery of: (A) accessible transportation services in the County; (B) transportation for eligible senior citizens; and (C) transportation for persons of limited income. The introduced Bill would remove these specific purposes and would instead provide for the fund “to be used for transportation purposes in the County.” Since the Executive has requested withdrawal of the Bill from consideration, and there is no apparent desire to broaden the purpose of the Fund, staff recommends amending the Bill so that this part of the law remains unchanged.

**Committee recommendation (3-0):** Amend lines 9-15 as follows to retain the law's existing purpose provisions for the Fund:

(b) *Fund established.*

(1) There is a Transportation Services Improvement Fund [created

to improve the delivery of:

- (A) accessible transportation services in the County;
- (B) transportation for eligible senior citizens; and
- (C) transportation for persons of limited income] [[to be used for transportation purposes in the County]] created to improve the delivery of:

- (A) accessible transportation services in the County;
- (B) transportation for eligible senior citizens; and
- (C) transportation for persons of limited income.

**2. Should the restrictions on use of the Fund be clarified?**

Current law provides that the Fund must be used: (1) to offset the higher operational costs of accessible taxicab services for owners and operators; or (2) to provide incentives for improving or expanding transportation options for eligible senior citizens or persons of limited income. The introduced Bill would eliminate these restrictions and would instead allow use of the Fund for any transportation purpose. Beyond the fact that most of the money in the Fund had not, prior to the adoption to the FY19 budget, been spent, there has not been any justification offered for broadening the permissible uses of the Fund. From the public hearing testimony, it appears that transportation problems facing the Fund's intended beneficiaries have not been solved. Also, given that the Executive has requested withdrawal of the Bill from consideration, it now seems that no one is advocating for the change contained in the introduced Bill.

As described above, the existing law restricts use of the Fund to offsetting higher costs of operating accessible taxicabs or providing incentives to improve or expand transportation options for eligible senior citizens or persons of limited income. The Executive's request to withdraw the Bill was apparently based on the idea that it is not necessary to amend the law to use money from the Fund as recommended in the Executive's recommended FY19 budget. On April 25, Councilmember Berliner requested that the County Attorney provide "the basis for the determination that the Fund may be used for general mass transit purposes . . ." (see ©20). In a memorandum dated June 4, 2018, the Assistant County Attorney Robert Birenbaum concluded that "monies in the Fund may be used to pay for eligible programs that were previously paid from other sources," such as the Call-N-Ride and Seniors Ride Free programs (see ©21-26).

Council staff is not entirely persuaded by the analysis and conclusion in the memorandum, but agrees that doubt about permissible uses could be removed by amending the law to place restrictions on the use of the Fund similar to those governing revenues in the Emergency Medical Services Transport Reimbursement (EMST) Program. Codified at §21-23A(h)(1) &(2), the law requires that "revenues collected from the emergency medical services transport reimbursement must be used to supplement, and must not supplant, Fiscal Year 2013 expenditures appropriated in the annual operating budget resolution (not including any expenditures of revenue collected

under this program in Fiscal Year 2013) for emergency medical services and other related fire and rescue services provided by the Fire and Rescue Service.” By using the words “supplement” and “must not supplant,” and including a baseline fiscal year appropriation against which to measure future use of the revenues, the EMST Program law leaves no ambiguity as to how the funds may be used. The Committee-recommended language to accomplish this additional restriction on the use of the Fund is included in the amendment below.

**3. Should the law be amended to increase use of the Fund for its intended purposes?**

All speakers at the public hearing, in addition to opposing the Bill, recommended changes, either to the law or to the implementing regulations, to better use the revenues collected and deposited in the Fund. The fact that a mere \$61,600 out of \$2.9 million in the Fund had been spent prior to the adoption of the FY19 budget is compelling evidence that there is room for substantial improvement. At the worksession, DOT informed the Committee that additional steps, including possible amendment of regulations governing the accessible taxicab incentive program were being explored.

Absent a clear idea of the sorts of programs that will ultimately be implemented, Council staff recommends avoiding adding too much specificity or additional directives to the law. Instead, staff recommends: (1) increasing flexibility in serving the target populations by allowing the Fund to be used for “program enhancements” in addition to incentives; and (2) clearly providing that these incentives or program enhancements must improve or expand transportation options for “persons with disabilities,” eligible senior citizens, or persons of limited income.

**Committee recommendation (3-0):** Amend lines 26-45 as follows to:

- (1) clearly provide that the Fund must be used only to supplement, and must not supplant, expenditures appropriated in the FY19 budget;
- (2) restore provisions proposed to be deleted in the original Bill;
- (3) provide that the improvement or expansion of transportation options for which the Fund is used may be in the form of incentives *or program enhancements*; and
- (4) add “persons with disabilities” to the populations whom the incentives or program enhancements (beyond the subsidy to drivers of accessible taxicabs) may serve.

(d) *[Uses] Use of the Fund.* Disbursements from the Fund must only be used [to] [[for transportation purposes in the County.]] to supplement, and must not supplant, Fiscal Year 2019 expenditures appropriated in the annual operating budget resolution to: [:

- (1) offset the higher operational costs of accessible taxicab services for owners and operators including, but not limited to:
  - (A) vehicle costs associated with purchasing and retrofitting an accessible vehicle;

- (B) costs associated with receiving training in providing accessible transportation services; and
  - (C) additional time involved in providing accessible taxicab services; or
- (2) provide incentives for improving or expanding transportation options for:
  - (A) eligible senior citizens; or
  - (B) persons of limited income.
- (e) *Disbursements from the Fund.* The Executive must by regulation establish the procedure for determining when and how to make distributions from the Fund to taxicab owners and operators, including setting eligibility standards, imposing conditions of reimbursement, imposing a maximum amount of reimbursement, and considering timely distribution of reimbursement to taxicab owners and operators.]
  - (1) offset the higher operational costs of accessible taxicab services for owners and operators including, but not limited to:
    - (A) vehicle costs associated with purchasing and retrofitting an accessible vehicle;
    - (B) costs associated with receiving training in providing accessible transportation services; and
    - (C) additional time involved in providing accessible taxicab services; or
  - (2) provide incentives or program enhancements to improve or expand transportation options for:
    - (A) persons with disabilities;
    - (B) eligible senior citizens; or
    - (C) persons of limited income.

- (e) Disbursements from the Fund. The Executive must by regulation establish the procedure for determining when and how to make distributions from the Fund to taxicab owners and operators, including setting eligibility standards, imposing conditions of reimbursement, imposing a maximum amount of reimbursement, and considering timely distribution of reimbursement to taxicab owners and operators.

This packet contains:

	<u>Circle #</u>
Expedited Bill 13-18	1
Legislative Request Report	5
County Executive Memorandum	6
Fiscal and Economic Impact statement	7
Executive Memorandum requesting withdrawal	10
Public Hearing testimony	
Isabelle Schoenfeld	11
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Expedited Bill No. 13-18  
Concerning: Taxicabs – Transportation  
Services Improvement Fund – Use of  
Fund  
Revised: 09/27/2018 Draft No. 2  
Introduced: April 3, 2018  
Expires: October 3, 2019  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Council President at the Request of the County Executive

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**AN EXPEDITED ACT to:**

- (1) provide for disbursements from the Transportation Services Improvement Fund for [[any transportation purpose]] specific purposes;
- (2) require that the Fund be used to supplement, and not supplant, previously appropriated expenditures; and
- (3) generally amend the law governing the licensing and regulation of taxicabs.

By amending

Montgomery County Code  
Chapter 53, Taxicabs  
Section 53-801

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<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 53-801 is amended as follows:**

2        **53-801. Transportation Services Improvement Fund.**

3        (a)    *Definitions.* In this section:

4            (1)    *Fund* means the Transportation Services Improvement Fund  
5                    established in this Section.

6            (2)    *Transportation Network Services* means “Transportation Network  
7                    Services” as defined in § 10-101 of the Public Utilities Article of  
8                    the Maryland Code.

9        (b)    *Fund established.*

10           (1)    There is a Transportation Services Improvement Fund [created to  
11                    improve the delivery of:

12                    (A)    accessible transportation services in the County;

13                    (B)    transportation for eligible senior citizens; and

14                    (C)    transportation for persons of limited income] [[to be used  
15                                for transportation purposes in the County]] created to  
16                                improve the delivery of:

17                    (A)    accessible transportation services in the County;

18                    (B)    transportation for eligible senior citizens; and

19                    (C)    transportation for persons of limited income.

20           (2)    The Fund consists of:

21                    (A)    all revenue from the surcharge imposed on transportation  
22                                network services under this Section;

23                    (B)    all funds appropriated to it by the County Council; and

24                    (C)    all funds received by the Fund from any other public or  
25                                private entity.

26        (c)    *Per-ride surcharge.* There is a \$0.25 surcharge on Transportation  
27                    Network Services for each trip originating in the County. The surcharge

must be collected as provided in §10-406 of the Public Utilities Article of the Maryland Code.

- (d) *[Uses] Use of the Fund.* Disbursements from the Fund must only be used [to] [[for transportation purposes in the County.]] to supplement, and must not supplant, Fiscal Year 2019 expenditures appropriated in the annual operating budget resolution to: [

(1) offset the higher operational costs of accessible taxicab services for owners and operators including, but not limited to:

(A) vehicle costs associated with purchasing and retrofitting an accessible vehicle;

(B) costs associated with receiving training in providing accessible transportation services; and

(C) additional time involved in providing accessible taxicab services; or

(2) provide incentives for improving or expanding transportation options for:

(A) eligible senior citizens; or

(B) persons of limited income.

- (e) *Disbursements from the Fund.* The Executive must by regulation establish the procedure for determining when and how to make distributions from the Fund to taxicab owners and operators, including setting eligibility standards, imposing conditions of reimbursement, imposing a maximum amount of reimbursement, and considering timely distribution of reimbursement to taxicab owners and operators.]

(1) offset the higher operational costs of accessible taxicab services for owners and operators including, but not limited to:

(A) vehicle costs associated with purchasing and retrofitting an

accessible vehicle;

(B) costs associated with receiving training in providing accessible transportation services; and

(C) additional time involved in providing accessible taxicab services; or

(2) provide incentives or program enhancements to improve or expand transportation options for:

(A) persons with disabilities;

(B) eligible senior citizens; or

(C) persons of limited income.

(e) Disbursements from the Fund. The Executive must by regulation establish the procedure for determining when and how to make distributions from the Fund to taxicab owners and operators, including setting eligibility standards, imposing conditions of reimbursement, imposing a maximum amount of reimbursement, and considering timely distribution of reimbursement to taxicab owners and operators.

## **Sec. 2. Expedited Effective Date.**

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law.

*Approved:*

---

Hans D. Riemer, President, County Council

Date

*Approved:*

---

Isiah Leggett, County Executive

Date

## LEGISLATIVE REQUEST REPORT

Expedited Bill 13-18

*Taxicabs – Transportation Services Improvement Fund – Use of Fund*

**DESCRIPTION:** Expedited Bill 13-18 would amend Section 53-801 of the County Code regarding the purpose, use and disbursements from the Transportation Services Improvement Fund to expand allowable use of the Fund to any transportation purpose in the County.

**PROBLEM:** Money from the Fund must be used to offset higher costs of operating accessible taxicabs in the County, and to provide incentives for improving or expanding transportation options for eligible senior citizens and persons of limited income. The current law is too restrictive in how funds may be used.

**GOALS AND:  
OBJECTIVES** Provide flexibility to use funds for any transportation purpose in the County.

**COORDINATION:** Office of the County Executive  
Office of Management and Budget  
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** Josh Hamlin, Legislative Attorney

**APPLICATION:  
WITHIN  
MUNICIPALITIES** To be researched.

**PENALTIES:** Not applicable.

Bill



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

BD  
CC  
MM  
ML  
GO  
AM  
JH

## MEMORANDUM

March 15, 2018

TO: Hans Riemer, President, County Council

FROM: Isiah Leggett, County Executive *Isiah Leggett*

SUBJECT: Transportation Services Improvement Fund

The purpose of this memorandum is to transmit the proposed expedited bill amending Section 53-801 of the County Code regarding disbursements from the Transportation Services Improvement Fund to expand use to transportation purposes in the County. The existing regulation (ER 1-17) will continue to govern when making disbursements for accessible transportation services, transportation for eligible senior citizens, and transportation for persons of limited income.

Thank you for your expedited consideration.

IL:brg

Attachment:

- c: Timothy L. Firestine, Chief Administrative Officer
- Jennifer A. Hughes, Director, Office of Management and Budget
- Alexandre A. Espinosa, Director, Department of Finance
- Al Roshdieh, Director, Department of Transportation
- Bonnie Kirkland, Assistant Chief Administrative Officer

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MONTGOMERY COUNTY  
FEBRUARY 15 2018

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**Fiscal Impact Statement**  
**Bill 13-18 Taxicabs - Transportation Services Improvement Fund - Use of Fund**

1. Legislative Summary

The bill amends Section 53-801 of the County Code regarding disbursements from the Transportation Services Improvement Fund to expand use to transportation purposes in the County.

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.

There are no changes to revenues and expenditures.

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

There are no changes in future revenue and expenditures estimates.

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

Not applicable.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not applicable.

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

Not applicable.

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

No additional staff time is needed.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

The bill simply provides additional flexibility for the use of funds collected.

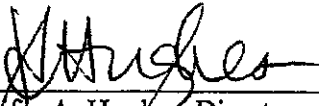
13. Other fiscal impacts or comments.

No fiscal impacts.

14. The following contributed to and concurred with this analysis:

Brady Goldsmith, Office of Management and Budget

Fred Lees, Department of Transportation

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

4/17/10  
Date



**Economic Impact Statement**  
**Expedited Bill 13-18, Taxicabs – Transportation Services Improvement Fund –**  
**Use of Fund**

**Background:** The proposed legislation would amend Section 53-801 of the County Code as follows:

- Provide for disbursements from the Transportation Services Improvement Fund (TSIF) for *any* transportation purpose.

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

There are no sources of information, assumptions, and methodologies used by the Department of Finance in the preparation of the economic impact statement.

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

There are no variables that could affect the economic impact estimates.

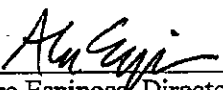
**3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.**

Because Expedited Bill 13-18 allows for the use of the TSIF to support *any* transportation purpose, it would have no positive or negative effect on employment, spending, savings, investment, incomes, and property values in the County.

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

Expedited Bill 13-18 would have no economic impact as noted in paragraph 3.

**5. The following contributed to or concurred with this analysis: David Platt and Rob Hagedoorn, Finance; and Brady Goldsmith, OMB.**

  
\_\_\_\_\_  
Alexandre Espinosa, Director  
Department of Finance

4/12/2018  
Date



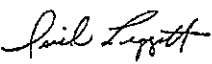
OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

April 23, 2018

TO: Hans Riemer, President  
County Council

FROM: Isiah Leggett   
County Executive

SUBJECT: Expedited Bill 13-18, Taxicabs – Transportation Services Improvement Fund –  
Use of Fund

On April 3, 2018, Council introduced at my request Expedited Bill 13-18, Taxicabs – Transportation Services Improvement Fund – Use of Fund. After further review, I request that Expedited Bill 13-18, Taxicabs – Transportation Services Improvement Fund – Use of Fund be withdrawn from consideration.



3

## COMMISSION ON AGING

April 24, 2018

### MONTGOMERY COUNTY COMMISSION ON AGING April 24, 2018 Testimony – Montgomery County Council Bill 13-18 Taxicabs-Transportation Services Improvement Fund (TSIF)-Use of Fund

Thank you for the opportunity to comment on Bill 13-18, although it has been withdrawn. The Commission on Aging was disturbed to learn that the County Executive submitted Expedited Bill 13-18 because it would expand the purpose and use of the Transportation Services Improvement Fund for "any transportation purpose in the County." The bill placed no limits on the type of transportation purposes and did not define what the phrase "transportation purposes" means.

Although, the Commission on Aging was pleased to learn that Bill 13-18 has been withdrawn, the Commission is concerned that the use of the Funds may still be diverted to purposes other than what Bill 33-15 intended which was to increase the availability of accessible taxis for people with disabilities, older adults and people with limited income. This was especially important in that Transportation Network Companies such as Uber and Lyft, do not reliably provide accessible vehicles. The law establishing this Fund was passed in response to concerns raised by the Commission on People with Disabilities and the Commission on Aging about the entry into Montgomery County of Transportation Network Companies.

However, following the passage of Bill 33-15, before regulations were put in place, the Commission on Aging believed that the regulations that were being proposed were unlikely to adequately support the intended purpose of providing more accessible taxis on the road for two reasons (1) the subsidy for having accessible taxis was not sufficient to cover the cost, and (2) the subsidy for drivers to rent accessible vehicles was not a sufficient incentive to cover their costs. Both Commissions wrote letters in March and June 2017 on Executive Order No. 1-17, raising these issues and suggesting higher subsidies. Despite our stated concerns, the regulations went into effect.

Today, there are only 60 available accessible taxis (out of approximately 800 taxis) and only 20 are on the road at any time. Only \$65,000.00 (out of \$2.9 million in the Fund currently) has been disbursed at this time. Hence, the regulations did not provide enough dollars for subsidies to make a meaningful difference in the number of available accessible taxis.

Although the use of the Transportation Services Improvement Fund appears to be a solely budgetary issue, it also presents an ethical and moral issue. Current or future consideration of using these funds for other purposes than increasing the mobility of the intended beneficiaries, the County would be worsening their social isolation, health, and safety, thereby, negatively impacting their quality of life.

Now is an opportunity to improve the regulations to ensure that the funds accomplish what the Council wanted...greater availability of accessible vehicles for the intended users: people with disabilities, older adults and people with limited income.

The Commission on Aging would be happy to participate with other stakeholders in the modification of the regulations with the goal of making the use of the Fund more effective in meeting the intended purpose.

Thank you for your consideration of our concerns.

Isabelle Schoenfeld  
Chair, Commission on Aging



4

Testimony  
Montgomery County Council  
November 28, 2017  
Bill 13-18

Taxicabs- Transportation Services Improvement Fund- Use of Fund

My name is Seth Morgan and I am Chairman of the Commission on People with Disabilities. Bill 13-18 undermines the purpose and intent of the Transportation Services Improvement Fund and the Commission is in strong opposition to Bill 13-18.

The Commission has monitored the implementation of the Fund and, as we expressed in our prior communications, was concerned that the disbursement plan developed by DOT, though well intended, was inadequate and destined to fail.

The goal of the Fund has been to improve the delivery of transportation services to those in our community with disabilities as well as eligible seniors and persons of limited income. The genesis of the Fund came at the request of the Commission in partnership with the Commission on Aging and was a direct response to the entry of Transportation Network Companies (TNCs) such as Uber and Lyft (which do not reliably provide accessible car service to those in need of such services) into our County. The intent of the Fund was to provide financial incentives to promote accessible taxi service for residents of the County.

In communications from DOT, it has been claimed that Bill 13-18 is in "no way intended to reduce the monies available to subsidize owners and drivers of accessible taxis". If true, why is the proposed purpose of the Fund being changed to allow for use of the Fund for any transportation needs?

If there is a surplus of funds then the guidelines for promoting distribution of funds to improve accessible taxi service are not working and need to be changed; it is not a reason to change the entire purpose of the Fund. We ask that financial incentives such as using the fund to decrease the daily rental of accessible taxis to perhaps half of what they pay now might be a financial incentive for drivers to rent them.

The availability of accessible taxi service has, in fact, worsening since the Fund has been established. The availability of accessible taxi service in our County is down to an all-time low of 60 accessible taxis of the total of 797 licensed taxis in Montgomery County. This means that at any given time, only approximately 20 accessible taxis are in service in the entire County. Changing the purpose of the Fund in the face of worsening statistics is not reasonable; changing the Fund to make disbursement to promote accessible taxi availability is.

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## Testimony TSIF

My name is Elaine Binder. As a past Chair of the Commission on Aging **and** the person who in 2013 proposed the creation of the Transportation and Mobility Management Program that was supported and funded by the County Council and the County Executive, I speak in opposition to Expedited Bill 13-18. Broadening the use of the Transportation Services Improvement Fund (TSIF) to be used for **any transportation purpose in the County** removes the focus on accessibility for older adults, people with disabilities and low-income County residents, which was the intent of the original Bill 33-15. It will be too easy to spread the funds across existing programs that do not benefit these populations.

Despite the growth of the Fund to nearly \$3 million since 2015, only \$65,000 has been disbursed for its intended purposes – “to offset the higher costs of operating accessible taxicabs **and** to provide incentives for improving or expanding transportation options for eligible senior citizens and persons of limited income.”

Although I applaud recent verbal assurances to establish a process to ensure that the Fund is used for its original priority purpose of increasing accessible taxicabs, I am not comfortable relying on verbal assurances. A concerted effort needs to be made to add to the number of accessible taxis, and the appropriate group within the Department of Transportation should be required to make that a priority. I am concerned, however, about the length of time it will take to increase the number of accessible taxis. In the meantime, the Fund will continue to accumulate as will an increase in unmet transportation needs.

The County's older adult population is expected to grow from 120,000 in 2010 to 244,000 in 2040. They, as well as individuals with disabilities need a **variety** of transportation options. Disbursement of the funds to taxi companies or drivers is not the only way to expand services. Furthermore, not everyone needs completely accessible taxis. Consideration should be given instead to developing alternative approaches that will enable older adults and people with disabilities to get where they want to go when they want to go. Therefore, I recommend that the concept of providing incentives for improving or expanding transportation options of the Fund be broadened beyond accessible taxis.

I propose that the Expedited Bill 13-18 be rejected and that the Department of Transportation, the Transportation and Mobility Manager and the Department of Recreation collectively be charged with developing creative options about ways to use funds collected under Bill #33-15 to expand and enhance **all** transportation options for these populations. In addition, I propose that a portion of the available funds be given directly to older adults, the disabled and low-income county residents.

For example, the County currently funds the Jewish Council for the Aging to provide morning and afternoon bus service to senior centers – a program that has been reduced from 5 to 4 days a week. After a utilization study, it may be reasonable to use the Fund to take that program back to full operation. Another option could be using the Fund to provide vouchers to these riders for taxi service home so they will have flexibility in the hours they attend senior centers. The Fund could be used to expand the escorted transportation program that already exists. The Call-n-Ride program could be expanded. There could be a focus on training able older adults to utilize Ride-On and Metro buses.

By focusing on **all** possible solutions, the transportation experts in the County will be able to effectively and efficiently use the Transportation Services Improvement Fund in a manner that benefits the growing needs of the County's older adult and disabled residents.

Charles Kauffman  
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301 467 9336  
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X

April 20<sup>th</sup> 2018

Hon. Hans Reimer, Chair  
Montgomery County Council  
100 Maryland Avenue  
Rockville MD 20850

Re: Opposition to Proposed Bill 13-18

Members of the Council:

I speak for myself in opposing Bill 13-18 because I currently serve on an interested County Commission. I am not alone in opposing this bill. You have received letters in opposition to this proposal from the Commission on Aging, The COA Alumni Group, The Commission on People with Disabilities, The Vital Living Network among others and I add my voice to their testimony.

The Taxicab Services Improvement Fund ("TSIF") is a dedicated, specific-purpose trust fund with the express objective of providing adequate wheelchair accessible vehicles and taxicab service for seniors, people with disabilities and low income persons.

Proposed Bill 13-18 is an obvious attempt to divert funds from the Taxicab Services Improvement Fund ("TSIF") to enrich and replenish Department of Transportation coffers. *A preemptive raid on this fund would frustrate all future implementation.*

Proposed Bill 13-18 would subvert future proposals and divert the funds to "any" other purpose.

The proposed legislation potentially would allow unrestricted, unpoliced and unenforceable invasion of the TSIF for (any) "transportation purposes in the County". The assurance of the current Director of Transportation on March 12<sup>th</sup> 2018 that the use of the funds will be "consistent" with the County's objective is neither binding, nor convincing, nor enforceable. It will be easy to tap the fund, defend tapping, and apologize after the fact *without recourse or the ability of the Council to recover or replenish for any wrongful use.*

TSIF collections have accumulated (\$2,900,000) over two years although implementation was authorized only a few months ago and little expenditure (\$65,000) have been made. The Taxicab Services Commission seems pre-occupied with other issues and DOT has devoted little effort to promote this program to potential users or to taxi industry owners and drivers. *Robust implementation of the TSIF will provide additional transportation for the handicapped and others and will also add streams of income for Taxicab Owners and Drivers.*



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*No comprehensive study has yet been undertaken to explore commonalities, best practices and effective solutions..*

I therefore respectfully recommend:

1. That this proposal be defeated ; and
2. That a study should be undertaken to explore commonalities, best practices and effective solutions and make recommendations to the Council to assure rapid, long term and effective and continuous implementation of the TSIF. This study should be conducted by the County Council and include a taxicab driver, owner and citizen representative. I believe this study could be completed within 45 days. The goal is to find the best use of the TSIF to fulfill the Council's intent. The TSIF should be the catalyst for creating a first class "one-stop" taxi-like service, reduce current costs of the County, end wasteful duplication and fill the competitive loss by adding new streams of income to providers and drivers.

In summary, the Transportation Service Investment Fund is extremely valuable, has much potential and must be preserved.

I personally want to thank this Council for your support of senior issues over the past decade. I wish the departing members Godspeed and hope that future Councils will embellish your sterling record of caring and your vision of Montgomery County as an Age Friendly community for a lifetime. It has been a pleasure and honor working with you.

Respectfully submitted,

*Charles Kauffman*

CHARLES KAUFFMAN

that a standard combine is nearly 17' wide (©25), and the bridge would need to be wider to provide enough shy distance from the parapets. DOT has stated that the Significant Features will be maintained.

### III. FY19 Operating Budget: Mass Transit Fund

1. *Overview.* The Executive's recommendations for the Mass Transit Fund are attached on ©26-33. The Executive recommends total expenditures of \$137,511,283 for the Mass Transit Fund, a \$218,687 (0.2%) increase from the FY18 approved budget. Operating Budget workyears would increase by 1.0 FTEs, to 875.37 FTEs, a 0.1% increase.

2. *Ride On.* Most of the changes to Ride On's budget are merely annualizations of the cost (or cost savings) from changes that were budgeted to occur during FY18. The table on ©34-36 displays—in descending order—the effectiveness of existing Ride On routes on weekdays, Saturdays and Sundays. Overall, the average is 18.9 riders/hour, down from 20.1 riders per hour last year, and 21.6 riders/hour two years ago. DOT anticipates that this metric will drop even further, to 18.7 riders/hour, in FY19. Most routes meet Ride On's minimum performance standards: 15 riders per platform hour for peak-period-only routes and 10 riders per platform hour for all-day routes.

The only notable service change for FY19 is the initiation of a pilot bus service on Route 52 between Olney and Rockville, currently one of the worst performing routes in the system, carrying only 5.9 riders/hour. DOT explains that this new program would change Route 52 to allow for deviations to alternate pickup locations as needed. This new service will use shift from the 30'-long clean diesel buses to smaller minibuses, and it would broaden the service area within Olney's neighborhoods, including Olney Mill, Longwood and Brookeville. This new minibus service, Route 302, would operate every 10 minutes during the AM and PM peak periods on weekdays. Customers will have direct connections to Rockville and the Metrorail. With the start of the new minibus route, customers will be able to use a new app to flag or call the next available bus to deviate to alternate pickup locations. Route 302 would be initiated in January 2019. The only route performing worse than Route 52 on weekdays is Route 301 between Tobytown and Rockville, which carries only 3.8 riders/hour; if Route 302 proves to be successful, Route 301 should be the next route to which the concept is applied.

One of the routes discontinued last year was Route 94, a "Meet the MARC" service that ran between several points in Clarksburg and the Germantown MARC station. This service was important because current parking activity at the MARC station is well beyond capacity. Since its demise last fall, several residents in Clarksburg have been working with Councilmember Riemer's office and DOT to identify an alternative. A concept that has been developed would simply use Route 75, which runs between points in Clarksburg and the Germantown Transit Center, and extend it to the Germantown MARC station every 30 minutes during weekday peak periods (5:30-8:30am and 4:30-8:30pm) when commuter trains are stopping there. DOT estimates that the annual operating cost would be \$169,789, with an offsetting annual revenue of \$8,405.

To operate this route extension, Ride On will need to put one more bus in service. Until the FLASH service begins in 2020, DOT is initiating the interim US 29 BRT service<sup>1</sup> in mid-May, and it can do so by not retiring eight older Ride On buses in the fleet. Council staff believes that one more bus scheduled for replacement can be retained.

<sup>1</sup> "FLASH Light", maybe?

Should this service be budgeted, it would start either this September (five-sixths of the annual cost and revenue in FY19), next January (one-half), or next May (one-sixth). In the past there has been State aid to cover part of the Route 94 costs, but when it was discontinued the Maryland Transit Administration reallocated the funds elsewhere.

**Council staff recommends adding to the Reconciliation List \$28,298 (offset by revenue of \$1,401) for the extension of Route 75 to the Germantown MARC station during weekday peak periods, starting in May 2019.**

**3. *Call-'n'-Ride.*** The Call-'n'-Ride Program provides subsidized taxi service for low-income seniors (age 65 or older) and low-income persons with disabilities (age 18 or older). The subsidy levels were adjusted four years ago. The subsidy levels for one-person households is as follows:

- A person earning less than \$15,857 would pay \$5.25 for \$60 of rides (91.3% subsidy).
- A person earning \$15,857-\$21,403 would pay \$10 for \$60 of rides (83.3% subsidy).
- A person earning \$21,404-\$26,951 would pay \$20 for \$60 of rides (66.7% subsidy).
- A person earning \$26,952-\$32,499 would pay \$30 for \$60 of rides (50.0% subsidy).

A table showing both the income ranges for households up to six persons is on ©37. A breakdown of participants by subsidy level is on ©38.

**4. *Transportation Services Improvement Fund.*** The Executive has proposed Expedited Bill 13-18 that would allow money from the Transportation Services Improvement Fund to be used for any transportation purpose. The money in this fund is collected from ride-hailing services Uber and Lyft; the current County law limits the use of the fund to offsetting additional costs associated with providing accessible transportation and providing incentives to improve or expand transportation options for eligible senior citizens and persons of limited income. Expedited Bill 13-18, as drafted, would instead allow use of the fund for any transportation purpose in the County.

Since the County's assessment has gone into effect about two years ago, the Transportation Services Improvement Fund has collected about \$2.9 million, of which only about \$61,600 has been spent or encumbered for taxi improvements for senior and disabled customers. The Executive has assumed that the balance of these funds—as well as the \$1.3 million in Uber and Lyft user fees projected to be collected in FY19—will be used to support his recommended Mass Transit Fund budget. All the \$4.14 million total would be used to pay for Call-'n'-Ride, freeing up an equivalent amount for uses elsewhere in the budget.

The public hearing on Expedited Bill 13-18 is scheduled for April 24. If the Council does not approve a bill that would allow the \$4.14 million to be used to supplant an equivalent amount of Mass Transit funding, then it will need to either raise the Mass Transit Tax or cut \$4.14 million in spending in the Mass Transit budget. The T&E Committee will need to address Expedited Bill 13-18 prior to its finalizing its recommendations on the FY19 Operating Budget.



MONTGOMERY COUNTY COUNCIL  
ROCKVILLE, MARYLAND

ROGER BERLINER  
COUNCILMEMBER  
DISTRICT 1

CHAIRMAN  
TRANSPORTATION, INFRASTRUCTURE  
ENERGY & ENVIRONMENT COMMITTEE

April 25, 2018

Marc Hansen, County Attorney  
Office of the County Attorney  
101 Monroe Street, 3<sup>rd</sup> Floor  
Rockville, MD 20850

Mr. Hansen,

On April 23, 2018, County Executive Leggett requested that the County Council withdraw Expedited Bill 13-18, Taxicabs – Transportation Services Improvement Fund – Use of Fund from consideration. It is my understanding that the County Executive requested the withdrawal of this bill after a legal opinion was rendered that the Transportation Services Improvement Fund (the Fund) could be drawn upon without broadening the permissible uses of the fund in Section 53-801 of the County Code.

County Code Section 53-801(d), as enacted by Bill 33-15, Taxicabs – Transportation Services Improvement Fund, provides that disbursements from the Fund *must* be used to “offset the higher operational costs of accessible taxicab services for owners and operators” or to “provide incentives for *improving* or *expanding* transportation options for: (A) eligible senior citizens; or (B) persons of limited income.”

None of the purposes of the statute were satisfied by the uses made of the Fund. Accordingly, please provide me with the basis for the determination that the Fund may be used for general mass transit purposes, as reflected in the Executive’s recommended budget, without amending the law as Expedited Bill 13-18 was drafted to do.

Thank you for your assistance. I look forward to your response.

Sincerely,

Roger Berliner  
Councilmember, District 1  
Chair, Transportation, Infrastructure, Energy &  
Environment Committee



Isiah Leggett  
County Executive

Marc P. Hansen  
County Attorney

OFFICE OF THE COUNTY ATTORNEY

MEMORANDUM

TO: Roger Berliner, Councilmember  
Chair, Transportation, Infrastructure, Energy & Environment Committee

VIA: Marc P. Hansen *MPH/EBF*  
County Attorney

Edward Lattner *EBF*  
Chief, Government Operations Division

FROM: Robert J. Birenbaum *RJB*  
Associate County Attorney

DATE: June 4, 2018

RE: Restriction on Use of Transportation Services Improvement Funds—Supplant or Supplement

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Question Presented

Without an amendment to § 53-801 of the County Code, must the monies contained in the Transportation Services Improvement Fund (the "Fund") be used to supplement, and not supplant, monies for eligible programs that were previously paid from other sources?

Answer

The monies in the Fund may be used to pay for eligible programs that were previously paid from other sources. The restriction on the use of the monies in the Fund to "offset the higher operational costs of accessible taxicab services for owners or operators" or to "provide incentives for *improving* or *expanding* transportation options for: (A) eligible senior citizens; or (B) persons of limited income" (emphasis added) should not be read so narrowly as to preclude the use of Fund monies for eligible programs for seniors and persons of limited income that were previously paid from other sources in prior years.

Councilmember Berliner

June 4, 2018

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### Background

In its 2015 legislative session, the Maryland General Assembly enacted legislation to more clearly regulate "transportation network companies" ("TNCs") such as Uber and Lyft. Laws of Maryland, Chapter 204 (2015). As part of that legislative enactment, the General Assembly authorized jurisdictions regulating taxicabs, such as Montgomery County, to impose an assessment on TNCs and collect up to \$0.25 on every TNC trip that originated in the particular jurisdiction. Md. Code Ann., Pub. Util., § 10-406. State law provides that the revenues received from the assessment on TNC trips must only be used for "transportation purposes." Md. Code Ann., Pub. Util., § 10-406(c)(4).

In July 2015, Montgomery County enacted Bill 33-15 to implement the General Assembly's enabling legislation discussed above. Bill 33-15 assessed TNCs \$0.25 for each trip originating in the County and authorized the Fund to receive all revenues derived therefrom. As originally introduced, the Fund was established to improve the delivery of accessible transportation services in the County, and disbursements from the Fund were limited to offsetting the higher operational costs that owners and operators experienced in providing accessible taxicab services. See Legislative Packet Introducing Bill 33-15 on June 23, 2015.

Following suggestions made by the Executive Branch, the Council amended Bill 33-15 to expand the purpose of the Fund to improve not only the delivery of accessible transportation services, but also to improve the delivery of transportation for eligible senior citizens and persons of limited income. See Legislative Packet for Action on Bill 33-15 (July 21, 2015). The amendment allowed disbursements from the Fund to "provide incentives for *improving* or *expanding* transportation options for: (A) eligible senior citizens; or (B) persons of limited income." (Emphasis added.) Bill 33-15 was codified into law as § 53-801 of the Montgomery County Code.

Since enactment of Bill 33-15, the Fund has collected approximately \$2.9 million, and expended approximately \$61,000. See Legislative Packet for Public Hearing on Bill 13-18 (April 24, 2018). It is this Office's understanding that the Fund is projected to collect an additional \$1.3 million in FY2019, according to information received from the Department of Transportation (DOT) and the Office of Management and Budget (OMB).

In preparing the FY2019 operating budget, the County Executive desired to make greater use of the monies in the Fund than had previously been expended. On April 3, 2018, Expedited Bill 13-18 was introduced at the request of the County Executive. Bill 13-18 proposed to amend Section 53-801 of the County Code by removing the self-imposed constraints on the use of the Fund imposed by Bill 33-15 to expand the allowable uses of the Fund for any transportation purpose in the County.

Councilmember Berliner

June 4, 2018

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Thereafter, the County Executive indicated that he felt that Bill 13-18 was not necessary, because the County Executive had been advised that the County could spend the monies in the Fund in the recommended FY2019 budget for programs that benefit eligible seniors and persons of limited income without an amendment to § 53-801 of the County Code.

The County Attorney's Office was advised by OMB and DOT that in FY2019, the County Executive recommended the expenditure of nearly \$4.5 million on two existing programs, Call-N-Ride and Seniors Ride Free, that directly benefit eligible seniors and persons of limited income. These programs have not previously utilized monies from the Fund. The anticipated costs of these programs are greater than the current balance of the Fund and what is projected to be collected by the Fund during FY2019. Thus, any deficiency for these programs not paid from Fund resources will be obtained from other resources making up the Mass Transit Fund.

On April 24, 2018, the Council decided to take up Bill 13-18, notwithstanding the County Executive's desire that it be withdrawn. At the hearing, Council President Hans Riemer and Councilmember Roger Berliner expressed concern about the County Executive's intent to use the monies in the Fund for existing programs such as Call-N-Ride and Seniors Ride Free in FY2019, thus freeing up an equivalent amount for uses elsewhere in the budget. With respect to the use of the Fund, Councilmember Berliner stated in relevant part, that

We were pretty clear with respect to this legislation [Bill 33-15] as to what these funds could be used for – expanding and improving transportation services to our senior and disabled community and to those of low income.

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The way in which the dollars have been spent by the County Executive [in the proposed budget] do not expand or improve our transportation services. They basically supplant dollars that were always expended for that purpose. [They] do not supplement or increase the amount of funding.

Following these statements, Councilmember Berliner sought a legal opinion from the County Attorney. Councilmember Berliner asks if the monies in the Fund may be expended in a manner that supplants, rather than supplements, prior expenditures for existing programs such as Call-N-Ride and Seniors Ride Free in FY2019 without a need for an amendment to § 53-801 of the County Code.<sup>1</sup>

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<sup>1</sup> Councilmember Berliner followed up with a letter dated April 25, 2018, that requested the County Attorney to "...please provide me with the basis for the determination that the Fund may be used for general mass

### Analysis

Councilmember Berliner question raises a reasonable concern about what the terms “expanding or improving” meant in the context of appropriate disbursements from the Fund. This question requires a brief review of the rules of statutory construction.

#### I. Rules of Statutory Construction

The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature. Statutory construction begins with the plain language of the statute, and ordinary, popular understanding of the English language dictates interpretation of its terminology.

*Proctor v. Washington Metro. Area Transit Auth.*, 412 Md. 691, 714 (2010) (internal quotations omitted).

Where a specific definition does not appear in the statute, the Court will give that term its “ordinary and natural meaning, and will not resort to subtle or forced interpretations for the purpose of extending or limiting the operation of the statute.” See *Maryland-Nat’l Capital Park and Planning Comm’n v. State Dep’t of Assessments and Taxation*, 110 Md. App. 677, 689 (1996), *aff’d*, 348 Md. 2 (1997). In doing so, the appellate court may refer to dictionary definitions and common usage. See *Bd. of License Commissioners for Prince George’s County v. Global Express Money Orders, Inc.*, 168 Md. App. 339, 348, 896 A.2d 432, 437 (2006); *Benson v. State*, 389 Md. 615, 633, 887 A.2d 525, 535 (2005). Moreover, in construing a statute, one should avoid a construction that is unreasonable, illogical, or inconsistent with common sense, or in a way that would lead to absurd consequences. *Walzer v. Osborne*, 395 Md. 563, 573 (2006); *Mayor & Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 550 (2002).

#### II. Application of Rules of Statutory Construction to § 53-801

With the above principles in mind, this Office explains why it believes that the County Executive may use the monies in the Fund for the Call-N-Ride and Seniors Ride Free programs without a change in the law.

Section 53-801(d)(2) of the County Code appears relatively clear and straight forward.

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transit purposes, as reflected in the Executive’s recommended budget, without amending the law as Expedited Bill 13-18 was drafted to do.” It is this Office’s understanding that the Fund will not be used for general purposes, but rather, for existing programs such as Call-N-Ride and Seniors Ride Free, which in this Office’s opinion falls within the scope of uses permitted by the Fund pursuant to § 53-801(d)(2). If the Executive desired to use the Fund for purposes not enumerated in § 53-801, an amendment to the law would be required.



Councilmember Berliner

June 4, 2018

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The Fund may be used to provide incentives for “improving” or “expanding” transportation options for eligible seniors or persons with limited income. According to the Merriam-Webster dictionary, “improve” is defined as follows:

1. *archaic* : EMPLOY, USE
2. a: to enhance in value or quality: make better  
b: to increase the value of (land or property) by making it more useful for humans (as by cultivation or the erection of buildings)  
c: to grade and drain (a road) and apply surfacing material other than pavement
3. to use to good purpose

“Improve.” *Merriam-Webster.com*, Merriam-Webster, [www.merriam-webster.com/dictionary/improving](http://www.merriam-webster.com/dictionary/improving). In addition, according to the Merriam-Webster dictionary, “expand” is defined as follows:

1. to open up: UNFOLD
2. to increase the extent, number, volume, or scope of: ENLARGE
3. a: to express at length or in greater detail  
b: to write out in full - *expand* all abbreviations  
c: to subject to mathematical expansion - *expand* a function in a power series

“Expand.” *Merriam-Webster.com*, Merriam-Webster, [www.merriam-webster.com/dictionary/expanding](http://www.merriam-webster.com/dictionary/expanding).

Clearly, providing subsidies to eligible seniors and low-income persons to take taxis and ride buses in the County *improves* and *expands* transportation options for these individuals were there to be no subsidy. The subsidies from the Call-N-Ride and Seniors Ride Free programs “enhance,” “make better,” and “open up” additional opportunities for seniors and persons of limited income for transportation. While the Call-N-Ride and Seniors Ride Free Programs have been in existence for some time, those programs are subject to the availability of funding and an annual appropriation of funds. On an annual basis, the County determines whether, and how much, to appropriate to these programs. Without an annual appropriation, those programs would not exist. Thus, it may be said that the plain reading of the statute would support the use of the Fund to finance the continued operations of these extant programs.

There is nothing in the law, or its legislative history, that reveals that the intent of the use of the monies in the Fund was to be supplemental in nature only, or to be used only for new and

Councilmember Berliner

June 4, 2018

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innovative programs without a prior funding source so as to preclude the use of the funds for previously established programs like Call-N-Ride and Seniors Ride Free.

Moreover, neither the words "supplement" nor "supplant" appear in § 53-801 of the County Code, and it would be improper to add such language in the interpretation to reflect an intent not evidenced by the plain language of the statute. However, it should be noted that those terms do appear in connection with the use of revenues collected under the Emergency Medical Services Transport Reimbursement Program (EMST Program) codified at § 21-23A(H)(1) & (2).

Under the EMST Program, the use of funds derived from the collection of various taxes and fees could not be used to supplant funds that were otherwise appropriated for the same purpose. However, this is not the case with § 53-801 since neither the words "supplant" nor "supplement" appear.

Moreover, the EMST Program establishes a base line year (FY2013) against which to judge whether the expenditure of EMST Program funds should be treated as a supplement to existing expenditures. Without a base line year, a requirement to supplement, and not supplant existing funding, runs into the illogical result that the baseline increases each year that a supplemental expenditure is made. Eventually this leads to the illogical result of either letting the Transportation Improvement Funds accumulate or expending those Funds on unneeded program enhancements. Bill 33-15 did not establish a baseline year against which to measure the expenditure of the Transportation Improvement Fund, which reinforces the conclusion that the words "improve" and "expand" should not be construed to require that the monies in the Fund must be used to supplement, and not supplant existing funding. Interpreting the words "improve" and "expand" in such a way would force a construction that goes beyond the ordinary meaning of those terms when there is no evidence in the legislative history Bill 33-15 that the monies in the Fund were intended to be supplemental in nature only.

#### Conclusion

It is our opinion, that without a change in the law, the monies in the Fund may be used to support the Call-N-Ride and Seniors Ride Free programs because those programs provide subsidies to eligible seniors and persons of limited income. The subsidies are incentives that improve or expand transportation options to eligible participants.

We trust that this memorandum is responsive to your inquiry.

cc: Robert H. Drummer, Senior Legislative Attorney  
Josh Hamlin, Legislative Attorney  
Bonnie Kirkland, Assistant CAO  
Al Roshdich, Director of MCDOT