

Department of Legislative Services  
 Maryland General Assembly  
 2017 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 402 (The Speaker, *et al.*) (By Request - Administration)  
 Appropriations and Environment and  
 Transportation

Repeal of the Maryland Open Transportation Investment Decision Act of 2016  
 (Road Kill Bill Repeal)

This emergency Administration bill repeals Chapter 36 of 2016, which (1) established State transportation goals and measures that must be used to evaluate whether and to what extent a “major transportation project” meets the State’s transportation goals; (2) requires the Maryland Transportation Plan (MTP) to be updated to reflect the goals and measures; and (3) requires the Maryland Department of Transportation (MDOT) to generally prioritize projects with higher scores in the *Consolidated Transportation Program (CTP)* over projects with lower scores, subject to MDOT’s authority to include lower scored projects if it provides a rational basis for such action in writing.

Fiscal Summary

**State Effect:** Transportation Trust Fund (TTF) expenditures decrease by \$2.2 million in FY 2018 as the staff, contractual resources, and software system developments needed to implement Chapter 36 are no longer necessary due to the Act’s repeal. Future year cost savings reflect ongoing costs required by Chapter 36. Other than developing a preliminary scoring system, MDOT has not yet begun implementation of Chapter 36, as discussed below; therefore, this estimate assumes that, absent the bill, MDOT would begin incurring expenses to implement Chapter 36 on July 1, 2017.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	(2,153,700)	(1,134,700)	(1,156,500)	(1,179,500)	(1,203,700)
Net Effect	\$2,153,700	\$1,134,700	\$1,156,500	\$1,179,500	\$1,203,700

Note: ( ) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

**Local Effect:** Local government finances and operations are not directly affected. Although Chapter 36 did not impose any additional responsibilities on local governments, and, thus, did not require additional local expenditures, to the extent that local jurisdictions would have chosen to conduct additional analyses under Chapter 36, local expenditures decrease due to the repeal of Chapter 36. Several local jurisdictions, as well as the Maryland Association of Counties and the Maryland Municipal League, advise that the repeal of Chapter 36 has no fiscal impact on local governments.

**Small Business Effect:** The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

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## Analysis

### Current Law:

#### *Chapter 36 of 2016 – Changes Repealed by the Bill*

The nine transportation goals established by Chapter 36 of 2016 are:

- safety and security;
- system preservation;
- quality of service;
- environmental stewardship;
- community vitality;
- economic prosperity;
- equitable access to transportation;
- cost-effectiveness and return on investment; and
- local priorities and planning.

Chapter 36 requires MDOT to (1) develop a project-based scoring system using the goals and measures, in accordance with federal transportation requirements; (2) develop weighting metrics for each goal and measure; (3) adopt regulations to implement the scoring system by January 1, 2017; and (4) rank major transportation projects for inclusion in the draft and final CTPs using the system it develops. The goals and measures must be the sole basis used to develop scores for each major transportation project, and MDOT must generally prioritize projects with higher scores in the CTP over projects with lower scores. MDOT is authorized to include a major project with a lower score in the CTP over a major project with a higher score, but only if it provides in writing a rational basis for the decision.

A “major transportation project” is a major capital project in the State Highway Administration or the Maryland Transit Administration whose total cost for all phases exceeds \$5.0 million and that (1) increases highway or transit capacity; (2) improves transit stations or station areas; or (3) improves highway capacity through the use of intelligent transportation systems or congestion management systems. It does not include (1) Maryland Aviation Administration, Maryland Port Administration, or Maryland Transportation Authority projects; (2) maintenance and storage facilities projects; (3) water quality improvement projects; (4) projects related to Maryland’s priorities for Total Maximum Daily Load development; (5) safety-related projects that do not increase highway or transit capacity; or (6) roads within the Appalachian Development Highway System.

When evaluating whether and to what extent a major transportation project meets the State transportation goals, Chapter 36 requires MDOT to rank how the project meets each transportation goal using a 20-year forecast and by assigning scores that range from 1 to 100. For each transportation goal, Chapter 36 specifies the criteria that must be taken into consideration when assigning scores. To calculate each major transportation project’s final score, MDOT must multiply the total combined score of each major project by a weighting factor equal to one plus the results of dividing the population in the area served by the project, as determined in regulations adopted by MDOT, by the population of Maryland.

Chapter 36 requires numerous specified reports and activities related to transportation planning throughout the State to incorporate the transportation goals and measures established. Among other things, when MDOT submits copies of the final CTP to the General Assembly, it must include the manner in which each major transportation project was evaluated and ranked pursuant to the requirements of Chapter 36.

### *Consolidated Transportation Program*

The CTP is MDOT’s six-year budget for the construction, development, and evaluation of transportation capital projects; the CTP must be revised annually to reflect updated information and changing priorities. It contains a list of current and anticipated major and minor capital projects for the fiscal year it is issued and for the next five fiscal years, including (1) an expanded description of major capital projects; (2) a detailed breakdown of the costs of a project with project expenditures to date, expected expenditures for the current fiscal year, projected annual expenditures for the next five years, and total project costs; and (3) MDOT’s estimates of the source (*i.e.*, federal funds, special funds, etc.) and amount of revenues required to fund the project. Chapter 36 also requires the CTP to include the manner in which each transportation project was evaluated and ranked, if applicable.

The Secretary of Transportation is required to present the draft CTP to elected officials by September 1 of each year and discuss it with them, while the final draft of the CTP must be submitted with the Governor's budget. The CTP must also include a report that, among other things, summarizes how each project meets the selection criteria for inclusion in the CTP, including the information required by Chapter 36.

For a major capital project to be considered for inclusion in the CTP, a request must be submitted to the Secretary by the proposing entity along with a purpose and need summary statement justifying the project and including specified information. MDOT must then evaluate the requests based on the State's goals, the availability of funding, and other criteria. If applicable, MDOT must also use the measures established by Chapter 36 to develop a score for the project. In its evaluation, MDOT must acknowledge the difference between urban and rural transportation needs.

### *Maryland Transportation Plan*

The MTP is a 20-year forecast of State transportation needs based on MDOT's anticipated financial resources during that 20-year period. It must be revised every five years through an inclusive public participation process. Furthermore, it must be expressed in terms of goals and objectives and include a summary of the types of projects and programs that are proposed to accomplish the goals and objectives, using a multimodal approach when feasible. The MTP was last updated in 2014 and does not yet contain the transportation goals established by Chapter 36.

The transportation goals established by Chapter 36 are similar to those currently contained in the MTP; the six MTP transportation goals are (1) safety and security; (2) system preservation; (3) quality of service; (4) environmental stewardship; (5) community vitality; and (6) economic prosperity.

**Background:** MDOT submitted proposed regulations that included a scoring system to the Joint Committee on Administrative, Executive, and Legislative Review (AELR) on September 20, 2016. The proposed regulations were published in the October 28, 2016 edition of the *Maryland Register*. On December 6, 2016, AELR placed a hold on the regulations, which is still in effect.

Other states have recently enacted laws that alter the transportation project proposal and prioritization process for the purposes of improving transparency and making the evaluation and selection of projects more performance based. For example, recent Virginia legislation requires its Commonwealth Transportation Board (CTB) to develop and implement a transparent prioritization process for making funding decisions for projects within Virginia's six-year transportation plan. The factors that must be taken into

consideration by CTB when making project decisions are (1) congestion mitigation; (2) safety; (3) accessibility; (4) economic development; (5) environmental quality; and (6) land use. CTB is not required to fund the highest scoring projects but is expected to be able to provide a rational basis for funding a project with a lower score over a project with a higher score. Virginia's legislation took effect in July 2015.

North Carolina has a similar scoring system that uses quantitative measures combined with local project rankings, where bonus points are given for multimodal connections. For projects of regional significance, the quantitative measures weigh more for the final tally, while for small-scale projects, local rankings weigh more for the final tally. North Carolina's system took effect in 2009 through executive order and was adopted by its Strategic Transportation Investments Law of 2013.

**State Expenditures:** MDOT advises that the implementation of Chapter 36 was delayed while it worked with AELR to finalize the regulations necessary to implement the law. Due to the uncertainty surrounding the timing and outcome of the final regulations, funds were not included in the Governor's proposed fiscal 2018 budget to implement Chapter 36. Absent the bill, and once final regulations are approved, MDOT plans to seek a budget amendment to begin implementing Chapter 36 starting in fiscal 2018.

The repeal of Chapter 36 means that MDOT is no longer required to hire the staff, acquire the contractual services, or make the programming changes necessary to implement it. A portion of the \$2.4 million estimated first-year cost included in the original fiscal and policy note for Chapter 36 (House Bill 1013 of 2016) was for contractual support to develop the scoring system. Following enactment, MDOT developed its preliminary scoring system, which was included in the proposed regulations submitted to AELR, using existing resources. The exact amount that MDOT, in the absence of the bill, would still need to spend on contractual services in the first year of implementation is estimated to be \$2.2 million; this reflects MDOT's estimate that approximately \$250,000 of the original amount was for the development of the scoring system.

Therefore, TTF expenditures decrease by \$2.2 million in fiscal 2018, which includes the cost of six additional staff, contractual services to assist in the initial evaluation of projects, and new software systems for data collection and analysis. Future year cost savings reflect salaries with annual increases and employee turnover and ongoing operating expenses.

Because it is assumed that, in the absence of the bill, MDOT would begin implementing Chapter 36 on July 1, 2017, there is no savings in fiscal 2017, despite the fact that the bill is an emergency measure and takes effect upon enactment.

## Additional Information

**Prior Introductions:** None.

**Cross File:** SB 307 (The President, *et al.*) (By Request - Administration) - Budget and Taxation.

**Information Source(s):** Baltimore, Charles, and Frederick counties; cities of Frederick and Havre de Grace; Maryland Association of Counties; Maryland Municipal League; Maryland Department of Transportation; Department of Legislative Services

**Fiscal Note History:** First Reader - February 20, 2017  
md/mcr

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Analysis by: Richard L. Duncan

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510

**ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES**

TITLE OF BILL: Repeal of the Maryland Open Transportation Investment Decision Act of 2016 (Road Kill Bill Repeal)

BILL NUMBER: SB307/HB402

PREPARED BY: Chris Carroll

**PART A. ECONOMIC IMPACT RATING**

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

**PART B. ECONOMIC IMPACT ANALYSIS**