

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 548

(Delegate Healey, *et al.*)

Environment and Transportation

Finance

Privately Owned Transportation Projects - Construction and Authorization to
 Use State-Owned Rights-of-Way and Property - Requirements

This bill prohibits a “project” from being constructed, and prohibits the State from authorizing the use of or access to a State-owned right-of-way or State property for a project, unless (1) the owner of the project has previously obtained a franchise from the Public Service Commission (PSC) to operate as a public service company or the project is approved by PSC and (2) a specified analysis of the environmental impact of the project is prepared and the rail alignment for the project is approved.

Fiscal Summary

State Effect: Special fund expenditures increase by \$435,400 in FY 2019. Future year expenditures reflect annualization. Special fund revenues increase correspondingly from assessments imposed on public service companies.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
SF Revenue	\$435,400	\$168,200	\$173,100	\$179,200	\$185,400
SF Expenditure	\$435,400	\$168,200	\$173,100	\$179,200	\$185,400
Net Effect	\$0	\$0	\$0	\$0	\$0

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

Local Effect: The bill does not directly affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: “Project” means a privately owned transportation project in the State that includes the construction of one or more tunnels with a diameter of six feet or greater that will be primarily used by a common carrier.

In addition to obtaining a franchise or PSC approval, a project may not be constructed and the State may not authorize the use of or access to a State-owned right-of-way or State property for a project unless (1) a rail alignment environmental impact statement is prepared for the project in accordance with the National Environmental Policy Act (NEPA) and the record of decision issued for the environmental impact statement (EIS) approves the rail alignment for the project or (2) an environmental effects report is prepared for the project in accordance with specified provisions of the Maryland Environmental Policy Act (MEPA) and the environmental effects report approves the rail alignment for the project.

Current Law: Generally, “public service company” means a common carrier company, electric company, gas company, sewage disposal company, telegraph company, telephone company, water company, or any combination of public service companies.

“Common carrier” means a person, public authority, or federal, State, district, or municipal transportation unit that is engaged in the public transportation of persons for hire, by land, water, air, or any combination of them. Common carrier includes (1) an airline company; (2) a car, motor vehicle, automobile, or motorbus company; (3) a power boat, vessel-boat, steamboat, or ferry company; (4) a railroad, street railroad, or sleeping car company; (5) a taxicab company; (6) a toll bridge company; (7) a transit company; and (8) a transportation network company. The definition of “common carrier” does not include a county revenue authority, a toll bridge or other facility owned and operated by a county revenue authority, a vanpool or launch service, or a for-hire water carrier, as defined under specified provisions of the Natural Resources Article.

Franchise

A public service company may not exercise a franchise *granted by law* except to the extent authorized by PCS. A public service company may not exercise a franchise unless it files with PSC (1) a certified copy of its charter and (2) a statement by its president and secretary, signed under oath, that the appropriate local authorities have provided the required consent for the exercise of the franchise. Generally, the power to grant a franchise is a legislative function, and a franchise may be granted only by the General Assembly or by a municipal corporation to which that power has been delegated.

Environmental Impact Study Process

For major transportation projects, NEPA requires a range of alternatives to be considered and the environmental impacts of each alternative to be analyzed. This type of study is required prior to the commitment of federal funds to any major project or prior to any action taken by a federal agency that might cause a significant impact on the environment. Some of the basic steps in this process include a public scoping process, data collection, analysis of policy alternatives, and preparation of draft and final documents. The process involves numerous federal, state, and local partners; can take several years; and costs millions of dollars.

NEPA is triggered when a project requires federal action, including approval of funding, joint and multiple use permits, changes in access control, and more. According to federal regulations, there are three classes of actions that have different levels of documentation required under NEPA. Class I actions require a full EIS; these include construction of new highways, fixed rail transit facilities, and other similar projects. Class II actions do not have a significant environmental effect and, therefore, do not require an EIS or environmental assessment; they include (1) actions that do not involve or lead to construction; (2) installation of noise barriers; (3) specified emergency repairs; (4) and other specified actions. Class III actions are those in which the significance of the environmental impact is not clearly established and, therefore, require the preparation of an environmental assessment, which is a less rigorous analysis than an EIS.

MEPA was established by Chapter 702 of 1973 and requires State agencies to prepare environmental effects reports for each proposed State action that significantly affects the quality of the environment. A “State action” is a request for legislative appropriations or other legislative actions that will alter the quality of the air, land, or water resources. MEPA is similar to and modeled after NEPA.

Background: For information on railroads powered by magnetic levitation propulsion systems, see the **Appendix – Background on Magnetic Levitation Systems in Maryland.**

In October 2017, the Boring Company was granted a conditional utility permit to let it begin digging a 10.3-mile tunnel beneath the State-owned portion of the Baltimore-Washington Parkway. The project is reported by the *Baltimore Sun* to be part of the initial steps needed for the establishment of an underground hyperloop system in the State. The hyperloop system is described as low-pressure, underground tubes with capsules that are transported at both low and high speeds throughout the length of the tubes to transport people and objects. The capsules are supported on a cushion of air and are accelerated using magnetic accelerators placed at various stations within the tubes.

State Fiscal Effect: Special fund expenditures for PSC increase by \$435,428 in fiscal 2019, which accounts for the bill’s October 1, 2018 effective date. This estimate reflects the cost of hiring one engineer to review projects for the construction of tunnels and one staff attorney to develop regulations, practices, and policies and to participate in the project review and approval process. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. It also includes an estimated \$300,000 for contractual consultation services in fiscal 2019 to assist with establishing the regulations and policies required to implement the bill.

Positions	2
Salaries and Fringe Benefits	\$120,960
Contractual Services	300,000
Other Operating Expenses	<u>14,468</u>
Total FY 2019 PSC Expenditures	\$435,428

Future year expenditures reflect full salaries with annual increases and employee turnover, ongoing operating expenses. Special fund revenues increase correspondingly from assessments imposed on public service companies.

Typically, major transportation projects require NEPA or MEPA impact studies. Therefore, it is assumed that any environmental impact assessments likely involve the Maryland Department of Transportation (MDOT). However, as those analyses are likely conducted even in the absence of the bill, it is assumed that MDOT can participate with existing resources. To the extent that the bill results in an increase in costs for such studies, it is assumed that MDOT recoups any costs from the owner of the project.

Additional Comment: PSC advises that if the proposed hyperloop is determined to be an interstate common carrier, the federal Surface Transportation Board and Federal Railroad Administration would have jurisdiction over determining the route and operational requirements of the project. Federal involvement would thus preempt State law requiring approval of the project by PSC. PSC further advises that if the proposed hyperloop (or other project as defined by the bill) is determined to be an interstate common carrier, PSC would not be able to capture special fund revenues directly from the owner of the project through its special assessment process. Instead, PCS would increase assessments on other public service companies.

Finally, while the bill requires the analysis of the environmental impact of a project to approve the *rail alignment*, the bill appears to apply to all privately owned transportation projects in the State that include the construction of a tunnel with a diameter of six feet or greater that will be primarily used by a common carrier. As a result, any project that meets the bill’s definition, such as a tunnel for motor vehicles, may be affected by the bill.

Additional Information

Prior Introductions: None.

Cross File: SB 1073 (Senator Pinsky) - Finance.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of General Services; Department of Labor, Licensing, and Regulation; Maryland Department of Planning; Maryland Department of Transportation; Public Service Commission; Department of Natural Resources; Montgomery and Prince George's counties; U.S. Department of Energy; Baltimore-Washington Superconducting Magnetic Levitation Project; *Baltimore Sun*; The Boring Company; Tesla; Department of Legislative Services

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Analysis by: Nathan W. McCurdy

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

Appendix – Background on Magnetic Levitation Systems in Maryland

Magnetic Levitation Trains – Generally

Unlike traditional steel wheel trains that travel along rails, magnetic levitation (Maglev) trains use superconducting magnets to levitate train cars. Magnets attached to the train interact with magnets along rails within a concrete guideway to propel the train. The [U.S. Department of Energy](#) (DOE) reports that a Maglev train can travel at speeds of up to 375 miles per hour with very little turbulence compared to steel wheel trains. DOE also notes that Maglev trains are safer than traditional trains; for example, traditional train derailments that result from cornering too quickly are nearly impossible. Several countries have implemented Maglev train systems, including Germany, Japan, and South Korea, and many others have explored the prospects of doing so.

History of Maglev in Maryland

The federal Transportation Equity Act for the 21st Century (TEA-21), which was signed into law in 1998, authorized federal funding to implement a Maglev system in the United States. Funding through TEA-21 lapsed in 2003, and although the Act did not result in the implementation of a Maglev system, several states explored the costs and benefits of doing so. Maryland was particularly interested because a Maglev system could significantly reduce the travel time between Baltimore City and the District of Columbia.

The Maryland Department of Transportation (MDOT) began to devote funding to the development and evaluation of a Maglev system in fiscal 2001. At that time, the Federal Railroad Administration (FRA) and MDOT commenced the Environmental Impact Study (EIS) for the project, which is required by the National Environmental Policy Act (NEPA).

The final EIS was never published, however, because State legislation enacted in 2003 and 2004 prohibited the funding of a Maglev project following the final report of the Task Force to Evaluate the Development and Construction of a Magnetic Levitation Transportation System. In its final report, which was issued in 2003, the task force noted that, among other challenges, a significant amount of funding would be required to implement a Maglev system in Maryland. As a result, during the 2003 session, the General Assembly prohibited spending any State funds to study, develop, or construct a Maglev system and required the enactment of legislation prior to any agreement to construct or operate such a system. During the 2004 session, these provisions were modified to prohibit any State or federal funding for any phase of a Maglev project after

July 1, 2005. The Budget Reconciliation and Financing Act of 2011, however, repealed these prohibitions.

Current Status of Maglev in Maryland

The Baltimore-Washington Superconducting Magnetic Levitation (SCMAGLEV) Project, which has been proposed by a private company, is a proposed Maglev train system between Baltimore City and the District of Columbia, with an intermediate stop at the Baltimore Washington International Thurgood Marshall Airport. In 2016, MDOT was awarded \$27.8 million by FRA to conduct the required EIS, and that analysis is currently underway. Additional information about the project can be found on the [Baltimore-Washington SCMAGLEV Project website](#).