

# HOUSE BILL 1595

M3, J1, R1

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By: **Delegates Mizeur, Kaiser, Ali, Barnes, Beidle, Bobo, Bromwell, Carr, Carter, V. Clagett, Frush, Gutierrez, Guzzone, Healey, Heller, Hixson, Holmes, Hubbard, Hucker, Ivey, Kullen, Lafferty, Montgomery, Nathan-Pulliam, Niemann, Oaks, Pena-Melnyk, Ramirez, Rice, Ross, Schuh, Schuler, Stein, Stukes, F. Turner, V. Turner, Valderrama, and Vaughn**

Introduced and read first time: March 3, 2008

Assigned to: Rules and Executive Nominations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Intercounty Connector – Public Health Impacts from Air Pollution –**  
3 **Assessment**

4 FOR the purpose of prohibiting the State and the Maryland Transportation Authority  
5 from expending certain funds for the Intercounty Connector until a certain  
6 assessment by the Maryland Department of Transportation (MDOT) and the  
7 Department of the Environment (MDE) is completed; specifying certain  
8 parameters for the assessment; requiring the Departments to create certain  
9 models and to quantify certain emissions, impacts, and risks related to certain  
10 pollutants; requiring MDOT and MDE to assess certain impacts for certain  
11 years, to conduct a certain analysis, to publish the results of the analysis, to  
12 hold public hearings and receive public comments on the analysis, and to  
13 prepare written responses to certain comments that they receive from the public  
14 in response to the analysis; requiring MDOT and MDE to submit certain reports  
15 to the Governor and to the General Assembly on or before certain dates;  
16 clarifying a certain provision; defining certain terms; and generally relating to  
17 an assessment of public health impacts from air pollution and the Intercounty  
18 Connector.

19 BY repealing and reenacting, with amendments,  
20 Article – Transportation  
21 Section 4–321  
22 Annotated Code of Maryland  
23 (2001 Replacement Volume and 2007 Supplement)

24 BY adding to

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Transportation  
Section 4–321.1  
Annotated Code of Maryland  
(2001 Replacement Volume and 2007 Supplement)

Preamble

WHEREAS, Motor vehicles are a major source of a wide array of air pollutants that, singly and cumulatively, harm public health and the environment, including ozone precursors; particles, fine particles, and ultrafine particles; dozens of toxic and carcinogenic air pollutants; carbon monoxide; carbon dioxide and other greenhouse gases; and acid precursors; and

WHEREAS, A large and growing body of scientific evidence strongly links air pollution generated by motor vehicles on highways and other heavily trafficked roads to premature mortality and to a wide array of disease impacts, including cancer, neurological damage, and increased incidence and severity of asthma, heart attack, and stroke; and

WHEREAS, Diseases caused or worsened by air pollution generally, and by highway–related air pollution specifically, take a tremendous toll on human lives, physically, emotionally, and economically; place increased burdens on Maryland’s health care system; and contribute to lost school time, work time, and productivity; and

WHEREAS, Studies link exposures to increased levels of fine particles and other air pollutants known to be emitted from cars, trucks, and other vehicles with increased visits to hospital emergency rooms; and

WHEREAS, Children, the elderly, and people with respiratory or cardiovascular disease and other conditions are especially vulnerable to traffic–related air pollution; and

WHEREAS, Recent studies show that certain traffic–related air pollutants can cross the placenta and may harm the fetus; and

WHEREAS, The Intercounty Connector (ICC), an 18.8–mile toll highway that would connect to I–370 just south of Gaithersburg to Route 1 just south of Laurel, would cut through or near dozens of residential communities, exposing tens of thousands of residents to increased concentrations of toxic and carcinogenic air pollutants; and

WHEREAS, This interstate–grade toll road would be six to eight lanes wide as it cuts through and near communities and would carry more than 100,000 cars and trucks per day on some stretches; and

WHEREAS, Scientific studies show that the impact zone for highway–related air pollution can extend to 500 meters (1,650 feet) or more, and that the closer a

1 person lives to a large roadway, the greater that person's exposure to and risk from air  
2 pollution; and

3 WHEREAS, The air in many Maryland communities, including those within  
4 and near the path of the Intercounty Connector, already is badly polluted; and

5 WHEREAS, The Washington region currently violates the federal health-based  
6 standards for two criteria of air pollutants which are major constituents of urban smog  
7 – fine particles (PM2.5) and ground-level ozone; and

8 WHEREAS, The Washington and Baltimore regions have never met the federal  
9 health-based standards for ground-level ozone, meaning that more than four million  
10 Marylanders reside in areas that fail to meet that essential standard; and

11 WHEREAS, According to the U.S. Environmental Protection Agency,  
12 Montgomery County and Prince George's County may already have some of the  
13 nation's highest concentrations of certain toxic and carcinogenic air pollutants known  
14 to be released by motor vehicles; and

15 WHEREAS, Maryland has some of the nation's highest cancer mortality rates;  
16 and

17 WHEREAS, The Intercounty Connector would pass within roughly 80 meters of  
18 the playing fields of Dr. Charles E. Drew Elementary School; and

19 WHEREAS, The Intercounty Connector also would pass close to other schools,  
20 parks, and places of worship, increasing the likelihood of chronic exposure of large  
21 numbers of individuals to dangerous air pollution; and

22 WHEREAS, According to the Maryland-National Capital Park and Planning  
23 Commission, the Intercounty Connector would pass within close proximity to roughly  
24 12,000 current homes in Montgomery County, representing roughly 30,000 residents,  
25 including the homes in Leisure World, a retirement community in Silver Spring, which  
26 has roughly 8,500 elderly residents who have an average age of more than 70 years;  
27 and

28 WHEREAS, The Intercounty Connector also would pass within 500 meters of an  
29 undetermined number of homes in Prince George's County; and

30 WHEREAS, The Intercounty Connector would pass so close to so many homes  
31 that the Maryland State Highway Administration expects to take the backyards of  
32 hundreds of families and the common areas of many homeowners associations; and

33 WHEREAS, Many residents would be exposed to the cumulative impacts of air  
34 pollution from traffic on the Intercounty Connector as well as traffic on other  
35 high-volume federal, State, and local roads and highways, including I-270, Maryland  
36 355, Shady Grove Road, Midcounty Highway, Georgia Avenue, New Hampshire  
37 Avenue, Route 29, I-95, and U.S. Route 1; and

1 WHEREAS, Construction of the Intercounty Connector would increase traffic on  
2 segments of those high-volume federal, State, and local roads and highways,  
3 especially near interchanges with the Intercounty Connector, and would also increase  
4 traffic on segments of numerous major commuter routes, including I-495, I-95, and  
5 I-270; and

6 WHEREAS, The Maryland State Highway Administration, Federal Highway  
7 Administration, and Maryland Transportation Authority found in their 2006 Final  
8 Environmental Impact Statement that the Intercounty Connector would induce 700  
9 million miles of new vehicle miles traveled per year in 2030, miles that are over and  
10 above the projected vehicle miles traveled that would occur without the Intercounty  
11 Connector; and

12 WHEREAS, The Maryland State Highway Administration, Federal Highway  
13 Administration, and Maryland Transportation Authority also estimated that the  
14 increase of roughly three-quarters of a billion miles in annual vehicle miles traveled  
15 in 2030 equals roughly a 20 percent increase in annual vehicle miles traveled on roads  
16 and highways within the ICC Study Area, which covers much of Montgomery County  
17 and part of Prince George's County, miles that are over and above the vehicle miles  
18 traveled that would occur without the ICC; and

19 WHEREAS, The Maryland State Highway Administration, Federal Highway  
20 Administration, and Maryland Transportation Authority also found that the  
21 Intercounty Connector would increase area-wide emissions of certain toxic and  
22 carcinogenic air pollutants compared to a "No Build" alternative; and

23 WHEREAS, The Maryland State Highway Administration, Federal Highway  
24 Administration, and Maryland Transportation Authority estimated in their 2006 Final  
25 Environmental Impact Statement that the ICC would induce 5,000 acres of new  
26 growth beyond the growth programmed in the master plans of Montgomery County,  
27 Prince George's County, Frederick County, Howard County, and other jurisdictions;  
28 and

29 WHEREAS, Land use experts familiar with the ICC and the region have  
30 predicted that this highway could induce even substantially more new growth –  
31 perhaps exceeding 20,000 acres of new growth – beyond the growth already  
32 programmed into the region's county master plans; and

33 WHEREAS, Most of the new, induced growth would be suburban sprawl in  
34 character, located in outlying areas and in green fields that are relatively remote from  
35 public transit and other basic services and infrastructure, and therefore likely would  
36 induce large increases in vehicle trips, vehicle miles traveled, air pollutant emissions,  
37 and human exposure to toxic air pollution; and

38 WHEREAS, The projected increase of 700 million vehicle miles traveled  
39 triggered by the ICC in 2030 excludes the large increases in vehicle trips and vehicle

1 miles traveled that would result from the thousands of acres of growth likely to be  
2 induced by the ICC; and

3 WHEREAS, The Maryland State Highway Administration, Federal Highway  
4 Administration, and Maryland Transportation Authority did not include the induced  
5 vehicle trips and vehicle miles traveled from ICC-induced growth in the air pollution  
6 studies published in the ICC Final Environmental Impact Statement, and thereby  
7 potentially underestimated the project's impacts on air pollution and public health;  
8 and

9 WHEREAS, To assess the public health risks posed by air pollution, it is  
10 important to quantify ambient air concentrations of those pollutants and likely levels  
11 of chronic and acute exposures to them, and to consider the age and health status of  
12 the people exposed; and

13 WHEREAS, The Maryland State Highway Administration, Federal Highway  
14 Administration, and Maryland Transportation Authority have never quantified the air  
15 pollutant concentrations to which people living, working, or attending school near the  
16 Intercounty Connector and other local roads would be exposed; and

17 WHEREAS, In choosing not to assess and disclose these potentially serious  
18 public impacts, the Maryland State Highway Administration, Federal Highway  
19 Administration, and Maryland Transportation Authority have denied people in the  
20 affected communities the fundamental right to know about these risks; and

21 WHEREAS, Studies by the Maryland-National Capital Park and Planning  
22 Commission in 2001 and a coalition of nonprofit organizations in 2005 show that  
23 nonhighway alternatives that exclude the Intercounty Connector and integrate  
24 improved public transit, smart growth land use strategies, and targeted road  
25 investments would reduce air pollutant emissions compared to the Intercounty  
26 Connector and would serve many communities with increased transportation choices;  
27 and

28 WHEREAS, The Maryland Department of Transportation estimated in 2004  
29 that building the Intercounty Connector would cost \$2.4 billion, not including interest  
30 on the nearly \$2 billion debt that the Department and the Maryland Transportation  
31 Authority plan to issue to finance the construction of the Intercounty Connector; and

32 WHEREAS, The interest on that nearly \$2 billion in Intercounty  
33 Connector-related debt would bring the cost of building the ICC to more than \$3  
34 billion, based on the Department's 2004 cost estimate; and

35 WHEREAS, The Federal Highway Administration estimates that highway  
36 construction costs have increased by roughly 50 percent since January 2005; and

37 WHEREAS, Federal revenues have fallen so far short of projections that the  
38 U.S. Department of Transportation has rescinded more than \$130 million from

Maryland since the beginning of fiscal year 2006, and is expected to rescind another \$70 million from Maryland in fiscal year 2008; and

WHEREAS, Spending billions of dollars to construct the ICC would undermine the State's ability to invest in transportation projects and programs that would help to reduce projected vehicle miles traveled, vehicle trips, and toxic air pollutant emissions; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

### **Article – Transportation**

4–321.

(a) In this section, “Intercounty Connector” means the east–west multimodal highway in Montgomery and Prince George’s counties between Interstate 270 and Interstate 95/U.S. Route 1, as described in the 2005 – 2010 Consolidated Transportation Plan.

(b) [The] **SUBJECT TO § 4–321.1 OF THIS SUBTITLE, THE** State and the Authority shall finance the Intercounty Connector as provided in this section.

(c) The Authority shall:

(1) Issue not more than an aggregate principal amount of \$750,000,000 in bonds secured by a pledge of future federal aid; and

(2) Issue revenue bonds under this subtitle that are not secured by a pledge of future federal aid.

(d) The Governor shall transfer from the Transportation Trust Fund to the Authority for the Intercounty Connector \$22,000,000 in fiscal 2005 and \$38,000,000 in fiscal 2006.

(e) The Governor shall transfer to the Authority for the Intercounty Connector:

(1) From the Transportation Trust Fund, at least \$30,000,000 each year for fiscal years 2007 through 2010;

(2) From the General Fund, an aggregate appropriation by fiscal year 2010 equal to \$264,913,000, with a payment of at least \$50,000,000 each year for fiscal years 2007 through 2010; and

(3) At least \$10,000,000 federal aid from any source in amounts as deemed prudent.

(f) (1) On or before December 1 of each year, in accordance with § 2-1246 of the State Government Article, the Authority shall submit a report on the status of the Intercounty Connector to the Senate Budget and Taxation Committee, the House Appropriations Committee, and the House Committee on Ways and Means.

(2) The report required under this subsection shall include:

(i) An update on the progress of the project and a comparison of the actual progress to the project schedule provided to the committees in January 2005;

(ii) The revised estimate of the total project cost of the project and a statement of the reasons for any cost savings or cost overruns, relative to the estimate of \$2,447,000,000 provided to the committees in January 2005; and

(iii) A description of any changes to the financing plan for the project, including the impact of cost savings or cost overruns, and, consistent with the intent of the General Assembly to limit the overall amount of debt used for financing the Intercounty Connector, the specific identification of sources of funds that may be applied to address any cost overruns.

**4-321.1.**

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "ICC" MEANS THE INTERCOUNTY CONNECTOR.

(3) "INTERCOUNTY CONNECTOR" HAS THE MEANING STATED IN § 4-321 OF THIS SUBTITLE.

(B) (1) THE STATE AND THE AUTHORITY MAY NOT EXPEND STATE FUNDS OR ISSUE STATE DEBT FOR THE PLANNING, DESIGN, OR CONSTRUCTION OF, OR FOR THE PURCHASING OF RIGHTS-OF-WAY FOR, THE INTERCOUNTY CONNECTOR UNTIL THE DEPARTMENT AND THE DEPARTMENT OF THE ENVIRONMENT JOINTLY HAVE FULLY ASSESSED, DISCLOSED, AND HELD PUBLIC HEARINGS ON THE DIRECT, INDIRECT, AND CUMULATIVE PUBLIC HEALTH IMPACTS OF AIR POLLUTION GENERATED BY VEHICULAR TRAFFIC ON:

(I) THE INTERCOUNTY CONNECTOR; AND

(II) OTHER FEDERAL, STATE, AND LOCAL ROADS AND HIGHWAYS WITHIN THE ICC STUDY AREA.

(2) THE CUMULATIVE ASSESSMENT REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE:

1                   (I)     THE VEHICLE EMISSIONS THAT WOULD BE GENERATED  
2 BY MOTOR VEHICLES TRAVELING ON THE INTERCOUNTY CONNECTOR;

3                   (II)    THE VEHICLE EMISSIONS GENERATED BY VEHICLES  
4 TRAVELING ON OTHER FEDERAL, STATE, AND LOCAL ROADS AND HIGHWAYS IN  
5 THE ICC STUDY AREA AND NEIGHBORING JURISDICTIONS; AND

6                   (III)   OTHER     REASONABLY     FORESEEABLE     VEHICLE  
7 EMISSIONS FROM INCREASED TRAVEL DEMAND AND DEVELOPMENT INDUCED  
8 BY THE INTERCOUNTY CONNECTOR.

9                   (3)     THE DEPARTMENT AND THE DEPARTMENT OF THE  
10 ENVIRONMENT SHALL, TO THE GREATEST EXTENT FEASIBLE, ENSURE THAT THE  
11 PROJECT-SPECIFIC ASSESSMENT REQUIRED UNDER THIS SECTION USE THE  
12 BEST AVAILABLE TOOLS AND DATA TO:

13                   (I)     ESTABLISH RELIABLE MONITORED BACKGROUND  
14 CONCENTRATIONS AND EXPOSURES IN THE RESIDENTIAL COMMUNITIES,  
15 SCHOOLS, PARKS, PLACES OF WORSHIP, AND OTHER FACILITIES THAT ARE  
16 WITHIN 1,500 METERS OF THE PROPOSED ICC ALIGNMENT, OR DEVELOP A  
17 RELIABLE BASELINE OF BACKGROUND CONCENTRATIONS AND EXPOSURES  
18 BASED ON SIMILAR ROADS AND HIGHWAYS WITH SIMILAR TRAFFIC VOLUMES;

19                   (II)    MODEL PROJECTED EMISSIONS OF AIR POLLUTION  
20 FROM MOTOR VEHICLES TRAVELING ON THE INTERCOUNTY CONNECTOR AND  
21 OTHER ROADS AND HIGHWAYS IN THE ICC STUDY AREA AND AFFECTED  
22 NEIGHBORING JURISDICTIONS;

23                   (III)   MODEL THE LIKELY DISPERSION OF AIR POLLUTION  
24 FROM MOTOR VEHICLES TRAVELING ON THE INTERCOUNTY CONNECTOR AND  
25 OTHER ROADS AND HIGHWAYS IN THE ICC STUDY AREA AND AFFECTED  
26 NEIGHBORING JURISDICTIONS;

27                   (IV)    QUANTIFY POTENTIAL EMISSIONS OF, AMBIENT AIR  
28 CONCENTRATIONS OF, EXPOSURES TO, AND RISKS FROM POLLUTANTS  
29 RESULTING FROM MOTOR VEHICLE TRIPS GENERATED BY INDUCED GROWTH  
30 AND INDUCED TRAVEL DEMAND ASSOCIATED WITH THE INTERCOUNTY  
31 CONNECTOR AND OTHER NEW OR EXPANDED ROADS IDENTIFIED IN RELEVANT  
32 MONTGOMERY COUNTY MASTER PLANS, PRINCE GEORGE'S COUNTY MASTER  
33 PLANS, OR THE METROPOLITAN WASHINGTON CONSTRAINED LONG-RANGE  
34 PLAN;

(V) QUANTIFY THE CUMULATIVE SHORT-TERM AND LONG-TERM PUBLIC IMPACTS OF EXPOSURE TO AIR POLLUTION FROM MOTOR VEHICLES TRAVELING ON THE INTERCOUNTY CONNECTOR AND OTHER ROADS AND HIGHWAYS IN THE ICC STUDY AREA AND AFFECTED NEIGHBORING JURISDICTIONS, INCLUDING:

1. THE CRITERIA POLLUTANTS, INCLUDING:

A. GROUND-LEVEL OZONE AND ITS PRECURSORS;

B. CARBON MONOXIDE; AND

C. PARTICULATES (PM10) AND FINE PARTICULATES (PM2.5); AND

2. OTHER EPA-REGULATED AIR POLLUTANTS THAT, BASED ON THE BEST AVAILABLE EVIDENCE, ARE KNOWN OR SUSPECTED TO BE TOXIC OR CARCINOGENIC, INCLUDING:

A. ULTRAFINE PARTICULATES (PM.1); AND

B. EPA-LISTED MOBILE SOURCE AIR TOXICS (MSATs);

(VI) QUANTIFY THE POTENTIAL RISKS TO AT-RISK POPULATIONS THAT WOULD RESIDE, RECREATE, OR ATTEND SCHOOL WITHIN 1,500 METERS OF THE INTERCOUNTY CONNECTOR, INCLUDING:

1. CHILDREN;

2. THE ELDERLY;

3. WOMEN OF CHILDBEARING AGE; AND

4. INDIVIDUALS WITH RESPIRATORY DISEASE, CARDIOVASCULAR DISEASE, DIABETES, OR OTHER DISEASES THAT WOULD MAKE THEM MORE SUSCEPTIBLE TO HARM FROM THE ARRAY OF AIR POLLUTANTS EMITTED BY MOTOR VEHICLES;

(VII) ASSESS THE IMPACTS DESCRIBED UNDER ITEMS (I) THROUGH (VI) OF THIS PARAGRAPH FOR:

1. THE CALENDAR YEAR 2012, THE PROJECTED FIRST YEAR OF FULL OPERATION OF THE ICC;

1                               **2. THE CALENDAR YEAR 2021, 10 YEARS AFTER THE**  
2 **IMPLEMENTATION OF MARYLAND'S CLEAN CARS STANDARDS; AND**

3                               **3. THE CALENDAR YEAR 2030, THE STUDY YEAR FOR**  
4 **THE 2006 ICC ENVIRONMENTAL IMPACT STATEMENT; AND**

5                               **(VIII) INCLUDE A ROBUST SENSITIVITY ANALYSIS TO ASSESS**  
6 **THE POTENTIAL PUBLIC HEALTH IMPACTS THAT WOULD OCCUR SHOULD**  
7 **EMISSIONS RATES OF AIR POLLUTION FROM MOTOR VEHICLES NOT DECREASE**  
8 **BY THE AMOUNTS:**

9                               **1. MANDATED UNDER FEDERAL OR STATE LAW; OR**

10                              **2. ASSUMED IN THE 2006 ICC ENVIRONMENTAL**  
11 **IMPACT STATEMENT.**

12               **(C) (1) ON COMPLETION OF THE ASSESSMENTS REQUIRED UNDER**  
13 **THIS SECTION, THE DEPARTMENT AND THE DEPARTMENT OF THE**  
14 **ENVIRONMENT JOINTLY SHALL:**

15                              **(I) PUBLISH THE RESULTS OF THE ASSESSMENTS;**

16                              **(II) ESTABLISH A REASONABLE PERIOD FOR WRITTEN**  
17 **PUBLIC COMMENT ON THE ASSESSMENTS; AND**

18                              **(III) CONVENE PUBLIC HEARINGS AND ACCEPT ORAL AND**  
19 **WRITTEN COMMENTS FROM THE PUBLIC CONCERNING THE ASSESSMENTS.**

20                              **(2) FOLLOWING THE PUBLIC HEARINGS AND A REVIEW AND**  
21 **CONSIDERATION OF THE WRITTEN COMMENTS SUBMITTED BY THE PUBLIC, THE**  
22 **DEPARTMENT AND THE DEPARTMENT OF THE ENVIRONMENT JOINTLY SHALL:**

23                              **(I) ISSUE A WRITTEN RESPONSE TO THE SUBSTANTIVE**  
24 **ISSUES SUBMITTED BY THE PUBLIC CONCERNING THE ASSESSMENTS; AND**

25                              **(II) ON OR BEFORE DECEMBER 1, 2008 SUBMIT A REPORT**  
26 **TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE**  
27 **GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.**

28               SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
29 July 1, 2008.