

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 209 (Delegate Healey, *et al.*)
Environment and Transportation

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 an environmental impact statement (EIS) is prepared in accordance with the National Environmental Policy Act (NEPA) or, if an EIS is not required under NEPA, (1) an environmental effects report is prepared in accordance with specified provisions of the Maryland Environmental Policy Act (MEPA) that is substantially similar to a report prepared in accordance with NEPA and (2) the project is approved by the Maryland Department of Transportation (MDOT).

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures may increase, potentially significantly. Revenues are not directly affected.

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.”

Nothing in the bill may be construed to preempt or conflict with any federal law or regulation.

Current Law: “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.

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 – 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.

While the bill's requirements are likely to apply to both the magnetic levitation and hyperloop systems, the bill applies 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, such as a tunnel for motor vehicles.

State Expenditures: TTF expenditures increase, potentially significantly, for MDOT to participate in or conduct environmental impact studies that are required as a result of the bill. MDOT has previously advised that if the project is entirely private, it is likely able to recover any costs incurred from the project owner. However, MDOT notes that if it is required to partner with the owner of the project, as is often the case with large transportation projects, such as the Baltimore Howard Street railroad tunnel, MDOT may be required to assist with the analysis and may not be able to recover its costs. Because the cost of participating in any specific impact study and whether or to what extent MDOT is able to recover future costs is unknown, a specific estimate of the bill's impact cannot be provided at this time.

Additional Information

Prior Introductions: HB 548 of 2018, as amended, passed the General Assembly and was vetoed by the Governor.

Cross File: None.

Information Source(s): Maryland Department of Transportation; Baltimore City; Anne Arundel and Baltimore counties; Maryland Department of the Environment; Department of Natural Resources; Department of Legislative Services

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Appendix – 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. The *Consolidated Transportation Program* for fiscal 2019 through 2024 estimates that the EIS will be completed in fiscal 2020. Additional information about the project can be found on the [Baltimore-Washington SCMAGLEV Project website](#).