

HOUSE BILL 1373

R1, P2

11r3087
CF SB 960

By: **Delegate Love**

Introduced and read first time: March 1, 2021

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Highways – Public–Private Partnerships – Cultural Preservation**

3 FOR the purpose of prohibiting the Maryland Department of Transportation from acquiring
4 a right-of-way or exercising eminent domain, and prohibiting a person from
5 acquiring a right-of-way, for certain highway projects unless the General Assembly
6 approves the development of the project in a certain manner; defining a certain term;
7 and generally relating to development of highways and cultural preservation.

8 BY repealing and reenacting, with amendments,
9 Article – State Finance and Procurement
10 Section 5A–325
11 Annotated Code of Maryland
12 (2015 Replacement Volume and 2020 Supplement)

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

15 **Article – State Finance and Procurement**

16 5A–325.

17 (a) (1) To the extent feasible, a State unit that submits a request or is
18 otherwise responsible for a capital project shall consult with the Director to determine
19 whether the project will adversely affect any property listed in or eligible for listing in the
20 Historic Register.

21 (2) The consultation shall occur:

22 (i) before the State unit submits a request for the capital project to
23 the Department of Budget and Management under § 3–602 of this article;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (ii) before or as part of the final project planning phase for a major
2 transportation capital project as defined in § 2–103.1 of the Transportation Article; or

3 (iii) as early in the planning process as possible for a capital project
4 that uses nonbudgeted money and is subject to the reporting requirements of § 3–602 of
5 this article.

6 **(3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
7 **PARAGRAPH, THE MARYLAND DEPARTMENT OF TRANSPORTATION MAY NOT**
8 **ACQUIRE A RIGHT-OF-WAY OR EXERCISE EMINENT DOMAIN, AND A PERSON MAY**
9 **NOT ACQUIRE A RIGHT-OF-WAY, FOR A HIGHWAY PROJECT SUBJECT TO A**
10 **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT UNDER TITLE 10A OF THIS ARTICLE**
11 **THAT ENCROACHES OR HAS AN ADVERSE EFFECT ON:**

12 **1. A HISTORIC AFRICAN AMERICAN CEMETERY, BURIAL**
13 **GROUND, OR CULTURAL HERITAGE SITE;**

14 **2. A PROPERTY LISTED IN OR ELIGIBLE FOR LISTING IN**
15 **THE NATIONAL REGISTER OF HISTORIC PLACES OF THE UNITED STATES**
16 **DEPARTMENT OF THE INTERIOR;**

17 **3. A PROPERTY LISTED IN THE MARYLAND INVENTORY**
18 **OF HISTORIC PROPERTIES; OR**

19 **4. A PROPERTY THAT BENEFITED FROM A GRANT FROM**
20 **THE STATE WITHIN 20 YEARS BEFORE THE ADOPTION OF THE PUBLIC-PRIVATE**
21 **PARTNERSHIP AGREEMENT UNDER TITLE 10A OF THIS ARTICLE.**

22 **(II) 1. IN THIS SUBPARAGRAPH, “DEVELOP” INCLUDES**
23 **ACQUISITION OF A RIGHT-OF-WAY OR EXERCISING EMINENT DOMAIN.**

24 **2. THE MARYLAND DEPARTMENT OF TRANSPORTATION**
25 **OR A PERSON MAY NOT DEVELOP A HIGHWAY PROJECT THAT IS SUBJECT TO A**
26 **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT UNDER TITLE 10A OF THIS ARTICLE**
27 **THAT ENCROACHES OR HAS AN ADVERSE EFFECT ON A PROPERTY IDENTIFIED**
28 **UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH UNLESS THE GENERAL ASSEMBLY**
29 **APPROVES THE DEVELOPMENT BY A MAJORITY VOTE IN EACH OF THE TWO HOUSES**
30 **OF THE GENERAL ASSEMBLY.**

31 (b) (1) State units that own or control properties may consult with the Director
32 to develop plans or interagency agreements to identify, evaluate, and manage any of those
33 properties that are listed in or eligible to be listed in the Historic Register.

34 (2) Capital projects undertaken in accordance with a plan approved by the

1 Trust or an interagency agreement are not subject to further review under this section.

2 (c) (1) This subsection applies to a capital project that:

3 (i) is not being carried out by a State unit;

4 (ii) uses the proceeds of State general obligation bonds; and

5 (iii) is not otherwise reviewed by the Trust under this section.

6 (2) Before the Board of Public Works may approve the use of bond proceeds
7 for the project, the Department of Budget and Management or another State unit
8 responsible for the project shall consult with the Director to determine whether the project
9 will adversely affect any property listed in or eligible to be listed in the Historic Register.

10 (d) (1) Within 30 days after a State unit notifies the Director of a proposed
11 capital project under this section, the Director shall determine whether the project would
12 adversely affect any property listed in or eligible to be listed in the Historic Register.

13 (2) If the Director finds that the proposed capital project would have a
14 significant adverse effect on a listed or eligible property, the Director and the State unit
15 shall consult to determine whether a practicable plan exists to avoid, mitigate, or
16 satisfactorily reduce the adverse effect.

17 (3) If the Director and the State unit cannot agree on a plan, the State unit
18 shall submit to the Council a report of the consultations and the findings and
19 recommendations of the State unit.

20 (4) Within 30 days after receiving the report, the Council shall submit to
21 the State unit comments:

22 (i) accepting the adverse effect; or

23 (ii) recommending practicable alternatives to avoid, mitigate, or
24 satisfactorily reduce the adverse effect.

25 (5) The State unit may:

26 (i) incorporate in the project the alternatives recommended by the
27 Council; or

28 (ii) disagree with the comments of the Council.

29 (6) If the State unit disagrees with the comments of the Council, the State
30 unit:

31 (i) shall respond in writing to the Council, explaining why the State

1 unit refuses to adopt the measures included in the comments of the Council; and

2 (ii) may not proceed with the project for at least 10 working days
3 after responding.

4 (e) Except for the cost of studies and surveys, a State unit may include the capital
5 costs of preservation activities required under this subtitle as eligible project costs of any
6 project undertaken or financed by the State unit.

7 (f) The Trust shall adopt regulations that establish procedures and standards for:

8 (1) administrative review and comment under this section, including time
9 frames for Trust action by the Trust or the Director on specific categories of projects;

10 (2) exempting specific projects, categories of projects, or categories of
11 programs from any requirement of this section, if the exemption is found to be consistent
12 with the purposes of this subtitle and the best interests of the State, considering the
13 magnitude of the exemption and the risk of impairing historic properties; and

14 (3) participation by State units, political subdivisions, private
15 organizations, and other entities in proceedings under this section that may affect their
16 interests.

17 (g) In accordance with regulations adopted under subsection (f) of this section,
18 this section may be applied to any undertaking that is subject to the National Historic
19 Preservation Act, 54 U.S.C. § 306108.

20 (h) Failure by a State unit to comply with this section does not create a private
21 cause of action under State law.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
23 1, 2021.