Department of Legislative Services

Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 704 (Delegate Ivey)
Environment and Transportation

Land Use – Magnetic Levitation Transportation System Siting (Maryland Stop the Maglev Act of 2021)

This emergency bill prohibits any person from constructing a magnetic levitation (Maglev) transportation system within two miles of a "protected property," as defined by the bill. Additionally, the bill prohibits a State, regional, or local governmental unit from approving a proposal for the construction, or approving the condemnation of property for the construction, of a Maglev within two miles of a protected property. Neither prohibition applies to property that is not protected property before the date a person obtains all required approvals to begin construction of a Maglev, as specified. The county council, county commissioners, or City Council of Baltimore City, as appropriate, may adopt local laws for the use of land within two miles of a Maglev that is under construction or in operation. The bill applies in all counties, including charter counties.

Fiscal Summary

State Effect: No immediate effect; however, the bill may make the proposed Baltimore-Washington Superconducting Magnetic Levitation (SCMAGLEV) Project difficult or impossible to implement, as discussed below.

Local Effect: No immediate effect, as discussed below.

Small Business Effect: No immediate effect, as discussed below.

Analysis

Bill Summary: "Protected property" means (1) a lot where a residence is located; (2) a waterfront park; (3) property owned by the federal government; (4) a national park;

or (5) a forest preserve. "Waterfront park" means a State, local, or regional park that (1) consists, in whole or in part, of coastal or riverine lands of the State; (2) is designed for the purpose of flood mitigation or resource conservation; and (3) may include an educational, entertainment, or recreational facility.

Current Law: For information on the status of Maglev transportation projects in the State, please see the **Appendix – Magnetic Levitation Transit Systems in Maryland.**

Land Use – Generally

Local governments are granted broad authority to establish planning and zoning controls for use of land in the State. Specifically, the legislative body of a local government may divide the local jurisdiction into districts and zones of any shape and area, and within those districts and zones, regulate the construction, alteration, repair, or use of buildings, structures, or land. Even so, a local government's land use rules and regulations may not preempt or supersede the regulatory authority of any unit of the State under any public general law.

Condemnation – Generally

The power to take, or condemn, private property for public use is one of the inherent powers of state government and, through the State, its political subdivisions. Courts have long held that this power, known as "eminent domain," is derived from the sovereignty of the state. Both the federal and State constitutions limit the condemnation authority. Both constitutions establish two requirements for taking property through the power of eminent domain: (1) the property taken must be for a "public use"; and (2) the party whose property is taken must receive "just compensation." In either event, the party whose property is being taken is generally entitled to a judicial proceeding prior to the taking of the property. However, the Maryland Constitution does authorize "quick-take" condemnations in limited circumstances prior to a court proceeding.

Other entities have been given express statutory authority by the State to exercise condemnation powers under specified circumstances, including the major subdivisions of the State, municipalities, and specified utilities such as gas, oil pipeline, railroad, telephone and telegraph, and water companies.

State/Local Fiscal Effect: While the bill does not directly prohibit the construction of a Maglev system in the State, it may make the proposed SCMAGLEV Project difficult or impossible to implement. Specifically, the broad definition of protected property under the bill significantly limits the area in the State where a Maglev could be located. To the extent the proposed Maglev or future Maglev projects are unable to move forward as a result of

the bill, the bill likely has direct and indirect effects on the State and affected local governments, as both would likely be involved to some extent in such a project.

Small Business Effect: While there is no immediate effect on small businesses, several types of small businesses could be affected by the bill's changes (*e.g.*, those whose properties might otherwise be condemned for such a project, those who would otherwise be involved in the construction of such a project, and those who might otherwise be affected by the siting of such a project in relation to their businesses).

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Transportation; Anne Arundel, Baltimore, and Prince George's counties; Department of Natural Resources; Maryland Department of Planning; Department of Legislative Services

Fiscal Note History: First Reader - February 4, 2021
rh/lgc

Analysis by: Richard L. Duncan

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

Appendix – Magnetic Levitation Transit 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.

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. The estimated completion date of the EIS is January 2022. Additional information about the project can be found on the Baltimore-Washington SCMAGLEV Project website.