

Department of Legislative Services  
 Maryland General Assembly  
 2021 Session

FISCAL AND POLICY NOTE  
 Third Reader - Revised

House Bill 1328  
 Economic Matters

(Delegate Feldmark)

Finance

Economic Development – Broadband Providers – Joint Trenching and Fee  
 (Building Out Broadband Act of 2021)

This bill requires the Maryland Department of Transportation (MDOT) and units of local government to allow joint trenching by broadband providers, as specified. MDOT and local governments are authorized to assess fees to certain broadband providers that participate in joint trenching; fees collected by MDOT are distributed to special funds that support broadband development. To the extent practicable, the State must appropriate federal funding for the purpose of improving broadband access and adoption. MDOT must adopt regulations to implement the bill, as specified. The bill expressly authorizes local governments to adopt policies to extend broadband access to underserved areas, contingent on the enactment of Senate Bill 66 of 2021 or House Bill 97 of 2021. The bill’s requirements and authorizations do not apply to a county or municipal corporation within the Washington Suburban Sanitary District (WSSD). **The bill takes effect July 1, 2021.**

Fiscal Summary

**State Effect:** Transportation Trust Fund (TTF) expenditures increase by \$186,000 in FY 2022 for additional staff needed to administer the bill; out-year expenditures reflect ongoing operating costs and the elimination of one-time costs. TTF expenditures and nonbudgeted expenditures by the Maryland Transportation Authority (MDTA) may increase to the extent that the bill results in project delays (not reflected below). Other special fund revenues and expenditures, specifically for broadband-related special funds, all of which are administered by the Department of Housing and Community Development (DHCD), increase as joint trenching fees are collected and disbursed, as discussed below.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
SF Revenue	-	-	-	-	-
SF Expenditure	\$186,000	\$167,700	\$172,800	\$179,000	\$185,300
Net Effect	(-)	(-)	(-)	(-)	(-)

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

**Local Effect:** Revenues and expenditures increase, correspondingly, as local governments that are not in WSSD collect and spend joint trenching fees. Local government expenditures may increase to the extent that joint trenching results in project delays, as discussed below.

**Small Business Effect:** Minimal.

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## Analysis

### Bill Summary:

#### *Joint Trenching*

“Trenching” means a construction project in which a highway right-of-way surface is opened or removed for the purpose of laying or installing conduit, fiber, or similar infrastructure in excess of one mile in length. “Trenching” does not include a project for construction or maintenance of a highway facility, including drainage or culvert work.

A unit of local government and MDOT (including the State Highway Administration (SHA), MDTA, and the Maryland Transit Administration (MTA)) must allow joint trenching by broadband providers on a nonexclusive and nondiscriminatory basis. MDOT or a unit of local government may deny joint trenching if allowing it (1) will hinder or obstruct highway safety or the construction, maintenance, operations, or related regulation of highway facilities or (2) is not feasible because it will delay the repair or construction of a county’s water, wastewater, electricity, or gas lines.

MDOT or a unit of local government may charge a fee to a broadband provider that participates in joint trenching on reasonable financial terms, but may not do so for a nonprofit broadband provider. Revenues generated from fees charged by MDOT must be evenly distributed across funds designed for investment in broadband infrastructure, and revenues generated from fees charged by a unit of local government must be used to improve broadband access and adoption within that jurisdiction.

By January 1, 2022, MDOT must, after consulting with stakeholders including broadband providers, the Maryland Association of Counties, and the Maryland Municipal League, adopt regulations to implement the bill, including procedures for charging a fee to a broadband provider for joint trenching (on reasonable financial terms) and procedures for MDOT and units of local government to provide notice of upcoming trenching projects to broadband providers.

### *Other – Contingent Local Authorization*

A county or municipal corporation may adopt, by ordinance or resolution, locally appropriate policies to advance progress of infrastructure, equipment, and systems needed to extend broadband access to underserved areas, including the waiving of certain fees and other specified actions.

This authorization is contingent on the enactment of Senate Bill 66 or House Bill 97, which (1) establish the Office of Statewide Broadband (OSB) and two new special funds (the Digital Inclusion Fund and Digital Connectivity Fund) within DHCD to support the expansion and improvement of broadband infrastructure in the State and (2) require OSB, instead of the Department of Commerce, to administer the existing RBAF.

### **Current Law:**

#### *State Highway Administration*

SHA is responsible for more than 5,200 miles or approximately 16,800 lane miles of road, 2,500 bridges, 3,500 small stream crossing structures, and 80 miles of sound/noise barriers in the State. It also has responsibility for planning, designing, constructing, and maintaining these roads and bridges to safety and performance standards while considering sociological, ecological, and economic concerns.

#### *Rural Broadband Assistance Fund and Rural Broadband Coordination Board*

Chapter 176 of 2018 made permanent Chapter 269 of 2006, which, among other things, established RBAF in Commerce (then the Department of Business and Economic Development). The purpose of the fund is to assist in the establishment of broadband communication services in rural and underserved areas of the State.

Commerce has been required to administer the fund, which consists of (1) money appropriated in the State budget to the fund; (2) money appropriated in the State budget to the Maryland Economic Development Assistance Fund for the purpose of assisting in the establishment of broadband communication services in rural and underserved areas of the State; (3) federal money allocated or granted to the fund; and (4) any other money from any source accepted for the benefit of the fund. The fund may be used only for planning, construction, and maintenance of broadband communication services and equipment in rural and underserved areas and related activities. However, the fund has not received State or federal funding since 2009.

The Rural Broadband Coordination Board must, among other responsibilities, review and approve the disbursement of funds from RBAF and any other federal, State, and private

financial resources that may be provided to assist the establishment of broadband communication services in rural and underserved areas of the State.

Senate Bill 66 was signed by the Governor as emergency legislation in April 2021 and became Chapter 74 of 2021. As a result, RBAF is now administered by OSB and DHCD.

**State Fiscal Effect:**

*Joint Trenching Administrative Costs*

The bill creates substantial new responsibilities for MDOT and particularly SHA; because SHA is responsible for maintaining thousands of miles of State right-of-way, it is the transportation agency likely to be most affected by the bill. Moreover, to ensure a successful program, SHA must work with local governments to correspond and share information with broadband providers. Due to these new responsibilities, SHA needs additional staff. Therefore, TTF expenditures increase by \$186,030 in fiscal 2022, which assumes that staff must be in place on the bill’s July 1, 2021 effective date, to respond to requests from broadband providers to conduct trenching. The estimate reflects the cost of hiring two permanent full-time program managers to work with local governments, manage the collection of fees, and generally administer the joint trenching program. This estimate assumes that the staff provide support for other transportation agencies (such as MDTA or MTA) as necessary and appropriate. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$174,540
Operating Expenses	<u>11,490</u>
<b>Total FY 2022 TTF Administrative Expenditures</b>	<b>\$186,030</b>

Future year expenditures reflect annual increases, employee turnover, and ongoing operating expenses.

*Potential Transportation Project Costs*

MDOT advises that the bill’s requirements could affect both the design and construction timelines for any project affected by joint trenching, since the bill necessitates regular and ongoing coordination between MDOT, local governments, and broadband providers regarding those projects. Any resulting delay in a project directly increases costs for the affected project; however, any such occurrence cannot be predicted and, therefore, an estimate of these potential costs is not included in this analysis.

*Department of Housing and Community Development – Special Funds*

As previously noted, Senate Bill 66 was signed by the Governor in April 2021 and became Chapter 74 of 2021, thereby requiring RBAF to be administered by OSB and DHCD and establishing two new special funds related to the improvement of broadband infrastructure in the State. Because this bill requires joint trenching fees collected by MDOT to be evenly distributed among all funds designed for investment in broadband infrastructure, special fund revenues and expenditures for DHCD increase correspondingly as joint trenching fees accrue evenly to these three special funds and are disbursed for authorized purposes. Total revenues to and expenditures from these funds depend on the size, scope, and frequency of joint trenching projects and on the fees set by MDOT and, therefore, cannot be reliably estimated at this time.

The fiscal and policy note for Senate Bill 66 estimates that three staff are needed for OSB to perform its duties; these staff are likely to be able to handle the administration of RBAF (which has a funding source under this bill) as well. Therefore, this estimate does not include any additional staff for DHCD to administer RBAF.

*Federal Funding for Improving Broadband Access*

The bill specifies that, to the extent practicable, federal funding be appropriated to improve broadband access and adoption. This analysis assumes that, should such funding be available and appropriated for that purpose, it would have otherwise been expended. Accordingly, this provision may affect the timing and purpose of federal expenditures; any such impact cannot be reliably estimated at this time.

**Local Fiscal Effect:** Local revenues and expenditures for counties and municipalities that are not in WSSD increase to the extent that local governments elect to collect and spend joint trenching fees under the bill. Additionally, local revenues for those jurisdictions may decrease minimally to the extent that local governments waive permitting fees. Any such impact depends on the fees set by each local government, how often joint trenching takes place, and whether a local government chooses to waive fees and, therefore, cannot be reliably estimated at this time.

Similar to the project delays discussed above for MDOT, the bill may result in the delay of local government projects affected by joint trenching, resulting in increased costs for those projects. Local governments can provide the necessary information to MDOT using existing budgeted resources.

## Additional Information

**Prior Introductions:** None.

**Designated Cross File:** SB 824 (Senator Hester, *et al.*) (Chair, Joint Cybersecurity, Information Technology, and Biotechnology Committee) - Finance.

**Information Source(s):** Department of Information Technology; Department of Commerce; Maryland Department of Transportation; Carroll, Harford, Montgomery, and St. Mary's counties; towns of Bel Air and Leonardtown; Department of Legislative Services

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