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FISCAL AND POLICY NOTE
First Reader

Senate Bill 681 (Senators Lam and Gile)
 Finance and Budget and Taxation

Major Highway Capacity Expansion Projects - Impact Assessments and Mitigation Plans (Transportation and Climate Alignment Act of 2024)

This bill requires the Maryland Department of Transportation (MDOT) or a Metropolitan Planning Organization (MPO) to conduct an impact assessment for a “major highway capacity expansion project” before the project may be considered for inclusion in the Statewide Transportation Improvement Program (STIP) or the *Consolidated Transportation Program* (CTP). The bill establishes related requirements for MDOT, MPOs, and the Maryland Department of the Environment (MDE). Projects that do not meet specified requirements must be altered or halted or a specified mitigation plan must be developed, approved, and implemented. MDOT is authorized to restrict and redirect funding to MPOs if a mitigation plan does not meet the bill’s requirements after being resubmitted to address issues raised by MDOT. MDOT may adopt implementing regulations. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures increase by \$500,000 in FY 2025; TTF and nonbudgeted expenditures each increase by an estimated \$50,000 annually thereafter. General fund expenditures for MDE increase by \$120,000 in FY 2025 only. TTF and nonbudgeted expenditures and revenues may otherwise be significantly affected depending on how major highway capacity expansion projects are affected by the bill, as discussed below; any such impact is not shown in the table below.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	120,000	0	0	0	0
SF Expenditure	500,000	50,000	50,000	50,000	50,000
NonBud Exp.	0	50,000	50,000	50,000	50,000
Net Effect	(\$620,000)	(\$100,000)	(\$100,000)	(\$100,000)	(\$100,000)

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

Local Effect: Local government revenues and expenditures related to transportation projects undertaken by an MPO may be significantly affected, as discussed below.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Impact Assessments – Applicability

MDOT must perform an impact assessment for a major highway capacity expansion project before the project may be considered for inclusion in the STIP or CTP. An MPO must perform an impact assessment for a major highway capacity expansion project before the project may be considered for inclusion in an MPO Transportation Improvement Program (TIP). An MPO must also submit any such impact assessment to MDOT for review and approval.

“Major highway capacity expansion project” means a major capital project (1) whose total cost for all phases exceeds \$10.0 million and (2) that increases highway capacity, improves highway capacity in a specified manner, or includes grade separation at an intersection. It does not include:

- projects in the Maryland Aviation Administration or the Maryland Port Administration;
- maintenance and storage facilities projects;
- water quality improvement projects;
- projects related to Maryland’s priorities for total maximum daily load development;
- projects that are solely for system preservation; or
- the construction or reconstruction of (1) a highway exit ramp that is less than 2,500 feet long; (2) a bike lane; or (3) a dedicated bus lane.

The bill’s requirements do not apply to a major highway capacity expansion project (1) that was, before July 1, 2024, submitted for approval for inclusion in, or funded for construction under, the CTP, the STIP, or a TIP or (2) for which an assessment comparable to the impact assessment required by the bill was performed.

Impact Assessments – Requirements and Specifications

MDOT must establish a process for performing major highway capacity expansion project impact assessments required by the bill. An impact assessment must include an analysis and estimates of a major highway capacity expansion project's (1) quantitative net change in greenhouse gas (GHG) emissions and vehicle miles traveled (VMT), as specified, and (2) impact on GHG emissions and VMT caused by any induced demand created by the project. The analyses and estimates must be determined using the best available data and modeling tools, as specified.

MDOT must use the information collected in an impact assessment to determine whether a major highway capacity expansion project meets the following requirements:

- the project will not increase GHG emissions;
- the project will not increase VMT;
- the project conforms with the State's GHG emissions reduction targets under specified provisions of the Environment Article; and
- the project conforms with the VMT reduction targets specified in the 2024 Annual Attainment Report on Transportation System Performance.

If MDOT determines that a project does not satisfy each of those requirements, MDOT, or the MPO that conducted the impact assessment, must (1) alter the scope or design of the project; (2) develop a mitigation plan (discussed in more detail below); and (3) halt project development and omit the project from the relevant capital funding program. MDOT or an MPO must perform subsequent impact assessments on a project altered in accordance with these provisions until MDOT determines that the project satisfies each of the requirements specified above.

Mitigation Plans

If MDOT determines through an impact assessment that a major highway capacity expansion project will result in a net increase in GHG emissions or VMT and the project is not going to be altered or halted, MDOT or an MPO must develop and implement a mitigation plan to eliminate the net increase in GHG emissions or VMT. MDE must develop a methodology for MDOT to determine if a mitigation plan is sufficient for reducing GHG emissions.

A mitigation plan must include one or more of the following mitigation actions:

- transit expansion and service improvements, as specified;

- active transportation infrastructure improvements, including protected bicycle lanes or pathways;
- shared services for manual or electric low speed vehicles, including electric bicycles and scooters;
- transportation demand management, as specified;
- parking management, as specified;
- land use improvements, as specified; and
- infrastructure improvements related to pedestrians or traffic operations, as specified.

The benefits provided by a mitigation action must focus on specified areas and be prioritized in a specified manner.

A mitigation action may be incorporated in the mitigation plan for a project if (1) the necessary funding sources are identified and sufficient amounts are committed; (2) the mitigation action is focused on areas in accordance with the above requirement regarding the benefits provided by a mitigation action; and (3) procedures are established to ensure that the mitigation action conforms with the requirements discussed above.

An MPO must submit a mitigation plan to MDOT for review and approval. MDOT must approve a mitigation plan if it determines that the plan complies with the bill's requirements.

If MDOT does not approve a mitigation plan submitted by an MPO, the MPO must address any issues raised by MDOT and resubmit the plan for approval. If the resubmitted plan still does not conform to the bill's requirements, MDOT may restrict and redirect any funding that would have been allocated to the MPO.

Publishing of Certain Information Required

MDOT or an MPO must publish on its website, for each impact assessment performed, (1) a summary of the major highway capacity expansion project and an overview of the impact assessment, including specified data and information, and (2) the induced demand traffic model and methodology used to assess a project's impact on GHG emissions and VMT.

Current Law:

Consolidated Transportation Program and Maryland Transportation Plan

Long-term transportation planning in the State is a collaborative process designed to consider input from the public, local jurisdictions, MPOs, and elected officials. Among the

numerous reports, meetings, and discussions that take place, two important documents are developed to guide transportation planning in the State: the [CTP](#) and the [Maryland Transportation Plan \(MTP\)](#).

The CTP, which is issued annually to the General Assembly, local elected officials, and interested citizens, provides a description of projects proposed by MDOT for development and evaluation or construction over the next six-year period. The MTP is a 20-year forecast of State transportation needs based on MDOT's anticipated financial resources during that 20-year period. It must be revised every five years through an inclusive public participation process. Furthermore, it must be expressed in terms of goals and objectives and include a summary of the types of projects and programs that are proposed to accomplish the goals and objectives, using a multimodal approach when feasible.

Metropolitan Planning Organizations

Federal regulations require that each urbanized area, as a condition of the receipt of federal capital or operating assistance, have a continuing, cooperative, and comprehensive transportation planning process carried out by an MPO in cooperation with the state that results in plans and programs consistent with the development of the urbanized area. Although the [federal regulations](#) have yet to be updated, the U.S. Census Bureau [no longer distinguishes](#) between urbanized areas of 50,000 or more people and urban clusters of less than 50,000 people. Instead, the bureau defines an [urban area](#) as a geographic location with at least 2,000 housing units or a population of at least 5,000.

Nevertheless, the federal regulations further specify that each MPO must consist of (1) local elected officials; (2) officials of public agencies that administer or operate major modes of transportation in the metropolitan area; and (3) appropriate state officials. An MPO designation remains in effect until otherwise redesignated. An MPO may be redesignated by an agreement between the Governor and units of local government that together represent 75% of the existing planning area population.

The federal regulations also require each state to develop a STIP for all areas of the state that covers a period of at least four years. The STIP must be updated at least every four years, be developed in cooperation with the state's MPOs, and include TIPs from each of the urbanized areas represented by those MPOs. The STIP must include capital and noncapital surface transportation projects (or phases of projects) within boundaries of the state proposed for federal funding and may include other specified projects, such as safety projects and emergency relief projects. Specified information about each project, such as the estimated total project cost and amount of federal funds proposed to be obligated for the project, must also be included.

The State's current [STIP](#) covers fiscal 2022 through 2025 and includes TIPs from each of the State's seven MPOs, which are listed below:

- Baltimore Regional Transportation Board;
- Calvert – St. Mary's Metropolitan Planning Organization;
- Cumberland Metropolitan Planning Organization;
- Hagerstown-Eastern Panhandle Metropolitan Planning Organization;
- National Capital Region Transportation Planning Board;
- Salisbury/Wicomico Area Metropolitan Planning Organization; and
- Wilmington Metropolitan Planning and Coordinating Council.

A visualization of the urbanized areas covered by these MPOs can be found [here](#).

Greenhouse Gas Emissions Reduction Targets

Chapter 38 of 2022 (the Climate Solutions Now Act) made broad changes to the State's approach to reducing statewide GHG emissions and addressing climate change. Among other things, the Act accelerated previous statewide GHG emissions reductions targets originally established under the Greenhouse Gas Emissions Reduction Act by requiring the State to develop plans, adopt regulations, and implement programs to (1) reduce GHG emissions by 60% from 2006 levels by 2031 and (2) achieve net-zero statewide GHG emissions by 2045.

In December 2023, MDE published [Maryland's Climate Pollution Reduction Plan](#), which was developed to implement Chapter 38. [MDOT's Climate Action Status Report](#), also released in December 2023, includes MDOT's mission, goals, strategies, and activities to reduce GHG emissions and VMT in the State.

State Fiscal Effect: The implementation of the bill results in (1) known costs – for MDOT to develop the assessment tool, for MDE to develop the mitigation plan methodology, and for the completion of impact assessments when necessary and (2) unknown fiscal effects – related to the bill's impact on future major capital highway capacity expansion projects, which cannot be estimated or predicted in advance.

While known costs (multiple funds) total \$620,000 in fiscal 2025 and are estimated to total \$100,000 annually thereafter, the bill may also (1) significantly increase project costs for MDOT or the Maryland Transportation Authority (MDTA) by tens or hundreds of millions of dollars if the affected agency is required to alter projects and/or implement any mitigation plans and/or (2) result in the cancellation of highway projects and the likely redirection of funding to other projects. More detailed information about the bill's potential effect on State finances and the State's transportation system is discussed below.

Although unclear, this analysis assumes that the bill requires impact assessments and mitigation plans for projects undertaken by both MDOT and MDTA due to the broad definition of major highway capacity expansion projects. Additionally, MDOT has previously advised that MPOs receive limited planning from a combination of federal agencies, the State, and local governments to meet federal requirements and generally do not have the staff or resources necessary to complete large-scale analyses. Thus, for purposes of this analysis, it is assumed that MDOT undertakes any impact assessments required for an MPO. Mitigation plan implementation by an MPO could be the responsibility of the State (for State projects included in the STIP) or local governments (for local projects included in a TIP or the STIP).

Development of the Impact Assessment Tool and Mitigation Methodology

TTF expenditures increase by \$500,000 in fiscal 2025 for MDOT to engage its expert consultants to develop an impact assessment tool that meets the bill's requirements and can accurately predict and measure GHG emissions and VMT. MDOT advises that, once complete, it plans to use the tool to evaluate its own major capital highway capacity expansion projects and to allow MDTA to use the tool to evaluate its major capital highway capacity expansion projects. As noted above, this analysis assumes that MDOT also uses the tool to conduct impact assessments on behalf of MPOs when necessary.

General fund expenditures for MDE increase by \$120,000 in fiscal 2025 for MDE to engage an expert consultant to assist in the development of the mitigation plan methodology, as required by the bill.

Assessment Costs

The number of assessments required under the bill depends on the types and scope of future projects that are not yet included in the CTP, STIP, or a TIP (because the bill does not apply to projects that are, before the bill's July 1, 2024 effective date, submitted for approval for inclusion in, or funded for construction under the STIP, a TIP, or the CTP), which are unknown. However, for purposes of this analysis, it is assumed that MDOT and MDTA each perform one assessment annually. MDOT plans to continue to engage the consultant that develops the impact assessment tool to complete any future assessments, and each assessment is estimated to cost \$50,000. Accordingly, TTF and nonbudgeted expenditures are each assumed to increase by \$50,000 annually beginning in fiscal 2026 to perform assessments.

Effects on Projects and Associated Fiscal Effects

Depending on the structure and implementation of any future highway capacity expansion projects proposed for inclusion in the CTP, STIP or a TIP, State revenues and expenditures are likely to be significantly affected.

If an impact assessment requires MDOT, MDTA, or an MPO to alter a project to meet the bill's requirements or to develop and implement a mitigation plan, project costs could increase significantly. MDOT advises that, utilizing the State Highway Induced Frequency of Travel Calculator developed by Rocky Mountain Institute, if a highway expansion project were to add 20 lane miles in the Baltimore Statistical Area, the expected VMT growth would be 116 million to 173 million VMT annually. Mitigation efforts to counteract this increase in VMT could total hundreds of millions or even billions of dollars depending on the strategies employed by MDOT.

Alternatively, a project could instead be canceled. The cancellation of a project could affect overall TTF and/or nonbudgeted expenditures (as well as nonbudgeted revenues for MDTA) depending on the extent to which funding is redirected to other projects and the costs of (and any revenues resulting from) those projects. It could also affect federal fund revenues (and associated expenditures).

Local Fiscal Effect: Local government major capital highway capacity expansion projects proposed for inclusion in a TIP or the STIP may be significantly affected by the bill. Similar to the effect discussed above for MDOT, MDTA, and MPOs, costs could increase as projects are altered or mitigation plans are developed and implemented or projects could be canceled, with funding potentially redirected to other projects.

Small Business Effect: Small businesses that work in the State's transportation industry could be significantly affected by bill. For example, small businesses involved in road construction could lose business to the extent the bill results in the cancellation of any highway projects, while other businesses could benefit from any funding redirected to other projects. Small businesses involved in environmental consulting and/or engineering could experience an increase in business to the extent the bill results in the implementation of mitigation plans to counteract GHG emissions and VMT.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 836 (Delegate Edelson, *et al.*) - Appropriations and Environment and Transportation.

Information Source(s): Maryland Department of Transportation; Maryland Department of the Environment; Maryland Association of Counties; Maryland Municipal League; Harford and Montgomery counties; City of Frostburg; Federal Highway Administration; U.S. Census Bureau; Department of Legislative Services

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