Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 258 (Senator Attar)
Judicial Proceedings

Real Property - Dedication - Roads

This bill establishes circumstances under which a private road is considered to be offered for dedication to public use and accepted.

Fiscal Summary

State Effect: Potential significant impact on Transportation Trust Fund (TTF) expenditures to the extent the bill (1) requires the State Highway Administration (SHA) to reconstruct and maintain private roads to meet State standards and (2) increases liability exposure, as discussed below. Revenues are not directly affected.

Local Effect: Potential significant increase in local government expenditures to the extent the bill (1) requires local governments to maintain private roads to meet local government standards and (2) increases liability exposure, as discussed below. Local highway user revenues may potentially be affected, as discussed below. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill establishes that if a private road has been open to public travel for 20 years or more, the road must be considered offered for dedication to public use. If the State, county, or municipality provides maintenance of and repair to the private road in the same manner as a public road before or following the offer, an offer for dedication to public use must be considered accepted.

A governing body of a county or municipality may not enact or enforce a local law, ordinance, or regulation that conflicts with the provisions of the bill, and the provisions of the bill may not be interpreted as limiting or prohibiting any alternative method of offer or acceptance of dedication of private land to public use available under law.

Current Law: The Supreme Court of Maryland, in *Bd. of Cnty. Comm'rs v. Aiken*, indicated that a public road is established over real property by (1) public authority; (2) dedication; or (3) prescriptive easement. 483 Md. 590, 624 (2023).

Statute specifies that a public authority (State or local) may acquire real property, including a private road, through a condemnation proceeding. Dedication and prescriptive easement as ways of establishing a private road for public use have been recognized by Maryland courts based on the common law. Local codes vary regarding the specific requirements for dedication of a private road for public use.

Public Authority – Condemnation Proceedings

Eminent Domain – 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; however, there are limits. 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," which may not be less than the fair market value of the real property. In either event, the party whose property is being taken is generally entitled to a judicial proceeding prior to the taking of the property.

State Highway Administration – Condemnation Proceedings: SHA, within the Maryland Department of Transportation (MDOT), has the general power to acquire for the State, by condemnation under Title 12 of the Real Property Article, or by other specified means, any private property for any public purpose it considers necessary or desirable to perform its duties or for any other purpose authorized under Title 8 of the Transportation Article.

Dedication

In General: Maryland recognizes the common law dedication of a private road for public use. Offer and acceptance are required for a dedication to be complete.

Offer: According to the court in *Aiken*, the landowner's offer to dedicate a road for public use must be voluntary, unambiguous, and clearly manifested from declarations and acts. In many cases, the offer is expressed through the act of the landowner recording a plat to dedicate certain types of land to public use, such as roads and parks, which then must be accepted by the State or local government to complete the dedication (methods of acceptance specified below). For example, § 13-2-203 of the Anne Arundel County Code specifies that a private road may be dedicated for public use by the filing of a petition by the owner requesting that the county accept the road into the county road system. The county may accept if certain conditions are met, including that the road meets all applicable legal, design, and construction standards.

However, in *Wilkinson v. Bd. of Cnty. Comm'rs*, the Appellate Court of Maryland indicated that "pursuant to an applicable statute, the recording of a subdivision plat may constitute both an offer and acceptance of the roads or streets depicted on the plat." The court cited prior cases that held, pursuant to local codes, the approval and recording of a subdivision plat was *both* an offer and acceptance completing the dedication of a street for public use. 255 Md. App. 213, 252 (2022).

In addition to an explicit offer of dedication, in Allegany County, for example, an implied offer may be made whenever any road has been in public use for 20 years (even if the road has not been condemned or dedicated as a public highway). The county commissioners may declare (accept) the road to be a public highway (with public notice, as specified) if the road is at least 40 feet in width. Once declared to be a public road, the county must keep the road in good order and repair as other public roads. (See § 461-5 of the Allegany County Code)

Acceptance: The court in *Aiken* specified that an acceptance to an offer to dedicate a private road for public use may be made by (1) deed or other record; (2) acts *in pais* (informal acts outside of the legal process), such as opening, grading, or keeping the road in repair at the public expense; (3) the general public's "long continued use" of the land; and (4) express statutory provision or other similar official action. The court noted that acceptance may be either express through a recorded document (as stated above), or implied "by the appropriate entity assuming control and maintenance of the property offered." (Quoting *City of Annapolis v. Waterman* 357 Md. 484, 504 (2000); 483 Md. 590, 626-628 (2023).

Prescriptive Easement

Prescriptive easement (a right to use or control land owned by another person) was not relevant to the *Aiken* case; however, the court cited prior cases establishing that a public road by prescriptive easement requires evidence of "adverse, exclusive, and uninterrupted use of another's real property for twenty years." 483 Md. 590, 625 n.10 (2023).

As stated above, the long, continued use of land or a road by the general public is considered acceptance of an offer to dedicate a private road for public use.

Similarly, the Court of Appeals (now the Supreme Court of Maryland), in *Mt. Sinai Nursing Home, Inc. v. Pleasant Manor Corp*., held that uninterrupted use of a road by the general public for twenty years vests title by prescription as a public easement. 254 Md. 1, 6-7 (1969)

State Highway Administration – Road Standards

SHA has the responsibility for planning, designing, constructing, and maintaining State roads and bridges to safety and performance standards while considering sociological, ecological, and economic concerns. SHA must construct, reconstruct, and repair State highways as necessary to maintain them in good condition. SHA maintains a Book of Standards for Highway & Incidental Structures that establishes structural and maintenance standards, including paving, for State roads.

State Expenditures: Potential significant impact on TTF expenditures to the extent the bill requires SHA to reconstruct and maintain private roads to meet State standards, including the cost of any environmental impacts that require mitigation, as well as increased exposure to liability.

Reconstruction and Maintenance of Private Roads

Because MDOT's capital program is fully subscribed, to account for any increased reconstruction or maintenance costs under the bill, SHA must either redirect capital funding from other projects to upgrade and maintain private roads or reduce the amount of State highways or lane miles rehabilitated each year.

MDOT indicates that private roads are typically not built to SHA's standard widths, and pavement and drainage standards. According to SHA, the depth of pavement required for a State highway (necessary for trucks and longevity) may require reconstruction of a private road. For context, SHA estimates that the costs of pavement reconstruction (at 1 foot depth) may exceed $1 million per lane mile for a two-lane residential highway; or if the road is only resurfaced, an estimated cost of $310,000 per lane mile.

According to MDOT, SHA's responsibility for a private road may also incur maintenance costs. SHA's average routine maintenance costs are $11,700 per year per lane mile. MDOT also advises that costs associated with repairs to private roads may delay eligibility for funding provided by the Federal Highway Administration.

The magnitude of costs, if any, cannot be reliably estimated without experience under the bill; however, MDOT advises that under one potential scenario of 10 private roads (1 mile each) becoming SHA's responsibility per year, associated costs could exceed $10.6 million on an annual basis. Over 90% of the costs are associated with pavement reconstruction.

Other Impacts

TTF expenditures may increase to the extent that the State faces additional exposure to liability based on the acquisition of private roads under the bill; however, any potential impact cannot be reliably estimated in advance.

Local Revenues: The amount of the capital grants (local highway user revenues) that MDOT must annually provide to local governments from the Gasoline and Motor Vehicle Revenue Account is based on a statutory formula based on road mileage and motor vehicle registration. To the extent the bill requires local governments to increase mileage (private roads) under their jurisdiction, a reallocation of local highway user revenues among local jurisdictions may occur. Local governments that increase road mileage by acquiring private roads under the bill will receive a greater share of the highway user revenues at the expense of other local governments through a reallocation of the total amount of capital grants available.

Local Expenditures: Potential significant increase in local government expenditures to the extent the bill (1) requires local governments to maintain private roads to meet local government standards and (2) increases liability exposure.

The Maryland Municipal League (MML) advises that upgrading a private road to local government public use standards requires significant expenditures, such as those associated with maintaining a level road surface, trimming trees, and appropriate signage and traffic controls. Prince George's County indicates that the bill may have a significant fiscal impact, because the county in most cases does not have prior rights where utilities are installed on a private road that may lead to costly relocations if certain maintenance and repairs are required.

MML further advises that municipalities may experience increased liability exposure and potential tort claims under the bill. A private road is typically not maintained at the same level as a county or municipal road. Thus, the road may have a pothole or other defects creating pedestrian or vehicular hazards increasing liability exposure for accidents and injuries. The Maryland Association of Counties also expressed concerns regarding liability and uncertainty over when the county would have to assume responsibility for the private road.

Small Business Effect: Small businesses that engage in the construction, maintenance, and repair of roads may benefit from an increased demand for contractual services by the State or local governments as a result of the bill.

Additional Information

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

Designated Cross File: HB 335 (Delegate Rosenberg, *et al.*) - Economic Matters.

Information Source(s): Baltimore City; Prince George's County; Maryland Association of Counties; City of Frederick; Maryland Municipal League; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland Department of Planning; Maryland Department of Transportation; Department of Legislative Services

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