



Agenda Item 1
March 4, 2019

OFFICE OF INTERGOVERNMENTAL RELATIONS

Marc Elrich
County Executive

Melanie Wenger
Director

February 28, 2019

MEMORANDUM

TO: Montgomery County Council

FROM: Melanie L. Wenger, Director ^{MLW}
Office of Intergovernmental Relations

SUBJECT: Discussion: State Legislation

PURPOSE: Receive information; provide input on State bills – Council votes may be required

STATE LEGISLATION – POSITIONS NEEDED

1. **HB 1118 – Use of Public Funds – Playground and Athletic Field Surfaces – Authorizations, Preferences, and Prohibitions**
2. **SB 787/HB 1281 – Transportation – Bikeways Network Program – Funding**
3. **SB 574/HB 1161 – Maryland Small Business Innovation Research and Technology Transfer Incentive Program**
4. **SB 898/HB 983 – Public Safety – Investigation of an Officer-Involved Death (Law Enforcement Trust and Transparency Act)**
5. **SB 917/HB 1045 – Land Use – Comprehensive Plans – Housing Element**

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Additional information:

Link to the Montgomery County Office of Intergovernmental website:
<https://www.montgomerycountymd.gov/oir/>.

Link to the Maryland General Assembly website:
<http://mgaleg.maryland.gov/webmga/frmlst.aspx?tab=home>.

Link to the Montgomery County Delegation website which allows you to access the text of all local and bi-county bills: <http://www.montgomerycountydelegation.com/legislation.html>.

Link to the Montgomery County Association of Counties (MACo) website:
<https://www.mdcounties.org/>.

TO: Councilmembers

FROM: Amanda Mihill, Legislative Attorney

STATEWIDE BILLS					
Bill	Description	Agency Position	Executive Position	Council Staff Comments/Recommendation	Council Position
<p>HB 1118 – Use of Public Funds – Playground and Athletic Field Surfaces – Authorizations, Preferences, and Prohibitions (Levchencko/Howard)</p> <p>See page 6 for full description</p>	<p>House Bill 1118 requires State and local units of government responsible for the construction of playgrounds and athletic fields to give consideration and preference to “the use of state-of-the-art natural surfaces materials” to the maximum extent practicable if the project is to be paid for with public funds. The bill also prohibits State funds from being used to finance any portion of a project to build or replace a playground or athletic field with a synthetic surface.</p>	<p>MCPS: Support with an amendment to allow synthetic surfaces for playgrounds for students with accessibility needs.</p>		<p>The legislation would preclude MCPS from seeking State dollars for the construction of artificial turf fields. The language is pretty clear in the bill: (C) (1) STATE FUNDS MAY NOT BE USED TO FINANCE ANY PORTION OF A PROJECT TO BUILD A NEW OR REPLACE AN EXISTING PLAYGROUND OR ATHLETIC FIELD WITH A SYNTHETIC SURFACE. Yes, MCPS could still build turf fields. However, if MCPS is building a turf field as part of a rev/ex project and that rev/ex project goes to the State for a school construction dollar request, the turf field cost would not be an eligible cost. Maybe MCPS is not getting any State money for its new turf fields now either. However, if athletic fields are currently an eligible cost under the State school construction program, then the turf fields should be eligible too. One way to address this issue would be to amend the bill to make clear the State funding in the bill relates only to Program Open Space dollars. Council staff recommends that the Council oppose HB 1118.</p>	

Bill	Description	Agency Position	Executive Position	Council Staff Comments/Recommendation	Council Position
<p>SB 787/HB 1281 – Transportation – Bikeways Network Program – Funding (Orlin)</p> <p>See page 6 for full description</p>	<p>The bill establishes in State statute a Bikeways Network Program in the Maryland Department of Transportation.</p>	<p>MACo: No position</p>		<p>Council staff recommends the Council support SB 787/HB 1281.</p>	
<p>SB 574/HB 1161 – Maryland Small Business Innovation Research and Technology Transfer Incentive Program (Smith)</p> <p>See page 6 for full description</p>	<p>This bill establishes the Maryland Small Business Innovation Research and Technology Transfer Incentive Program and Matching Fund administered by the Dept. of Commerce. Subject to specified conditions, an eligible small business may apply for a matching grant equal to 25% of an award, up to \$25,000 for a Phase I award and up to \$75,000 for a Phase II award.</p>	<p>MACo: No position</p>		<p>Council staff recommends the Council support SB 574/HB 1161.</p>	

<p>SB 898/HB 983 – Public Safety – Investigation of an Officer-Involved Death (Law Enforcement Trust and Transparency Act) (Farag/Drummer)</p> <p>See page 7 for full description</p>	<p>This bill requires a law enforcement agency to develop and implement a written policy requiring the investigation of each death involving a law enforcement officer (“officer-involved death”). The policy must require that an investigation be performed by at least two independent law enforcement investigators employed by a different law enforcement agency who have experience conducting complex criminal investigations.</p>	<p>MACo: No position</p>		<p>Council staff has several concerns with these bills:</p> <p>1) The bill covers not just county entities, but college and city law enforcement agencies as well. It may also make it more difficult for the County to get a specific outside LEA to investigate ours. Will we be able to find an LEA with sufficient expertise and staff?</p> <p>2) The bill requires investigators to have experience in complex criminal investigations. County investigators are all homicide detectives, and they have additional use of force training/experience. The bill does not require that level of expertise.</p> <p>3) There are potentially significant expenses, both for the investigative LEA as well as MCPD.</p> <p>Council staff recommends that the Council oppose SB 898/HB 983 unless these concerns are addressed. One potential amendment is to require the State Police to do the investigation.</p>	
<p>SB 917/HB 1045 – Land Use – Comprehensive Plans – Housing Element (Dunn/McMillan)</p> <p>See page 8 for full description</p>	<p>This bill requires the inclusion of a “housing element” in any comprehensive plan. The housing element must include a plan to address: (1) the need for affordable housing within the local jurisdiction, including low- and moderate-income housing; and (2) if applicable, the impacts of gentrification.</p>	<p>MACo: Oppose</p>		<p>Council staff recommends the Council support SB 917/HB 1045 with an amendment to remove the specific requirement for affordable housing or gentrification. A jurisdiction should be able to approve its own housing element. Additionally, it is unclear who would decide if the County had complied with these requirements? If included, the terms need to be defined.</p>	

Bill Summaries

1. **HB 1118 – Use of Public Funds – Playground and Athletic Field Surfaces – Authorizations, Preferences, and Prohibitions**

(Delegates Solomon, Acevero, Barron, Carr, Charkoudian, Cullison, Fraser-Hidalgo, Kelly, Korman, Krimm, Lehman, Lierman, Lopez, Love, Luedtke, Moon, Qi, Queen, Shetty, Stewart, Wilkins, and K. Young)

House Bill 1118 requires State and local units of government responsible for the construction of playgrounds and athletic fields to give consideration and preference to “the use of state-of-the-art natural surfaces materials” to the maximum extent practicable if the project is to be paid for with public funds. The bill also prohibits State funds from being used to finance any portion of a project to build or replace a playground or athletic field with a synthetic surface. Synthetic surface is defined as “(i) artificial turf; and (ii) any ground cover made from plastic, rubber or tires.”

This bill also allows the State’s share of Program Open Space (POS) capital improvement funds to be used for the maintenance and upkeep of grass athletic fields and drainage systems for grass athletic fields on land owned by the State. It allows a subdivision, as part of its local annual POS program, to request funds for the maintenance and upkeep of any grass athletic fields and drainage systems over the course of the project’s lifetime.

2. **SB 787/HB 1281 – Transportation – Bikeways Network Program – Funding**

(Senators Rosapepe, Guzzone, and Peters; Delegate Lierman)

The bill establishes in State statute a Bikeways Network Program in the Maryland Department of Transportation. It also mandates State appropriations to underwrite the costs of administering the Program and awarding grants from the Program. Funding is phased in so that by fiscal 2025 the State budget will include at least \$7.7 million for this purpose. The proposal also requires that \$100,000 of each annual appropriation be allocated to the Maryland Municipal League and the Maryland Association of Counties to help local jurisdictions apply for grants from the Program.

3. **SB 574/HB 1161 – Maryland Small Business Innovation Research and Technology Transfer Incentive Program**

(Senator Feldman; Delegates Qi, Acevero, Bromwell, Brooks, Cain, Carey, Carr, Corderman, Crosby, D.E. Davis, Dumais, Fennell, Fraser-Hidalgo, Healey, Hill, Hornberger, Jalisi, Kelly, Kerr, Kittleman, Korman, R. Lewis, Lierman, Lopez, Luedtke, Palakovich Carr, Patterson, Queen, Reznik, Shetty, Shoemaker, Smith, Solomon, Stewart, Valderrama, Wilkins, and Wilson)

This bill establishes the Maryland Small Business Innovation Research and Technology Transfer (SBIR/STTR) Incentive Program and Matching Fund administered by the Department of Commerce (Commerce). Subject to specified conditions, an eligible small business may apply for a matching grant equal to 25% of a SBIR/STTR award, up to \$25,000 for a Phase I award and up to \$75,000 for a Phase II award. Every three years, the Secretary of Commerce must review and evaluate the program, and may submit recommendations to the Governor and General Assembly on the program’s continued effectiveness.

Montgomery County has funded a similar program for NIH SBIR/STTR grants only. The legislation does require Program administrators to coordinate with other county programs when evaluating applications and providing assistance to eligible businesses.

4. **SB 898/HB 983 – Public Safety – Investigation of an Officer-Involved Death (Law Enforcement Trust and Transparency Act)**
(Senator Carter; Delegates Shetty, Brooks, Carr, Lehman, Moon, Palakovich Carr, Patterson, Queen, Solomon, and Sydnor)

This bill requires a law enforcement agency to develop and implement a written policy requiring the investigation of each death involving a law enforcement officer (“officer-involved death”). The policy must require that an investigation be performed by at least two independent law enforcement investigators employed by a different law enforcement agency who have experience conducting complex criminal investigations. The final written report must be submitted to the State’s Attorney of the county in which the death occurred. If the State’s Attorney determines that there is not a sufficient basis to prosecute the officer involved in the death, the investigators must release the full report to the public with any confidential information redacted from the report before release. The bill expressly provides that it does not prohibit an internal administrative review of the officer-involved death under the Law Enforcement Officers Bill of Rights

Council staff comments: Council staff has several concerns with these bills:

- 1) Every local law enforcement agency (LEA) must get another LEA to provide two investigators to investigate an officer-involved death. The County has one of the better use of force investigative units in the State, so many jurisdictions may ask MCPD to investigate those jurisdictions’ officer-involved deaths. The bill covers not just county entities, but college and city LEAs as well. It may make it more difficult for the County to get a specific outside LEA to investigate County-related officer-involved deaths. Will the County be able to find an LEA with sufficient expertise and staff?
- 2) The bill requires the investigators to have experience in complex criminal investigations. County investigators are all homicide detectives, and they have additional use of force training/experience. The bill does not require that level of expertise. Another LEA could have fraud or property crime investigators doing the investigations.
- 3) There are more staff involved in an officer-involved death investigation than just two investigators. There are also crime scene processing and lab testing as well. Lab testing, in particular, can be costly and experience significant delays, depending on the existing caseloads the investigating LEA already has. County officers are on paid administrative leave until cases are resolved. These are all potentially significant expenses, both for the investigative LEA as well as MCPD.

Council staff does not have concerns with the SAO reporting requirements.

Council staff recommends that the Council oppose SB 898/HB 983 unless these concerns are addressed. One potential amendment is to require the State Police to do the investigation.

5. **SB 917/HB 1045 – Land Use – Comprehensive Plans – Housing Element**
(Senators Lam and Young; Delegate Lierman)

This bill requires the inclusion of a “housing element” in any comprehensive plan. The housing element must include a plan to address: (1) the need for affordable housing within the local jurisdiction, including low- and moderate-income housing; and (2) if applicable, the impacts of gentrification. Current State law governing Charter counties requires the inclusion of the following elements: (1) development regulations; (2) sensitive areas; (3) transportation; (4) water resources; and (5) mineral resources (if geological information is available).