



Agenda Item 1
March 25, 2019

OFFICE OF INTERGOVERNMENTAL RELATIONS

Marc Elrich
County Executive

Melanie Wenger
Director

March 21, 2019

MEMORANDUM

TO: Montgomery County Council

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

SUBJECT: Discussion: State Legislation

PURPOSE: Receive information

STATE LEGISLATION

- Update on Montgomery County's Priorities for the 2019 Session (see priorities letter on ©1)

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/>.



Montgomery County's Priorities for the 2019 Session

Education

- **PreK-12 Public Education.** Obtaining a fair share of State aid to support the County's public schools, including retention of the State payment for teacher retirement, is a critical priority every year. The importance of achieving this goal during the 2019 Session is of utmost concern because the Commission on Innovation and Excellence in Education (Kirwan Commission) is expected to issue its final report in December. The Commission is considering proposals for improving the State's public schools that are unprecedented in scope and would impact the County and our public schools for years, possibly decades, to come.

The County became concerned about potential Commission recommendations when a State consultant issued a report in 2016 regarding the adequacy of funding of education in Maryland that included recommendations for dramatic changes to school finance formulas. For Montgomery County, the estimated result would be a reduction of \$342 million in State aid and an increase of \$842 million in mandated local aid. Unfortunately, the report estimated the full impact of the consultant's recommendations as a consolidated unit and did not provide crucial information that would have allowed the County to independently analyze the fiscal impact of each separate component. The components included centerpiece suggestions like changing the wealth formula, shifting to a statewide "comparable wage index" for regional cost adjustments, and altering the funding "weights" for higher-need students.

During the 2018 Interim, the Commission has focused on early childhood education, recruitment and retention of high quality teachers, college and career readiness (CCR) pathways, programs for students with special needs, and governance and accountability. It is considering major changes in each of these categories, including free or subsidized full-day prekindergarten for some low-income students, teacher salary increases of 10-30%, a CCR assessment in 10th Grade, supplemental funding for schools with concentrated poverty, and new State-level oversight of local school systems. Implementing these programs would require billions of dollars in new State and local funding. However, with less than two months left to complete its final report, the Commission has not yet finalized its recommendations or associated cost estimates. Although the Commission indicated recently that it will not accept some of the recommendations in the 2016 report referenced above regarding school finance formulas, the County has been unable to gain even a basic understanding of the potential local impacts of Commission recommendations because they have not crystalized to the point where that is possible.

The County requests the Delegation's support in ensuring that the Commission has sufficient time to appropriately complete its work, including adequate opportunity to receive and evaluate public comments after the Commission formalizes draft proposals. The County also requests support in obtaining any underlying data that is necessary to independently analyze costs and fiscal impacts and sufficient time after receiving that data to provide meaningful comments on draft recommendations. During the 2019 Session, it is essential that the Delegation work closely with the County, the Board of Education, and Montgomery County Public Schools to ensure equitable treatment of the County and its large, diverse, and growing student population.

- **Public School Construction.** The allocation of funds in the State capital budget remains insufficient to help counties address the public school construction needs across the State, particularly in subdivisions like Montgomery County that have experienced significant enrollment growth. Since fiscal year 2011, the State program has grown from about \$260 million a year to \$380 million a year, with a new program added in fiscal year 2016 earmarked for school systems with significant enrollment growth and/or a high utilization of relocatable classrooms. Montgomery County has benefited significantly from this program, although on a percentage basis its share of the base program has declined slightly, which was not the expectation when the new program was negotiated. Even with these increases, at \$60 million a year in State assistance (about \$21 million more than the five-year average for fiscal years 2011 through 2015), the County is struggling to make meaningful progress in addressing its public school construction needs.

While the Montgomery County Office of Management and Budget assumes in its five-year projections that the State will contribute about \$59 million annually to the County's school construction program, the County needs the help of the Delegation to substantially increase the State's commitment. This could occur by: (1) meaningfully increasing the Statewide allocation; (2) creating statutory guarantees in the base program or the program overall that will yield a greater allocation to Montgomery County and create more year to year certainty; and/or (3) revisiting legislation that was introduced in 2014 that would have allowed Montgomery County to take advantage of a program created for Baltimore City through the Maryland Stadium Authority, which would let the County "jumpstart" a larger capital program through leveraging.

- **Universities at Shady Grove.** After demonstrating its commitment to the expansion of Universities at Shady Grove (USG) by providing \$20 million for the construction of a new parking garage, the County urges Delegation support for University System of Maryland's (USM) request for State funds to support Science, Technology, Engineering and Mathematics (STEM) academic program development at USG from its nine USM academic partners. These programs will support the second of three installments of the Governor's Workforce Development Initiative and enhance academic/industry partnerships that are critical to creating opportunities for research, entrepreneurship, innovation, and company creation – all catalysts for a robust, economic development ecosystem in the County and State.

Transportation

- ***Vision Zero Coordination and State Highways as Complete Streets.*** Roads and facilities owned by the State are a major element of Montgomery County's street network. In many areas of Montgomery County, the State Highway is an urban or suburban street that requires facilities for all modes, along with lighting and other features that allow it to operate properly. In some cases, the State Highways are inconsistent with community needs due to high speeds, limited pedestrian crossing opportunities, missing or insufficient streetlighting, and missing or inadequate pedestrian and bicycle facilities. In support of the County's Vision Zero and the State's Towards Zero Deaths programs, the Maryland Department of Transportation (MDOT) should develop a program to rapidly respond to these critical highway safety needs.

State Highways that are Complete Streets should be a significant component of this program. It has long been the policy of MDOT to install and maintain the roadway itself and to assign sidewalk, path and streetlight installation and maintenance to local jurisdictions on the basis that those facilities are not part of Statewide mobility but are provided by the local jurisdiction to meet local needs. The County requests that the Delegation require MDOT to evaluate the costs and benefits of changing this policy. The public may be better served if the State was wholly responsible for providing safe facilities for all users of the State Highway, not just the roadway that carries motor vehicle traffic. Such a program should continue to provide opportunity for engagement of the local government and communities to ensure that the resulting streets are compatible with the communities they serve.

- ***I-495/I-270 Traffic Relief Plan.*** MDOT is continuing to advance a Traffic Relief Plan for these two major corridors and the project is included in the Draft Visualize 2045 Long Range Plan for the Metropolitan Washington Region. The County asks the Delegation to require MDOT to meet its stated commitment to limit the project to the existing right-of-way for these corridors and to expeditiously begin the study of improvements on I-270 north of I-370. The County also asks that MDOT be required to fully evaluate the County's recommended treatment of two reversible lanes on I-270.

The County encourages the Delegation to require that MDOT's I-495/I-270 Traffic Relief Plan include complementary investment in expanded transit options like the Corridor Cities Transitway and MD 355 Bus Rapid Transit, both of which run parallel to I-270. The County also asks the Delegation to request MDOT to include provisions that continue to encourage High Occupancy Vehicle use on I-270. When coupled with transit investment, the I-270 Traffic Relief Plan could achieve its stated goals while also supporting the County's need for improved transit options and increased alternatives to single occupancy vehicles. Both are critical to ensure the functioning of the local road network serving our activity centers and reduce the environmental impacts of our transportation system.

- ***Personal Mobility Devices.*** Traditionally, personal mobility devices (e.g., powered chairs and scooters) were largely used by the disabled community and caused few concerns about conflicts with motor vehicle traffic, bicycles, and pedestrians. In the last two years, there

has been tremendous growth in the variety of these devices and in their use on public roads. It is unclear how existing laws apply to these devices. The County recommends that the State Legislature convene a work group to review the definitions of these vehicles and rules of the road. The work group should also be asked to recommend best-practices and State law changes to better establish the responsibilities of personal mobility device operators and the circumstances under which the devices can be safely operated within public rights-of-way.

- ***Video Bus Lane Enforcement.*** Baltimore City and Montgomery County have exclusive bus lanes in place or soon to be operational. The State already permits red light cameras, speed cameras, and school bus cameras. Video enforcement of bus lanes may also be an effective approach to managing this infrastructure. In jurisdictions around the country that allow this approach, the camera is typically placed on the bus and records bus lane violators as it uses the bus lane. The County requests Delegation support of legislation that would enable the use of video cameras to strengthen enforcement of bus-only lanes. Similar legislation was introduced by Baltimore City legislators during the 2018 Session.

Environment

- ***Increasing the Renewable Energy Portfolio Standard.*** Last fall, the County Council passed a resolution declaring a climate emergency and called on federal, State and local governments to (1) initiate a massive global mobilization to restore a safe climate and build a sustainable economy; and (2) reduce greenhouse gas emissions by 80% by 2027 and entirely by 2035. The Renewable Energy Portfolio Standard (RPS) requires utility companies to purchase renewable energy or renewable energy credits in an effort to shift the use of electricity produced from fossil fuels. During the 2018 Session, two bills were introduced to increase the RPS, but both were withdrawn following the committee hearings. The County requests the Delegation's support for any legislation that would substantially increase the State's RPS.

Housing

- ***Increasing Availability of Affordable Housing.*** Increasing the number of affordable housing units continues to be one of the County's most pressing problems as rental rates in the County continue to increase faster than incomes. Two local bills were enacted this year to increase the availability of affordable housing units and allow the County's Department of Housing and Community Affairs (DHCA) greater flexibility to create additional affordable housing opportunities Countywide. DHCA discussed with the Maryland Department of Housing and Community Development (DHCD) the possibility of setting aside a portion of Low Income Housing Tax credits for use by the Maryland Metropolitan Washington suburbs, similar to the carve out Virginia allows for its Northern Virginia suburbs. DHCD informed the County that due to existing funding commitments made by the State to settle fair housing complaints in the Baltimore region, a set-aside for the Washington region is not feasible. DHCA is currently discussing with DHCD an opportunity to partner to develop a funding mechanism for the preservation of market-rate affordable housing that may arise from the County's Right of First Refusal program. The

program allows the County to purchase existing rental properties slated for private sale to assure long-term affordability for a certain number of the units. The County requests that the Delegation assist DHCA by supporting its efforts with DHCD to establish a funding partnership that would help accomplish these objectives.

Health and Human Services

- ***Medicaid Match for County Funds Used to Supplement Wages Paid to Developmental Disability Providers Serving County Clients.*** The Montgomery County Department of Health and Human Services (DHHS) received permission from the Maryland Department of Health's Developmental Disabilities Administration (DDA) in 2016 to apply for Medicaid matching funds, contingent on DDA completing a rate-setting study and releasing new DDA provider rate information. The release of the new rates has not yet occurred. This delay has prevented DHHS from applying for Medicaid matching funds for the past three years, which leaves potential federal dollars unclaimed. As the State Delegation budget committee members review the DDA budget, the County asks for assistance to ensure that the State remains supportive of the County's efforts to secure federal matching funds and the application can proceed within the current rate structure. Adjustments can be made in the future when the updated provider rates are released.
- ***Public Health Grant Funding.*** Montgomery County has had the highest tuberculosis (TB) case rate in Maryland for more than five consecutive years. In 2016, there was a 25 percent increase in TB cases in Montgomery County, many of which were complicated by the care of clients with dual diagnoses such as HIV and Diabetes. Despite the increase in rates of TB cases, grant funding from the Maryland Department of Health (MDH) was cut by 37 percent this past year. To compensate for the loss of funds, several staff positions were eliminated and the number of TB Program screening and follow-up appointments was reduced by 50 percent. Now, a wait list exists for preventive treatment of TB infection. DHHS has made MDH leadership aware of its shortfalls in this critical area. DHHS asks the State Delegation budget committee members to support the County's advocacy to restore these funds.
- ***Funds to Divert Behavioral Patients from Hospital Emergency Departments.*** Local hospitals have reported a significant increase in the number of behavioral health patients leading to a shortage of Crisis Evaluation Unit (CEU) beds. These patients are coming to local hospitals from within the community as well as through the public safety and corrections systems. For example, Montgomery County Department of Corrections reports that during the last fiscal year, 32 percent of its inmate population required immediate behavioral intervention. This influx of patients has created significant challenges for the hospitals located in the County. They must find extra resources to address security and staffing needs to manage the large patient volume. Once the immediate needs of patients accessing the CEU beds are met, because the availability of step-down beds is limited, patients languish in the CEU beds, further exacerbating the CEU bed shortage. The County asks the Delegation to encourage MDH to study this problem and facilitate a statewide collaboration of stakeholders to find solutions.

- ***Early Care and Education.*** As discussed above, the Kirwan Commission is expected to recommend expansion of free or subsidized prekindergarten (PreK) services for low income students. All PreK programs, whether based in public schools or community settings, would be required to follow public PreK standards. Community providers would be required to achieve a level 3 ranking on the Maryland EXCELS Quality Rating Improvement System and submit a plan approved by the Maryland State Department of Education (MSDE) to achieve level 5 within five years. School-based PreK programs would be required to achieve a level 4 ranking and submit a plan approved plan by MSDE to achieve level 5 within five years.

Although the County strongly supports the goal of providing all children with high quality PreK services, there are significant costs associated with achieving higher levels of EXCELS standards and many small and midsize providers will find this very difficult, if not impossible, to do. This problem already exists under the State's current child care subsidy program because a provider must be EXCELS accredited to receive child care subsidy payments and receives higher reimbursements for higher EXCELS ratings. Using EXCELS ratings in this way creates a business challenge for many early child care and education providers and many are closing their doors. These are often the very providers who support low-income and immigrant families, thereby disadvantaging the same population that subsidies are intended to assist.

The County will share its concern about the declining number of early child care and education providers with the Kirwan Commission at its November 29 public hearing. We request support from the Delegation in requiring MSDE to study the reasons for the declining number of providers Statewide and report back to the General Assembly. The study should include an analysis of whether the EXCELS framework is unnecessarily complicated and overly burdensome for providers and schools, the potential positive impacts of reducing the number of rating levels to three and establishing clearly distinguishable criteria between levels, and the adequacy of resource and referral (R&R) networks.

Economic Development

- ***Make Office Vacancies Extinct (MOVE) Program.*** Legislation enacted in 2017 created a State grant program, modelled after the County's successful MOVE program, to encourage the location of new businesses and reduce office space vacancies in the State. To be eligible for State funds, counties must offer comparable incentives to these businesses. However, because the Governor has never included funds in the budget for the State program, it is not operational. If the Governor does include funds in the fiscal year 2020 budget, the County asks the Delegation to make sure the funds are appropriated; if the Governor does not, the County asks the Delegation to work with their budget committee colleagues to identify other means by which the funding goals of MOVE can be met. In addition, the County would request the Delegation's assistance in promoting the benefits of creating this type of a program to other counties since broader participation may create more of an incentive for the Governor to fund the program.

- ***Businesses Impacted by State Construction Projects.*** When major State infrastructure projects result in the displacement of a business, the State offers a program that provides them with financial assistance. However, there is no State program that offers similar assistance to businesses that are not displaced but suffer financially from loss of business activity during the preparation and construction phases of projects. A number of small businesses located near the Purple Line alignment currently fall into this category and may need financial and/or other types of assistance to avoid having to shutter their businesses before construction is complete.

During the 2018 Session, the budget committees requested the State Highway Administration, in coordination with the Department of Commerce, to examine the issues facing businesses impacted by road construction projects and report to the committees on the feasibility of establishing a Business Retention Program to assist impacted businesses. The report is to include recommendations on how such a program should be structured and funded and identify any changes to current law that would be needed to establish such a program. While this study is limited to road construction projects, the findings should be applicable to other major construction projects, such as the Purple Line. Therefore, the County urges the Delegation to consider the report's findings with the goal of expanding State assistance programs beyond the offerings that currently exist.

Victims' Rights

- ***Human Trafficking and Sexual Assault.*** Montgomery County urges the Delegation to continue its commitments to advancing victims' rights for all Marylanders. Better policies and laws are needed to address sexual assault and human trafficking. The County requests that the Delegation support legislative initiatives to ensure that trafficking victims who commit specific crimes while being trafficked can remove those convictions from their records. This process is called "vacatur." The County also requests that the Delegation support legislation providing immunity for trafficked minors (Safe Harbor), and the pursuit of stronger State contracting laws to protect workers from other countries from trafficking and coercive labor practices.
- ***Domestic Violence.*** The safety of victims and their children from domestic violence requires a collaborative local and State response that must include access to education and outreach services for affected Montgomery County residents. Montgomery County urges the Delegation to continue its commitment to advocate for and pursue substantive legislation to address domestic violence in Maryland, and to consider legislative recommendations that will be advanced by the Maryland Network Against Domestic Violence -- an organization that works cooperatively with Montgomery County's Domestic Violence Coordinating Council.

Public Safety

- ***Next-Generation 9-1-1 in Maryland.*** In the 2018 Session, the State established the Commission to Advance Next Generation 9-1-1 Across Maryland and charged the Commission with studying best practices for new 9-1-1 technology and making

recommendations on operational and funding issues. The availability of effective and reliable emergency service is critically important to the State and will require complicated planning matched with sufficient appropriations. The County requests the Delegation's support and attention to the Commission's preliminary report due in December to the Governor and the General Assembly that will help to guide Maryland's implementation of Next Generation 9-1-1 technology.

- ***School Bus Monitoring Cameras.*** In September, AAA-Mid Atlantic reported that 51,000 drivers over two years passed stopped Montgomery County school buses with stop-arms deployed and red lights flashing. The civil penalty for this violation recorded by a school bus monitoring camera is a prepay fine of \$250 per violation, which was increased in 2017 from \$125. Remarkably, the same violation witnessed by a police officer will result in a citation of \$570 and three points on the driver's license. The Delegation supported the enactment of this important public safety legislation two years ago, and the County requests the Delegation's support in 2019 to eliminate the sunset provision on the higher fine. Until more drivers understand and obey existing school bus safety laws aimed at protecting our children, the County believes this higher fine should stay in place.
- ***Gang Violence.*** Gang-related violence, from drugs and property crime to homicide, continues to increase in Montgomery County. In 2018, the Legislature passed a crime bill that increased penalties for witness intimidation and created the Task Force to Study Maryland's Criminal Gang Statutes. While there have been numerous successful prosecutions of gang members under statutes relating to crimes of violence, prosecutors have rarely used Maryland's Gang Participation statute because its evidentiary requirements are unwieldy and in need of change. A report of the Task Force's findings is due to the Governor and the General Assembly by the end of December. The County asks the Delegation to carefully consider that report and support programs intended to deter at-risk youth and families from gang involvement, and legislation to enhance the prosecution of gang-related crimes.

Core Government Functions

- ***Local Decision-Making Authority.*** The State has delegated broad home rule authority to Charter Counties, and Montgomery County regularly exercises this authority to address matters of importance to our community that are not addressed, or are addressed differently, at the State level. Each session, the General Assembly considers legislative proposals that seek to preempt local authority. In recent years, this has included legislation relating to paid sick leave, minimum wage, solar farms and pesticides. The County expects that various preemption bills will be introduced in the 2019 Session, including bills governing the minimum wage and small cell antennas. Additionally, the Maryland Association of Counties (MACo) will seek to override the legal doctrine of implied preemption, which allows a court to invalidate a local law even when there is no express preemption language in a State statute. In recent years, courts have used this doctrine to invalidate laws governing tobacco regulation, solar farms and pesticides. The County requests that the Delegation support this MACo initiative and oppose any legislation that

seeks to expressly preempt the County's authority to enact laws that best serve our community.

- ***Deployment of Small Cell Wireless Antennas.*** According to industry representatives, small cell antennas (small cells) are an essential component of fifth generation (5G) wireless broadband technology. The industry's desire to deploy this technology quickly and at the lowest possible cost has fueled unprecedented efforts at the State and federal levels to preempt local authority to manage the placement and size of this equipment in public rights-of-way and on public property. During the 2018 Session, the industry introduced a sweeping preemption bill that was eventually withdrawn due to strong opposition from counties and municipalities. Since the end of Session, the Federal Communications Commission (FCC) has acted aggressively to impose shot clocks on applications, ban franchise fees for use of public rights-of-way, ban rent for use of public property (e.g., street lights and buildings), and limit the ability to recover administrative costs.

The County strongly supports the goal of achieving fast and reliable broadband service but believes that the extensive federal rules that already apply to small cell deployment, together with the County's efforts to develop its own balanced solution, alleviate the need for State preemption in this area. Earlier this year, the County amended its zoning laws to significantly liberalize the rules governing siting of small cells in commercial areas - the highest priority areas for the small cell industry. During the past two years, the County Executive and County Council also conducted extensive outreach efforts with residents and businesses regarding the siting of small cells in residential areas and devoted significant time and effort to considering legislation that would establish a balanced approach for these areas. The tremendous progress that has been made in analyzing issues and identifying potential options will provide a solid foundation for resolution of this issue when new County leaders take office in December. The County requests that the Delegation support the County's efforts to finalize its work on this issue and oppose any effort to preempt local authority at the State level.

Other Capital Projects

- ***Public School Construction – \$113,000,000.*** This is the Montgomery County Public School's fiscal year 2020 State aid request.
- ***Montgomery College - \$35,000,000.*** The County is supporting Montgomery College's State capital request to construct the Takoma Park/Silver Spring Campus Math/Science building. Because of the size of the request, the State may allocate funding over more than one fiscal year.
- ***Avery Road Treatment Center – \$840,000.*** Montgomery County is in the process of rebuilding its Avery Road Treatment Center, which offers detoxification and intermediate residential behavioral health treatment services for low-income County residents. The State committed to funding 28% of project costs. Due to recent cost increases in the price of building materials, the project is under-funded in the range of \$1.5 million to \$3 million.

The County is requesting that the State share in this cost, which at the high end would be \$840,000.

- ***Poolesville Economic Development Project - \$1,000,000.*** The Montgomery County Revenue Authority is requesting a fiscal year 2020 State capital grant to help support the costs of utilizing excess land at the Poolesville Golf Course property, located in the Agricultural Reserve, to develop a comprehensive facility to support agriculture, economic development, and education/workforce development. This is a multiphase project that is focused on supporting farmers through research, sale of local crops, and alternative product development. It will support economic development in the region related to agritourism. Partnerships with educational institutions and industry will be utilized to create workforce development programs. All of these activities will help to preserve open space and foster a healthy agricultural ecosystem. The Delegation's previous financial support has allowed this project to move through the design phase and approval process, and a Request For Proposals has been issued.
- ***Round House Theatre - \$3,000,000.*** The County is supporting Round House Theatre's request for a \$3 million State grant in fiscal year 2020. This would be the second installment of a multi-year State request to help support the costs of a \$9 million renovation of the Bethesda theatre, to be completed by September 2019. The County has also invested in this project.
- ***Olney Theatre - \$2,000,000.*** The County is supporting Olney Theatre's request for a \$2 million State grant in fiscal year 2020. This would be the second installment of a multi-year State request to help support the costs of the Theatre's \$25 million capital improvement project to develop community amenities at the location. The County has also invested in this project.

11/14/18