

**MEMORANDUM**

January 19, 2023

TO: Planning, Housing, and Parks Committee

FROM: Ludeen McCartney-Green, Legislative Attorney

SUBJECT: Bill 33-22, Capital Improvements Program – Affordable Housing Feasibility Study – Required

PURPOSE: Worksession – Committee to make a recommendation<sup>1</sup>

**Expected Attendees:**

David Dise, Director, Department of General Services (Invited)  
Naeem Mia, Legislative Analyst, County Council

Bill 33-22, Capital Improvements Program – Affordable Housing Feasibility Study – Required, sponsored by Lead Sponsor Councilmember Friedson with Co-Sponsors Councilmembers Katz, Albornoz, Fani-González, Stewart, Balcombe, and then-Councilmembers Navarro, Riemer, and Rice was introduced on November 15, 2022. A public hearing was held on January 17, at which five speakers testified regarding the bill.

Bill 33-22 would:

- (1) require the County Executive to submit an affordable housing feasibility study to the Council for certain capital projects;
- (2) establish a review process for the Council to determine project feasibility for colocation of affordable housing; and
- (3) generally amend County law regarding the analysis of capital projects.

**PURPOSE**

The purpose of this bill is to make the process of evaluating a project for colocation of affordable housing and County facilities more transparent between the Executive branch and the County Council. A memorandum from the lead sponsor is on page ©6.

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<sup>1</sup> #colocation#affordablehousing

## BACKGROUND

Under the current law, the Office of Management and Budget (OMB) is required to provide to the County Council during the transmission of the Capital Improvements Program (CIP) budget, an affordable housing assessment for each applicable capital project that is in the facility planning stage.<sup>2</sup> The affordable housing assessment takes into consideration several factors in its evaluation: (1) the feasibility of including a significant amount of affordable housing in the project; (2) the effect of the project on the supply of affordable housing in the immediate area; (3) what capital or operating modifications, if any, would promote and maximize affordable housing in the project and the immediate area; and (4) what operating budget modifications, if any, would be needed to build and maintain affordable housing in the project.

The problem here is, by the time the capital project and housing assessment are included in the CIP for the Council's consideration there are already barriers to the project, *i.e.* site constraints, costs of construction, design elements, the program of requirements (POR), etc., that would prevent the feasibility of the project from moving forward, and as a result, a lost opportunity for affordable housing and colocation.

Colocation allows the County to shift its focus away from stand-alone individual projects and toward either: (a) making maximum use of its existing assets, or (b) integrating the County's goal of increasing its stock of affordable housing into the objectives of new CIP projects.

Bill 33-22 would seek to strengthen the evaluation of the colocation of affordable housing and County facilities *earlier* in the capital project development process by requiring a robust feasibility study prior to the facility planning stage. In return, this would provide an opportunity for the Council to review the study and determine whether to support the findings or make further recommendations.

## BILL SPECIFICS

Specifically, Bill 33-22 would require the County Executive to submit an affordable housing feasibility study **prior to** facility planning, development of the program of requirements (POR), site selection, or land acquisition of any capital project that includes a site for a potential library, police station, fire station, recreation center, or general services building. The study would include the following requirements, (lines 16-26 of the Bill):

(c) Contents of the feasibility study. The study must include, but is not limited to, the following:

- (1) a description of the proposed capital project;
- (2) outreach efforts and stakeholder input;
- (3) the program of requirements, if developed;
- (4) potential site and environmental constraints;

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<sup>2</sup> County Code §25B-7

- (5) programmatic elements evaluated for co-location;
- (6) projected total cost of construction, including, if any, costs of co-location of affordable housing;
- (7) a statement of whether co-location is feasible; and
- (8) any other related components used for consideration to determine project feasibility.

After the Council receives the study submitted by the County Executive, within 30 days, the Council must review the analysis provided in the study. The Council President has the discretion to send the review of these projects to the appropriate Council committee(s) or to put a project on the full council agenda for review by the body.

The analysis will provide a basis for considering co-locating affordable housing on any new CIP project (this bill would not apply to refresh projects). By a vote, the Council must decide whether to approve or disapprove of the analysis presented in the feasibility study, and depending on the Council's decision, this sets the direction of the project.

*Feasibility Study Approved by Council.* If the affordable housing feasibility study is approved, DGS moves forward with its normal capital project development process (planning, design, budget, and construction).

*Feasibility Study Disapproved by Council.* If the Council disapproves the analysis provided by the Executive, the Council can direct the Executive Branch to go back and perform additional analysis, and within a reasonable timeframe come back to the Council, with a capital project plan that includes co-location. When the Council reviews the Executive's capital project plan, it can do one of the following: (1) approve the plan that includes co-location; (2) waive any requirements; or (3) agree with the Executive that housing is not feasible for the project and allow the project to move forward without colocation.

In the case where a project is determined feasible, it would be included in the CIP as a part of the normal budget review process to receive funding.

#### *Waiver Provision*

The bill also includes a waiver provision, if the Council determines the project would result in a loss of a site; require emergency appropriation; or experience further delay not in the best interest of the public then the Council may waive requirements under this Section.

The effective date of the bill would be July 1, 2023, after the CIP budget for FY 2024 is approved by the Council.

#### **SUMMARY OF PUBLIC HEARING**

Jane Lyons-Raeder, Coalition for Smarter Growth, Greater Greater Washington, and Montgomery Housing Alliance have testified in support of Bill 33-22. See written testimonies at ©16.

## DISCUSSION

### 1. What is the general process for an applicable capital project?

#### Process Timeline

The general process for a potential project is intended to be flexible enough that it can be adapted to a variety of situations. It would primarily be used in situations when the need for a public facility has been identified and subsequently requires an appropriate site, such as determining the specific location of a new library within a general area. Needs may be identified through various processes, such as master/sector plans, community input, or other means. The process could also be modified for situations when new use(s) will be determined for a known and specific site that has become available for development (or redevelopment, in some cases) or a certain timeline must be met.

However, generally, the recommended process for DGS capital projects can be categorized into five phases:

- In **Phase 1**, the general idea for a potential project is identified and the process to further develop the project will be established.
- In **Phase 2 (facility planning)**, this phase will determine the program of requirements (which details the specifications and requirements of a facility), a framework for how sites will be evaluated, the civic engagement process and communications plan, and the timeline for reaching a decision.
- In **Phase 3 (site selection)**, potential sites will be identified, evaluated, and refined to two or three options for further consideration.
- In **Phase 4**, preliminary design studies and analysis will be developed for the refined list of site options identified from Phase 2. The evaluation of these sites will inform the recommendation of a preferred option.
- In **Phase 5**, the County Executive will consider the recommendations by DGS and decide whether to include in the recommended CIP a separate CIP project for Council's approval in the budget. Typically, once a separate project is recommended, final design, land acquisition, and estimated construction costs are included.

The existing requirement for an affordable housing assessment required under Section 25B-7 generally occurs in Phase 2 through Phase 4. In Phase 5, the assessment along with the Executive's budget recommendations is then sent to Council during the budget review. Bill 33-22 would require the feasibility study to begin earlier in the process at Phase 1.

### 2. Does the Council have the authority to request and review a feasibility study prepared by the Executive?

The Charter sets forth the legislative's branch authority. Under the County Charter Section 209, it is a valid exercise of power for the Council to request and review information prepared by the Executive. The review of the feasibility study and the ability of the Council to

comment and make recommendations about the contents included in the study is within the Council's regular oversight.

### **3. Is there precedent where the Council has reviewed potential capital projects prior to inclusion in the CIP?**

Yes. Typically, prior to transportation projects included in the CIP, there are usually “checkpoints” throughout the planning process where the Council can weigh in and provide informal feedback during a Council or committee worksession. This process is called Facility Planning Review. During facility planning, the Department of Transportation presents before the Council: Phase 1 (feasibility stage) and Phase 2 (detailed planning stage), and with each phase, there is a status update or a check-in with Council about the project. A few examples where a Facility Planning Review occurred are:

- [Summit Ave Extended](#)
- [Tuckerman Lane Sidewalk/Bikeway](#)
- [Dale Drive Pedestrian Improvements](#)

### **4. Are there jurisdictions that co-locate housing or use “public land for public good”?**

In Alexandria's [Station at Potomac Yard](#), a transit-oriented development project centered around the proposed Potomac Yard infill metro rail station, 64 affordable housing units are located on four stories above a new fire station. 44 units serve households with incomes below 60% of AMI; 20 units serve households with incomes below 80% of AMI.<sup>3</sup>

Back in 2015, Arlington County launched a robust and comprehensive year-long community facilities planning effort with a 23-member Committee that made several recommendations to further colocation in the County, including the need for a feasibility study and assessment of facility needs in the context of Arlington's and the region's projected economic and demographic growth that included a consensus framework regarding colocation and the committee.<sup>4</sup>

As cited in the Lincoln Institute of Land Policy article, in Chicago, the Mayor from 2011 to 2019 made more than \$300 million in new investments to renovate or build 30 public libraries in the city's network of 80 libraries, which serves 10 million visitors annually. The “Branching Out: Building Libraries, Building Communities” initiative. Three of the new libraries included co-location of affordable housing.<sup>5</sup>

### **5. What is the summary of the impact statements for the Bill?**

**Fiscal Impact Statement.** The Office of Management and Budget (OMB) is currently preparing an analysis for Council's review.

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<sup>3</sup> <https://www.housingalexandria.org/blog/station-history>

<sup>4</sup> Arlington County Community Facilities Study – Final Report. [http://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/5/2015/11/CFS\\_Final\\_Report\\_web.pdf](http://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/5/2015/11/CFS_Final_Report_web.pdf).

<sup>5</sup> Cities Are Tackling the Housing Crunch—by Building Above the Library. By Kathleen McCormick, September 27, 2019. <https://www.lincolnst.edu/publications/articles/new-chapter>.

**Economic Impact Statement.** The Office of Legislative Oversight (OLO) anticipates that Bill 33-22 would have an indeterminable impact on economic conditions in the County. As described by OLO, “the reforms to the legislative process described above would have no *direct* economic impacts on residents, private organizations, or broader conditions. However, they potentially could have *indirect* economic impacts. These impacts could occur if the reforms (a) increase affordable housing co-location at County facilities and/or (b) change the timeline or specifications of certain capital projects.” ©7.

**Racial Equity and Social Justice Impact Statement.** OLO anticipates the bill could have a positive, but minimal impact on racial equity and social justice in the County because only a limited number of projects would be eligible for colocation. The OLO report describes that “if Bill 33-22 works as intended an increase in affordable housing could also narrow racial disparities in housing insecurity, such as rent burden and homelessness, by increasing the availability of units that are more affordable to Black and Latinx residents.” ©11.

**NEXT STEP:** Roll call vote on whether to enact Bill 33-22 by the PH Committee.

This packet contains:	<u>Circle #</u>
Bill 33-22	1
Legislative Request Report	5
Lead Sponsor Memorandum	6
Economic Impact Statement	7
Racial Equity and Social Justice Impact Statement	11
Public Testimony	
Dan Reed (Greater Greater Washington)	16
Carrie Kisicki (Coalition for Smarter Growth)	18
Mary Kolar (Montgomery Housing Alliance)	20
Barbara Goldberg Goldman/Ralph Bennett (Affordable Housing Conference)	22
Jane Lyons-Raeder	23

0Bill No. 33-22  
Concerning: Capital Improvements  
Program – Affordable Housing  
Feasibility Study – Required  
Revised: 11/7/2022 Draft No. 5  
Introduced: November 15, 2022  
Expires: May 15, 2024  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Councilmember Friedson  
Co-Sponsors: Councilmembers Katz, Albornoz, Fani-González, Stewart, and Balcombe, then-  
Councilmembers Navarro, Riemer and Rice

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### AN ACT to:

- (1) require the County Executive to submit an affordable housing feasibility study to the Council for certain capital projects;
- (2) establish a review process for the Council to determine project feasibility for colocation of affordable housing; and
- (3) generally amend County law regarding the analysis of capital projects.

By amending

Montgomery County Code  
Chapter 25B, Housing Policy  
Section 25B-7

**Boldface**

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

\* \* \*

*Heading or defined term.*

*Added to existing law by original bill.*

*Deleted from existing law by original bill.*

*Added by amendment.*

*Deleted from existing law or the bill by amendment.*

*Existing law unaffected by bill.*

*The County Council for Montgomery County, Maryland approves the following Act:*

1        **Sec. 1. Section 25B-7 is amended as follows:**

2        **25B-7.        Affordable housing feasibility study and assessment.**

3        (a)    Definitions. As used in this Section:

4        Affordable housing feasibility study means an analysis of any applicable  
 5        capital project that includes an evaluation of affordable housing at a  
 6        library, recreation center, police station, fire station, or any other general  
 7        services building.

8        Applicable capital project means any proposed building project  
 9        administered by the Department of General Services or the Parking  
 10        Management Division of the Department of Transportation.

11        (b)    Affordable housing feasibility study. For any applicable capital project,  
 12        prior to facility planning, development of the program of requirements,  
 13        site selection, or land acquisition, the County Executive must prepare and  
 14        submit an affordable housing feasibility study to the Council.

15        (c)    Contents of the feasibility study. The study must include, but is not limited  
 16        to, the following:

- 17        (1)    a description of the proposed capital project;
- 18        (2)    outreach efforts and stakeholder input;
- 19        (3)    development of the program of requirements, if any;
- 20        (4)    potential site and environmental constraints;
- 21        (5)    programmatic elements for colocation projects;
- 22        (6)    the projected total cost for construction, including, if any, costs of  
 23        colocation of affordable housing;
- 24        (7)    a statement of whether colocation is feasible; and
- 25        (8)    any other related components used for consideration to determine  
 26        project feasibility.

27        (d)    County Council review; capital project plan.



- (1) Within 30 days after the Council receives the affordable housing feasibility study under subsection (b), the Council must:

  - (A) review the feasibility study; and
  - (B) determine by a vote whether to approve or disapprove the analysis provided in the feasibility study.
- (2) An analysis approved by the Council under subparagraph (1)(B) permits the project to proceed in its normal course of planning, design, and construction.
- (3) If the Council disapproves of the analysis under subparagraph (1)(B) and determines that colocation of affordable housing is feasible, the County Executive must, within a reasonable timeframe, develop and transmit to the Council a plan where the capital project identified in the study includes colocation of affordable housing.
- (e) Review of the Executive's plan. Before appropriation in the Capital Improvements Program, the Council must review and approve the plan submitted by the Executive under subsection (d)(3). A plan that does not include colocation must contain a written explanation describing the circumstances as to why the requirements for colocation could not be fulfilled.
- (f) Waiver. The Council may waive any requirement under this Section if the Council determines the project would:

  - (1) result in a loss of a site;
  - (2) require emergency appropriation; or
  - (3) experience further delay not in the best interest of the public.
- [(a)] (g) Affordable Housing Assessment. For each applicable capital project in

the Capital Improvements Program during facility planning, the Office of Management and Budget must include in or transmit with the CIP an evaluation of:

- (1) the feasibility of including a significant amount of affordable housing in the project;
- (2) the effect of the project on the supply of affordable housing in the immediate area;
- (3) what capital or operating modifications, if any, would promote and maximize affordable housing in the project and the immediate area; and
- (4) what operating budget modifications, if any, would be needed to build and maintain affordable housing in the project.

[(b)] (h) \* \* \*

[(c) As used in this section, applicable capital project means any proposed building project administered by the Department of General Services or the Parking Management Division of the Department of Transportation.]

\* \* \*

**Sec. 2. Effective Date; Transition.** The amendments in Section 1 take effect on July 1, 2023.

## LEGISLATIVE REQUEST REPORT

Bill 33-22

*Capital Improvements Program – Affordable Housing Feasibility Study – Required*

**DESCRIPTION:** Bill 33-22 would: (1) require the County Executive to submit an affordable housing feasibility study to the Council for certain capital projects; (2) establish a review process for the Council to determine project feasibility for co-location of affordable housing; and (3) generally amend County law regarding the analysis of capital projects.

**PROBLEM:** Co-location allows the County to shift its focus away from stand-alone individual projects and toward either: (a) making maximum use of its existing assets or (b) integrating the County's goal of increasing its stock of affordable housing into the objectives of new CIP projects. The purpose of this bill is to make the process of evaluating a project for the co-location of affordable housing and County facilities more transparent between the Executive branch and the County Council.

**GOALS AND OBJECTIVES:** To strengthen the existing requirement for the Executive Branch to assess the viability of co-location of affordable housing with new county facilities at a site for a potential library, recreation center, police station, fire station, or any general services building in the County.

**COORDINATION:** Department of General Services

**FISCAL IMPACT:** To be completed by OMB

**ECONOMIC IMPACT:** Office of Legislative Oversight

**RESJ IMPACT:** Office of Legislative Oversight

**EVALUATION:** To be completed.

**EXPERIENCE ELSEWHERE:**

**SOURCE OF INFORMATION:** Ludeen McCartney-Green, Legislative Attorney

**APPLICATION WITHIN MUNICIPALITIES:** N/A

**PENALTIES:** N/A



MONTGOMERY COUNTY COUNCIL  
ROCKVILLE, MARYLAND

ANDREW FRIEDSON  
COUNCILMEMBER  
DISTRICT 1

MEMORANDUM

TO: Colleagues  
FROM: Andrew Friedson *AF*  
SUBJECT: Colocation of Affordable Housing with County Facilities  
DATE: November 9, 2022

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On November 15, 2022, I will be introducing legislation (attached) to strengthen the [existing requirement](#) for the Executive Branch to assess the viability of colocation of affordable housing with new or significantly renovated county facilities.

We are all aware of the housing crisis we face. Bill 33-22, which helps ensure we make the highest and best use of county-owned property by collocating affordable housing with our own capital projects, provides another important tool to address our county's housing needs and allows us to lead by example. We have unfortunately missed countless opportunities for colocation in the past. Because our housing needs are great and our land is scarce, we must aggressively pursue each feasible project. This bill would accomplish that goal by ensuring a thorough and transparent analysis and review deserving of our shared commitment to increasing our affordable housing supply.

Specifically, this bill would add the following requirements/conditions:

- Require an affordable housing feasibility study prior to facility planning, development of the program of requirements, site selection, or land acquisition. This study would include eight requirements outlined on lines 19-28 of the draft and be submitted to the Council which would then review the analysis and approve or disapprove the assessment, setting the direction of the project.
- If the affordable housing feasibility study is approved, DGS moves forward with their normal capital project development process working with DHCA, HOC, and/or a private or nonprofit housing development partner.
- If the Council disapproves the Executive Branch assessment, the Council can direct the Executive Branch to go back, do additional analysis, and come back to the Council or the Council can concur with the Executive Branch that housing is not feasible for a given project.
- The colocation projects then make their way to inclusion in the CIP which the Council receives and reviews during the regular CIP review process. The Council President has the discretion to send the review of these projects to the appropriate Council committee(s) or to put a project on the full council agenda for review by the body.
- If anything has changed from the time of the Council's approval of the affordable housing assessment, the Executive Branch must come to the Council requesting a waiver to build a stand-alone county facility.

Please let us know if you would like to co-sponsor this legislation and of course, do not hesitate to reach out to me or Cindy with any questions.

# Economic Impact Statement

Office of Legislative Oversight

## Bill 33-22

## Capital Improvements Program – Affordable Housing Feasibility Study – Required

### SUMMARY

The Office of Legislative Oversight (OLO) anticipates Bill 33-22 would have an indeterminate impact on economic conditions in the County in terms of the Council's priority indicators. The Bill would require, both, the Executive to inform the Council of the status of affordable housing colocation for specific capital projects and the Council to intervene in the evaluation of these projects at an earlier stage in the capital development process. These reforms to the legislative process could have *indirect* economic impacts if they (a) increase affordable housing colocation at County facilities and/or (b) change timeline or specifications of certain capital projects. While increasing affordable housing would benefit certain residents, there is uncertainty regarding the Bill's potential indirect impacts to certain private organizations involved in capital projects and broader economic conditions.

### BACKGROUND

The goal of Bill 33-22 is to make the process of evaluating a capital project for co-location of affordable housing and County facilities more transparent between the Executive branch and the Council. The Bill would attempt to achieve this goal by reforming the process in two ways.

First, the Bill would require the Executive to provide the Council with an analysis of the feasibility of co-locating affordable housing in a capital project *earlier* in the capital development process. Under the current law, the Office of Management and Budget (OMB) is required to provide an affordable housing assessment for each project to the Council during the transmission of the Capital Improvements Program (CIP) budget.<sup>1</sup> The Bill would require the Executive to submit an "affordable housing feasibility study" before facility planning, development of program of requirements, site selection, or land acquisition. As stated in the Bill, the study would include the following elements:

- (1) a description of the proposed capital project;
- (2) outreach efforts and stakeholder input;
- (3) the program of requirements, if developed;
- (4) potential site and environmental constraints;

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<sup>1</sup> [McCartney-Green to County Council](#), November 10, 2022.

# Economic Impact Statement

## Office of Legislative Oversight

- (5) programmatic elements evaluated for co-location;
- (6) projected total cost of construction, including, if any, costs of co-location of affordable housing;
- (7) a statement of whether co-location is feasible; and
- (8) any other related components used for consideration to determine project feasibility.

Second, the Bill would require *earlier* Council action in the process of evaluating a capital project. In particular, the Council would be required to review and vote on whether to approve the feasibility study within thirty days. If the Council approves the study, the project will proceed in its normal course. If, however, the Council disapproves the study and determines that colocation of affordable housing is feasible, the Executive would be required to provide the Council with a new plan “where the project identified in the study includes co-location of affordable housing.”

If enacted, the change in law would take effect on July 1, 2023, after the Council approves the CIP budget for FY23.<sup>2</sup>

## INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

Per Section 2-81B of the Montgomery County Code, the purpose of this Economic Impact Statement is to assess, both, the impacts of Bill 33-22 on residents and private organizations in terms of the Council’s priority economic indicators and whether the bill would have a net positive or negative impact on overall economic conditions in the County.<sup>3</sup>

The reforms to the legislative process described above would have no *direct* economic impacts on residents, private organizations, or broader conditions. However, they potentially could have *indirect* economic impacts. These impacts could occur if the reforms (a) increase affordable housing co-location at County facilities and/or (b) change the timeline or specifications of certain capital projects.

In subsequent sections, OLO discusses the economic implications of these potential indirect impacts. The primary sources of information used in this analysis are materials enclosed in the Bill’s Introduction Staff Report (cited above) and a consultation with the attorney who wrote the bill.

## VARIABLES

The primary variables that would affect the indirect, economic impacts of enacting Bill 33-22 is the number of affordable housing units’ co-location at County facilities.

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<sup>2</sup> [Bill 33-22](#).

<sup>3</sup> Montgomery County Code, [Sec. 2-81B](#).

# Economic Impact Statement

## Office of Legislative Oversight

### IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

#### Residents

OLO anticipates Bill 33-22 potentially could have positive, indirect impacts on certain residents in the County in terms of certain indicators prioritized by Council. If the reforms to the capital development process increase affordable housing co-location at certain County facilities, the Bill would indirectly benefit residents who attain more affordable housing than they otherwise would in the absence of the reforms. Holding all else equal, more affordable housing reduces the total amount of income required for housing.

Beyond this potential indirect impact, OLO does not expect the Bill to affect residents in terms of the Council's other priority indicators.

#### Businesses, Non-Profits, Other Private Organizations

OLO anticipates Bill 33-22 would have an indeterminate impact on certain private organizations in the County in terms of the Council's priority indicators. If the reforms to the capital development process increase affordable housing co-location, construction companies/developers may be indirectly benefited by affordable housing being added to a capital project. If the reforms to the capital development process change the timeline or specification of certain capital projects, the Bill could indirectly impact private organizations involved in these projects. It is uncertain, however, whether these indirect impacts would be positive or negative.

#### Net Impact

While Bill 33-22 could have positive, indirect impacts on certain residents in the County, there is uncertainty regarding the Bill's potential impacts to certain private organizations. For this reason, OLO is unable to anticipate the net economic impact of the Bill on all stakeholders and broader economic conditions in the County.

### DISCUSSION ITEMS

Not applicable

### WORKS CITED

McCartney-Green, Ludeen to County Council. [Memorandum](#). November 10, 2022.

Montgomery County Code. [Sec. 2-81B, Economic Impact Statements](#).

# Economic Impact Statement

## Office of Legislative Oversight

Montgomery County Council. [Bill 33-22, Capital Improvements Program – Affordable Housing Feasibility Study – Required.](#)

Introduced on November 15, 2022.

### CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the Bill under consideration.

### CONTRIBUTIONS

Stephen Roblin (OLO) prepared this report.



# Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

## BILL 33-22: CAPITAL IMPROVEMENTS PROGRAM – AFFORDABLE HOUSING FEASIBILITY STUDY – REQUIRED

### SUMMARY

The Office of Legislative Oversight (OLO) anticipates Bill 33-22 could have a positive impact on racial equity and social justice (RESJ) in the County. Data on household median incomes suggest Black and Latinx households, particularly renter households, could disproportionately benefit from an increase in affordable housing units. If Bill 33-22 works as intended, an increase in affordable housing could also narrow racial disparities in housing insecurity, such as rent burden and homelessness, by increasing the availability of units that are more affordable to Black and Latinx residents. Because only a limited number of projects would be eligible for affordable housing co-location, OLO anticipates the positive RESJ impact will be small.

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### PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements (RESJIS) is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.<sup>1</sup> Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.<sup>2</sup>

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### PURPOSE OF BILL 33-22

According to the Montgomery County Planning Department's 2015 White Paper, co-location refers to "the locating of two or more organizations of public interest sharing some significant aspect of a physical space on a regular basis."<sup>3</sup> As the housing crisis mounts, jurisdictions locally and throughout the country are increasingly considering co-location of housing units with public facilities, such as schools and libraries.<sup>4,5,6</sup>

Under current law, during transmission of the Capital Improvements Program (CIP) budget, the County's Office of Management and Budget (OMB) is required to provide the County Council an affordable housing assessment for each applicable capital project that is in facility planning. The purpose of Bill 33-22 is to require the County Executive to submit an affordable housing feasibility study to the Council for certain capital projects, in addition to the affordable housing assessment already required. Capital projects requiring an affordable housing feasibility study would include libraries, recreation centers, police stations, fire stations, and other general services buildings.<sup>7</sup>

Bill 33-22 would require the Executive to submit the affordable housing feasibility study prior to facility planning, development of the program requirements, site selection or land acquisition of any capital project. This is intended to make affordable housing co-location more feasible through requiring planning for co-location earlier in the capital project development process.<sup>8</sup>

# RESJ Impact Statement

## Bill 33-22

Bill 33-22 would also establish a review process for the Council to determine project feasibility for co-location of affordable housing. The Council would determine by vote whether to approve or disapprove the analysis presented in the feasibility study. The Bill implies the Council would only disapprove of an analysis and request a revised plan for co-location if the study finds co-location to not be feasible.<sup>9</sup> According to Council staff, the Bill does not change the existing CIP process and the Executive can ultimately include projects in the CIP with or without recommendations that arise from the Council through this process.

Bill 33-22 was introduced to the Council on November 15, 2022.

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### HOUSING INSECURITY AND RACIAL EQUITY

Government policies and practices have played a significant role in creating and sustaining housing inequities by race and ethnicity. As outlined below, Black and Latinx residents experience higher rates of housing insecurity and lower rates of homeownership. Please refer to the RESJIS for Expedited Bill 30-21, Landlord-Tenant Relations – Restrictions During Emergencies – Extended Limitations Against Rent Increases and Late Fees, for more on the government’s role in fostering racial segregation in housing and the racial wealth divide.<sup>10</sup>

**Data on Housing Insecurity.** Local data on three metrics of housing insecurity – rent-burdened households, rental assistance participation, and homelessness – demonstrate that Black and Latinx households in the County are especially housing insecure. More specifically, in the County:

- In 2021, 63 percent of Latinx renters and 57 percent of Black renters were rent-burdened (expending 30 percent or more of income on rent), compared to 45 percent of White renters and 38 percent of Asian renters.<sup>11</sup>
- Among recent COVID-19 Rent Relief Program clients, 46 percent were Black and 24 percent were Latinx, while 8 percent were White and 2 percent were Asian or Pacific Islander.<sup>12</sup>
- Among single adults experiencing homelessness in 2021, 56 percent were Black, 33 percent were White, 5 percent were Native American, and 4 percent were Asian or Pacific Islander.<sup>13</sup>
- Among families experiencing homelessness in 2021, 84 percent were Black, 12 percent were White, and 3 percent were Native American.<sup>14</sup>

Local data on homeownership also confirms housing inequities by race and ethnicity. In 2019, 75 percent of White and 73 percent of Asian households in the County were owner-occupied, compared to 50 percent of Latinx households and 41 percent of Black households.<sup>15</sup>

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### ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of Bill 33-22 on RESJ in the County, OLO recommends the consideration of two related questions:

- Who are the primary beneficiaries of this bill?
- What racial and social inequities could passage of this bill weaken or strengthen?

# RESJ Impact Statement

## Bill 33-22

**For the first question,** OLO considered the median incomes of County households. Residents with lower incomes could benefit from an increase in affordable housing if this Bill works as intended. Table 1 summarizes the median incomes of County households by race and ethnicity. For reference, 60 percent of the Area Median Income (AMI), a common threshold for affordable housing eligibility, is currently \$85,380 for a family of four.<sup>16</sup>

Table 1 suggests that the median income of Black households is below the 60 percent AMI threshold for a family of four, while the median income of Latinx households is slightly above the threshold. The median incomes of Native American, Asian, and White households exceed the threshold by \$23,400, \$37,803, and \$55,623, respectively. This data suggests that Black and Latinx households could particularly benefit from more affordable housing.

**Table 1: Median Household Income by Race and Ethnicity, Montgomery County, Maryland<sup>17</sup>**

Race and ethnicity	Median Household Income
Asian	\$123,183
Black	\$83,194
Native American	\$108,780
White	\$141,003
Latinx	\$86,302

Source: Table S1903, 2021 American Community Survey 1-Year Estimates, Census Bureau.

Further, the median household income of renter households in the County was \$71,240, compared to \$147,209 for owner households.<sup>18</sup> The median income of renter households falls well below the 60 percent AMI threshold for a family of four, which implies that renters could also benefit from more affordable housing. Table 2 suggests Black and Latinx households are overrepresented among renter households. Native American households are proportionately represented, while White and Asian households are underrepresented.

**Table 2: Percent of All Households and Percent of Renter-Occupied Households by Race and Ethnicity, Montgomery County**

Race and ethnicity	All Households	Renter-Occupied Households
Asian	14.7	13.3
Black or African American	19.1	31.6
Native American	0.4	0.3
White	49.0	32.8
Hispanic or Latino	15.0	20.1

Source: Table S2502, 2021 American Community Survey 1-Year Estimates, Census Bureau.

**For the second question,** OLO considered the extent to which this Bill could address racial disparities in housing security. The nationwide housing crisis is fueled in large part by the shortage of affordable housing. The National Low Income Housing Coalition estimates there is a shortage of 7 million affordable homes for more than 10.8 million extremely low-income families in the country.<sup>19</sup> Locally, in response to the regional housing shortage, the Council supported housing targets established by the Metropolitan Washington Council of Governments. The targets call for the addition of 41,000 new housing units in the County by 2030, 75 percent of which should be affordable to low- and middle-income households.<sup>20</sup>

# RESJ Impact Statement

## Bill 33-22

Data on housing insecurity outlined in the previous section suggests Black and Latinx households are disproportionately impacted by the housing crisis. Bill 33-22 could narrow racial disparities in housing insecurity, such as rent burden and homelessness, by increasing the availability of units that are more affordable to Black and Latinx residents.

Taken together, OLO anticipates Bill 33-22 could have a positive impact on RESJ in the County. Data on household median incomes suggest Black and Latinx households, particularly renter households, could disproportionately benefit from an increase in affordable housing units. If Bill 33-22 works as intended, an increase in affordable housing could also narrow racial disparities in housing insecurity, such as rent burden and homelessness, by increasing the availability of units that are more affordable to Black and Latinx residents. Because only a limited number of projects would be eligible for affordable housing co-location, OLO anticipates the positive RESJ impact will be small.

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### RECOMMENDED AMENDMENTS

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.<sup>21</sup> OLO anticipates Bill 33-22 could have a positive impact on RESJ in the County. As such, OLO does not offer recommended amendments.

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### CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

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### CONTRIBUTIONS

OLO staffer Janmarie Peña, Performance Management and Data Analyst, drafted this RESJ impact statement.

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<sup>1</sup> Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools. <https://www.racialequitytools.org/glossary>

<sup>2</sup> Ibid

<sup>3</sup> Bolan Smart Associates, Inc., “Colocation White Paper,” Montgomery County Planning Department, January 2015. <https://www.montgomeryplanning.org/research/documents/MNCPCColocationFinal1-14-15.pdf>

<sup>4</sup> Steve Bohnel, “County Council Says it Supports Housing at Chevy Chase Library Site,” Bethesda Beat, May 12, 2022. <https://bethesdamagazine.com/2022/05/12/county-council-says-it-supports-housing-at-chevy-chase-library-site/>

<sup>5</sup> James Cullum, “City Manager: Co-Locating Affordable Housing Would Not Have Major Effect on ACPS Plans,” ALXnow, January 28, 2020. <https://www.alxnow.com/2020/01/28/city-manager-co-locating-affordable-housing-would-not-have-transformational-effect-on-acps-school-plans/>

<sup>6</sup> Kathleen McCormick, “A New Chapter: Cities are Tackling the Housing Crunch – by Building Above the Library,” Lincoln Institute of Land Policy, September 27, 2019. <https://www.lincolnst.edu/publications/articles/new-chapter>

# RESJ Impact Statement

## Bill 33-22

<sup>7</sup> Introduction Staff Packet for Bill 33-22, Capital Improvements Program – Affordable Housing Feasibility Study – Required, Montgomery County Council, Introduced November 15, 2022.

[https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2022/20221115/20221115\\_3B.pdf](https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2022/20221115/20221115_3B.pdf)

<sup>8</sup> Ibid

<sup>9</sup> Ibid

<sup>10</sup> Racial Equity and Social Justice Impact Statement for Expedited Bill 30-21, Office of Legislative Oversight, Montgomery County, Maryland, September 9, 2021. <https://montgomerycountymd.gov/OLO/Resources/Files/resjis/2021/Bill30-21RESJ.pdf>

<sup>11</sup> Table S0201: Selected Population Profile in the United States, 2021 American Community Survey 1-Year Estimates, Census Bureau. <https://data.census.gov/table?q=s0201&t=001:002:004:006:012:01A:050:400&g=0500000US24031>

<sup>12</sup> “DHHS Pulse Report: COVID-19 Impact and Recovery,” Montgomery County Department of Health and Human Services, November 30, 2022. <https://www.montgomerycountymd.gov/covid19/Resources/Files/pulse/DHHS-Pulse-221130.pdf>

<sup>13</sup> “Point in Time Survey,” Montgomery County Interagency Commission on Homelessness, Accessed December 5, 2022. <https://www.montgomerycountymd.gov/homelessness/numbers.html>

<sup>14</sup> Ibid

<sup>15</sup> “Percent of Owner-Occupied Households by Race/Ethnicity: Montgomery County, MD,” National Equity Atlas, Accessed December 1, 2022. <https://nationalequityatlas.org/indicators/Homeownership#/?geo=04000000000024031>

<sup>16</sup> 2022 Rent and Income Limits, Montgomery County Department of Housing and Community Affairs, June 15, 2022.

[https://montgomerycountymd.gov/DHCA/Resources/Files/housing/multifamily/compliance/rent\\_income\\_limits\\_current.pdf](https://montgomerycountymd.gov/DHCA/Resources/Files/housing/multifamily/compliance/rent_income_limits_current.pdf)

<sup>17</sup> Latinx is an ethnicity rather than a race. Therefore, Latinx people are included in multiple racial groups throughout this impact statement unless where otherwise noted.

<sup>18</sup> Table S2503: Financial Characteristics, 2021 American Community Survey 1-Year Estimates, Census Bureau.

<https://data.census.gov/cedsci/table?t=Owner%2FRenter%20%28Tenure%29&g=0500000US24031&tid=ACSST1Y2021.S2503>

<sup>19</sup> “The Problem,” National Low Income Housing Coalition, Accessed December 2, 2022. <https://nlihc.org/explore-issues/why-we-care/problem>

<sup>20</sup> “Council Unanimously Approves Resolution to Support Metropolitan Washington Council of Governments’ Regional Housing Targets for Montgomery County,” Press Releases, Montgomery County Council, November 6, 2019.

[https://www2.montgomerycountymd.gov/mcgportalapps/Press\\_Detail.aspx?Item\\_ID=23618&Dept=1](https://www2.montgomerycountymd.gov/mcgportalapps/Press_Detail.aspx?Item_ID=23618&Dept=1)

<sup>21</sup> Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council



Montgomery County Council  
Council Office Building  
100 Maryland Avenue  
Rockville, MD 20850

January 13, 2023

Dear Council President Glass and members of the Montgomery County Council:

My name is Dan Reed and I serve as the Regional Policy Director for [Greater Greater Washington](#), a nonprofit that works to advance racial, economic, and environmental justice in land use, transportation, and housing throughout Greater Washington. We support Bill 33-22, Capital Improvements Program–Affordable Housing Feasibility Study–Required as a way to provide much needed affordable housing in Montgomery County.

Public land is one of the county’s biggest assets. We have 20 library branches, 20 recreation centers, six police stations, 42 fire and rescue stations, and 38 public parking lots and garages. Many of these facilities need to be updated or rebuilt, are in locations zoned for housing, and may have underutilized space on their properties. This bill would require the County Executive to explore building affordable housing whenever planning a variety of capital projects, such as libraries, recreation centers, police stations, fire stations, public parking lots, and other public facilities. It creates a review process for determining whether co-locating housing and public amenities is possible. Most importantly, it puts the burden on the county to explain why colocation isn’t possible, which is the opposite of the current process that assumes that outright.

Additionally, Bill 33-22 supports several of the county’s goals:

- **It helps address our affordable housing shortage.** Home sale prices in Montgomery County have increased 16% over the past three years, and topped \$600,000 for the first time last year.<sup>1</sup> We need 60,000 new homes by 2040<sup>2</sup>, and 50% of which is anticipated to be needed for multi-family rentals.<sup>3</sup>
- **It makes it easier to provide affordable housing.** A study from the Maryland Department of Housing and Community Development specifically identifies leveraging public land as a strategy for delivering affordable housing, as land costs are a significant portion of development costs.<sup>4</sup>
- **It supports our racial equity and social justice goals.** Co-locating affordable housing and public amenities allows historically oppressed populations, such as people of color and queer people, as well as people with limited mobility or senior citizens, to fully participate in their communities.

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<sup>1</sup> Bright MLS

<sup>2</sup> [https://montgomeryplanning.org/wp-content/uploads/2021/05/MP\\_AHSExplainer\\_051221\\_v2.pdf](https://montgomeryplanning.org/wp-content/uploads/2021/05/MP_AHSExplainer_051221_v2.pdf)

<sup>3</sup> <https://montgomeryplanning.org/wp-content/uploads/2020/04/Housing-Needs-infographic.pdf>

<sup>4</sup> <https://dhcd.maryland.gov/Documents/Other%20Publications/Report.pdf>

The Washington, DC region is great ➡ and it can be greater.



- **It provides higher-quality affordable housing.** Recent coverage about flooding<sup>5</sup>, building code violations<sup>6</sup>, and explosions<sup>7</sup> at local apartment complexes show how the county's affordable housing stock is aging, putting our most vulnerable residents at risk. We need to start producing new affordable homes to replace and grow our current supply.
- **It supports our Climate Action Plan goals to reduce car trips 15% by 2027<sup>8</sup>.** Co-locating housing and public amenities allows residents to live closer to daily needs, transportation, and jobs, meaning they can drive less or not at all, reducing vehicle emissions. It also protects open space and improves storm water management by making better use of land that's already been developed.
- **It supports our Economic Development Strategic Plan goals<sup>9</sup>.** The strategic plan identifies providing more affordable housing as a tool to grow the talent pipeline by making it easier for workers to live near major employers.

Montgomery County already has several examples of co-located affordable housing and public buildings, such as the Silver Spring Library and the Bonifant, a mixed-income apartment building; Parking Lot 31 in Bethesda, which has apartments and condominiums above; and the Third District Police Station in White Oak, where affordable senior housing was built on the property. It's notable that some neighbors vehemently fought building affordable housing alongside that police station, delaying its construction for a decade. Likewise, a group of opponents in Chevy Chase have tried to block affordable housing and a new library from being built on the site of the current library. These fights prevent all of us from having a real conversation about how to meet our affordable housing needs and invest in public amenities we all need. We urge the council to ensure that these conversations can happen in the future.

Thank you for your consideration of our comments. I am happy to discuss any questions or concerns you have, and we look forward to working with you to achieve our County's affordable housing goals.

Sincerely,

Dan Reed  
Regional Policy Director  
Greater Greater Washington

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<sup>5</sup> <https://bethesdamagazine.com/2023/01/10/flooding-mold-rats-disaster-strikes-again-at-rock-creek-woods-apartments/>

<sup>6</sup> <https://bethesdamagazine.com/2019/07/26/silver-spring-apartment-complex-cited-with-2500-housing-code-violations-has-new-management/>

<sup>7</sup> <https://www.mymcmedia.org/friendly-garden-apartments-explosion-ruled-accidental-one-person-remains-in-critical-condition/>

<sup>8</sup> <https://www.montgomerycountymd.gov/climate/Resources/Files/climate/climate-action-plan.pdf>

<sup>9</sup> [https://static1.squarespace.com/static/5873c778e6f2e14a3529e892/t/624dd72fc30a024d37415e42/1649268531081/Economic\\_Development\\_Strategic\\_Plan\\_040622.pdf](https://static1.squarespace.com/static/5873c778e6f2e14a3529e892/t/624dd72fc30a024d37415e42/1649268531081/Economic_Development_Strategic_Plan_040622.pdf)





**Coalition for Smarter Growth**  
DC • MD • VA

Montgomery County Council  
Council Office Building  
100 Maryland Ave  
Rockville, MD 20850

January 17, 2023

**Support for Bill 33-22: Capital Improvements Program – Affordable Housing Feasibility Study – Required**

Good afternoon. My name is Carrie Kisicki and I am the Montgomery Advocacy Manager for the Coalition for Smarter Growth.

CSG strongly supports this bill, which will ensure the county is doing its due diligence to pursue opportunities to build affordable housing on public land, and with opportunities for input from the public and the Council.

Montgomery County is facing a housing shortage, especially when it comes to affordable housing, and public land is a scarce and valuable resource. The County recognized this when it initially required affordable housing feasibility studies for planned developments on public land.

But when we aren't getting the results we want—and we know that we *haven't* seen as much affordable housing on public land as we would like to—we have to ask why. The existing assessment, which is required only after facility planning begins, does not come soon enough for the public and the Council to provide meaningful input on projects. These missed opportunities have resulted in missed opportunities for affordable housing. We shouldn't think of that in the number of units but in the number of affordable homes for families that we failed to build.

What this bill provides is a pragmatic solution to the obstacles to co-locating affordable housing on public land that have become clear since the original legislation was put in place.

First, it increases transparency. It gives the public and Council more insight into these important projects, and requires certain assumptions of the feasibility study be clearly spelled out and open to public and Council review, and revision if necessary.

Second, it requires thoroughness and thoughtfulness from our public officials, who under this bill will have to carefully consider the potential for affordable housing on each applicable project.





## Coalition for Smarter Growth

DC • MD • VA

Importantly, if the Council believes that the potential for affordable housing on a given site has not yet been fully explored, there is a process to request further analysis so that we are doing our due diligence on affordable housing on every single site.

Third, the requirements of this bill match the urgency of this issue and the unique value—and important role—of public land. We cannot afford to miss any opportunities to build affordable housing. Land acquisition is a huge cost; public land is a huge opportunity for making deeply affordable housing feasible.

As a public, we and our elected officials should have an opportunity to know what projects are underway and have an opportunity to weigh in before those paths are set and changing a path becomes difficult or disruptive to an important project. In the case of the projects covered by this bill, it is especially important to have a clear, established process with clear expectations and make these decisions at a point where it will not cause delays because these sites by definition often involve important public resources like a library or police station.

Public land offers one of the best opportunities for providing much needed, and often deeply affordable, affordable housing. Therefore, CSG strongly urges you to support this bill. Thank you.



# MONTGOMERY HOUSING ALLIANCE

[www.montgomeryhousingalliance.org](http://www.montgomeryhousingalliance.org)

*A coalition of organizations focused on increasing the rate of preservation and development of affordable housing in Montgomery County*

## **Testimony on Bill 33-22, Capital Improvements Program – Affordable Housing Feasibility Study – Required Montgomery Housing Alliance**

January 17, 2023

Good afternoon Council President Glass and members of the Council. My name is Mary Kolar, and I am testifying on behalf of Montgomery Housing Alliance (MHA). MHA is a coalition of organizations focused on increasing the rate of affordable housing preservation and development in Montgomery County. MHA members include non-profit developers, organizations that serve people in need of affordable housing, and other groups who count affordable housing as one of their policy goals.

MHA supports Bill 33-22. The bill would help ensure colocation of affordable housing with the county's capital projects, an important step toward addressing the real and significant housing challenges facing the county, and toward achieving the maximum public benefit from public land.

We applaud the Council's ongoing commitment to affordable housing programs. As you know, the Council unanimously affirmed the housing targets identified in the 2019 Council of Governments report. To meet these targets, we must produce over 2,000 units of housing affordable to low-to-moderate (LMI) income households annually. At the current rate of production, we are not on track to reach this goal.

It is critical that the county utilize all opportunities to significantly increase affordable housing options, both rental and homeownership. Half of Montgomery County households are housing cost burdened, paying over 30% of their income toward housing costs. Further, over 20,000 renter households pay more than *half* of their incomes toward rent. Every day these families must make impossible choices between paying for housing and paying for other critical priorities like education, health care, and reliable transportation. We also face significant challenges ensuring affordable and equitable homeownership options in the county. We face a 32% gap between white households who own their homes and Black and African American households who own their homes, worse than the national average; and a 26% gap between white households who own their homes and Latinx households who own their homes. We know that low-income households and communities of color are especially impacted by lack of



*The Montgomery Housing Alliance is a coalition of  
the Community Development Network of Maryland*



# MONTGOMERY HOUSING ALLIANCE

[www.montgomeryhousingalliance.org](http://www.montgomeryhousingalliance.org)

*A coalition of organizations focused on increasing the rate of preservation and development of affordable housing in Montgomery County*

access to affordable housing, making efforts to meet housing production targets not simply a matter of economic growth, but also one of equity.

We urge you to pass Bill 33-22 to ensure the highest and best use of county-owned property. Co-locating affordable housing with county capital projects is a critical tool to address one of our most persistent and pervasive challenges and make real progress toward meeting housing targets and increasing affordability in an equitable way.

Thank you for the opportunity to provide input as you consider this matter.



*The Montgomery Housing Alliance is a coalition of the Community Development Network of Maryland*

## HONORARY CHAIRS

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The Honorable Chris Van Hollen  
The Honorable Jamie Raskin  
The Honorable John Sarbanes  
The Honorable David Trone  
The Honorable Isaiah "Ike" Leggett

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January 17, 2023

Mr. Evan Glass, President  
Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

Dear Council President Glass:

The Affordable Housing Conference of Montgomery County is pleased to support Bill 33-22, Capital Improvements Program – Affordable Housing Feasibility Study – Required. This legislation is an important step in Montgomery County's continued efforts to co-locate housing next to public facilities. We agree that every new project should be evaluated early in the planning process to see if affordable housing can be feasibly included alongside the proposed public facility.

Projects such as The Bonifant Apartments next to the Silver Spring Library, and Victory Crossing adjacent to the Third District Police Station, are proof that affordable housing can be built next to public facilities successfully. We support the bill's requirement that an affordable housing feasibility study must be prepared prior to facility planning or other early stages in the development of a capital project.

The Affordable Housing Conference of Montgomery County commends the Council's continued support of affordable housing. We urge you to approve Bill 33-22.

Sincerely,

A handwritten signature in blue ink, appearing to read "Barbara Goldberg Goldman".

Barbara Goldberg Goldman  
AHCMC Co-Chair

A handwritten signature in blue ink, appearing to read "Ralph Bennett".

Ralph Bennett  
AHCMC Co-Chair

January 18, 2023

Bill 32-22

**TO:** Montgomery County Council  
**FROM:** Jane Lyons-Raeder  
**BILL:** Bill 33-22, Capital Improvements Program – Affordable Housing Feasibility Study – Required  
**POSITION:** Support

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Thank you for the opportunity to submit testimony. My name is Jane Lyons-Raeder and I'm a renter in downtown Silver Spring. I am writing in support of Bill 33-22, Capital Improvements Program – Affordable Housing Feasibility Study – Required. I strongly support this legislation which would strengthen existing requirements around colocation of affordable housing with public projects.

Putting affordable housing on top of a newly renovated Chevy Chase Library, or any new public facility near transit, should not be a fight. It's common sense. Nevertheless, the County Executive has slow-rolled the process of finding a partner to work with on the Chevy Chase Library and has repeatedly tried to decrease the scope of the project, thus decreasing the number of possible subsidized housing units. Further, the only way that the Executive's decision not to pursue affordable housing at the Chevy Chase Library came to light was through myself as a community advocate reaching out to DPS via email to ask whether a decision had been made. From this experience, it is clear that the affordable housing assessment requirement for capital projects is not effective or transparent, and does not hold the County Executive accountable for his commitments to affordable housing.

Bill 33-22 seeks to address these structural inefficiencies by requiring the evaluation for affordable housing colocation earlier in the capital project development process and allowing the Council to approve or disapprove of the analysis.

As stated, I strongly support Bill 33-22 – however, I'd like to draw attention to the fact that in the current language, refresh projects are not required to submit an affordable housing assessment. The Chevy Chase Library project was originally included in the County Executive's recommended FY23 Library Refurbishment Level of Effort CIP, rather than as a standalone PDF. This is despite the Director of MCPL saying [in a letter](#) that the library has "structural deficits beyond what could be remedied on a refresh/refurbishment project" and [in yet another letter](#) that "a refresh of this building would not be wise economically." Despite this, in his [April 2022 letter](#), the County Executive was still trying to make the argument that the Chevy Chase Library might be a refresh project.

This loophole has been remedied for the Chevy Chase Library project, due to action by the County Council, but could be used for other projects worthy of affordable housing colocation. I do not think every refresh project warrants an affordable housing assessment, but would encourage stricter guidelines for what is considered a refresh.

In this testimony, I use the Chevy Chase Library as an example, but it is far from a unique case. Montgomery County has missed too many opportunities to colocate public facilities with affordable housing. I look forward to seeing this redressed via Bill 33-22 and this Council's strong commitment to furthering affordable housing, especially in high-opportunity, transit accessible neighborhoods.

Thank you.

**M E M O R A N D U M**

January 23, 2023

TO: Planning, Housing, and Parks Committee

FROM: Ludeen McCartney-Green, Legislative Attorney

SUBJECT: Bill 33-22, Capital Improvements Program – Affordable Housing Feasibility Study – Required

PURPOSE: **Worksession Addendum** – Committee to make a recommendation

Following the publication of the staff report, we received three additional documents relevant for the Planning, Housing, and Parks Committee worksession. Attached are the Planning Board Recommendation (©1), the Montgomery Planning Staff Report (©3) and the Fiscal Impact Statement (© 12).

Additionally, Councilmembers Mink and Sayles have been added as Co-Sponsors for Bill 33-22.

This packet contains:

Planning Board Recommendation  
Montgomery Planning Staff Report  
Fiscal Impact Statement

<u>Circle #</u>
1
3
12

**January 19, 2023**

**To:** The Honorable Evan Glass  
President, Montgomery County Council  
Stella B. Werner Council Office Building  
100 Maryland Avenue, Room 501  
Rockville, Maryland 20850

**From:** Montgomery County Planning Board

**Subject:** Bill 33-22 - Capital Improvements Program – Affordable Housing Feasibility Study – Required

### **BOARD RECOMMENDATION**

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission met on January 19, 2023, and reviewed Bill 33-22 – Capital Improvements Program – Affordable Housing Feasibility Study – Required. The Planning Board supports the intent of Bill 33-22, which would require the County Executive to submit an affordable housing feasibility study to the Council for certain capital projects, establish a review process for the Council to determine project feasibility for co-location of affordable housing, and generally amend County law regarding the analysis of capital projects.

The Planning Board believes that the proposed changes will allow more transparency to the existing evaluation of projects for co-location of affordable housing and county facilities. The bill also appropriately requires more analysis, ensuring that the increasingly limited opportunities for the co-location of affordable housing and county facilities are thoroughly evaluated earlier in the planning process, increasing the likelihood of co-location, and increasing the county’s supply of affordable housing.

The Planning Board offers three suggestions for potential points of clarification in the bill:

1. On lines 3-7 of the bill, under the definition of affordable housing feasibility study, the Planning Board believes there is no need to call out specific public facilities like a library, recreation center, police station, or fire station. Instead, the definition should be broader and should read “*affordable housing feasibility study means an analysis of any applicable capital project that includes an evaluation of co-location of affordable housing at any general services building.*” As introduced, the listing of the types of projects where an affordable housing co-location study would be required, is at odds with the definition of “applicable capital project” which includes “any”



project. Limitations, if any, can be appropriately made in the “applicable capital project definition”.

2. In the definition of “applicable capital project” on lines 8-10, the Planning Board suggests that the Council consider including a minimum project size threshold. There may be instances where projects are too small to viably fit a co-location project and may not necessitate an affordable housing feasibility study.
3. The Planning Board also believes that the relationship between the feasibility study and the existing affordable housing assessment be clarified. The Planning Board questions whether it is necessary for the Office of Management and Budget to complete the secondary affordable housing assessment if the Council approves an affordable housing feasible study that finds the co-location of affordable housing not feasible.

The Board appreciates the opportunity to review Bill 33-22 and offers its general support of the introduced bill with potential clarifications. The Board hopes the Council takes into consideration the enclosed recommendations to further clarify the intent of this section of code.

#### **CERTIFICATION**

This is to certify that the attached report is a true and correct copy of the technical staff report, and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Wheaton, Maryland, on Thursday, January 19, 2023.



**Jeff Zyontz**

Chair

Attachment A: Planning Staff Report Package

## BILL 33-22 - CAPITAL IMPROVEMENTS PROGRAM – AFFORDABLE HOUSING FEASIBILITY STUDY – REQUIRED



### Description

Bill 33-22 would require the County Executive to submit an affordable housing feasibility study to the Council for certain capital projects, establish a review process for the Council to determine project feasibility for co-location of affordable housing and generally amend County law regarding the analysis of capital projects.

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## SUMMARY

- Bill 33-22 would require the County Executive to submit an affordable housing feasibility study to the Council for certain capital projects, establish a review process for the Council to determine project feasibility for co-location of affordable housing and generally amend County law regarding the analysis of capital projects.
- Specifically, Bill 33-22 would require the County Executive to submit an affordable housing feasibility study prior to facility planning, development of the program of requirements, site selection, or land acquisition of any capital project.
- This bill seeks to strengthen the evaluation of co-location of affordable housing and county facilities throughout the county, and to make the process of evaluating a project for co-location of affordable housing and County facilities more transparent between the Executive branch and the County Council.

**BILL INFORMATION**

Sponsor

Councilmember Friedson

Review Basis

Chapter 25B, Housing Policy

Public Hearing

1/17/2023

*(comments from the Planning Board will  
be sent up prior to the first committee work  
session)*

Introduction Date

11/7/2022

Planning Division

Countywide Planning & Policy  
Research & Strategic Projects

Planning Board Information

MCPB

Item No. 10

## **BILL 33-22: CAPITAL IMPROVEMENTS PROGRAM – AFFORDABLE HOUSING FEASIBILITY STUDY – REQUIRED**

### **BILL 33-22 OVERVIEW**

Bill 33-22 seeks to strengthen the evaluation of the co-location of affordable housing and county facilities earlier in the capital project development project. The bill seeks to require a feasibility study prior to facility planning and provides an opportunity for the County Council to review the study and determine whether to support the findings or make further recommendations.

Under the current law, the Office of Management and Budget (OMB) is required to provide an affordable housing assessment for each applicable capital project that is in facility planning to the County Council during the transmission of the Capital Improvements Program (CIP) budget.

The affordable housing assessment takes into consideration several factors in its evaluation:

1. The feasibility of including a significant amount of affordable housing in the project.
2. The effect of the project on the supply of affordable housing in the immediate area.
3. What capital or operating modifications, if any, would promote and maximize affordable housing in the project and the immediate area.
4. What operating budget modifications, if any, would be needed to build and maintain affordable housing in the project.

Also, the affordable housing assessment by OMB should discuss the following issues related to the capital project, including:

1. Compatibility of affordable housing with the underlying project.
2. Conformity of affordable housing to applicable zoning and land use plans.
3. Proximity to public transit, and availability of other transportation options.
4. Proximity to other community services.

In performing its analysis, OMB generally consults the Department of Housing and Community Affairs (DHCA), the Planning Board, the Housing Opportunities Commission (HOC), and any other County department or agency with expertise in affordable housing.

However, by the time the housing assessment and capital project are included in the CIP for the Council's evaluation of whether to co-locate affordable housing with a new project, there are already potential barriers. These barriers could include constructions costs, design elements, and site constraints that could prevent the likelihood and feasibility of a project moving forward.

Bill 33-22 would require the County Executive to submit an affordable housing feasibility study prior to facility planning, development of the program requirements, site selections, or land acquisition of any capital project.

## BILL 33-22 ANALYSIS

Bill 33-22 makes several modifications to Chapter 25B of County Code as it relates to affordable housing assessments.

First, two definitions are added for ‘affordable housing feasibility study’ and ‘applicable capital project,’ as used in Section 7 of Chapter 25B, as follows.

Affordable housing feasibility study means an analysis of any applicable capital project that includes an evaluation of co-location of affordable housing at a library, recreation center, police station, fire station, or and other general services building.

Applicable capital project means any proposed building project administered by the Department of General Services or the Parking Management Division of the Department of Transportation.

The bill also updates the requirements for the feasibility study to include the following:

(c) Contents of the feasibility study. The study must include, but is not limited to, the following:

- (1) a description of the proposed capital project;
- (2) outreach efforts and stakeholder input;
- (3) the program of requirements, if developed;
- (4) potential site and environmental constraints;
- (5) programmatic elements evaluated for co-location;
- (6) projected total cost of construction, including, if any, costs of co-location of affordable housing;
- (7) a statement of whether co-location is feasible; and
- (8) any other related components used for consideration to determine project feasibility

After the Council receives the study submitted by the County Executive, the Council must review the study within 30 days.

The study will provide a basis for the consideration of co-locating affordable housing in any new CIP project. After reviewing the study, the Council will decide whether to approve or disapprove of the analysis presented in the feasibility study.

If the affordable housing feasibility study is **approved**, the Department of General Services (DGS) moves forward with its normal capital project development process.

If the Council **disapproves** the Executive Branch analysis, the Council can direct the Executive Branch to perform additional analysis and come back to the Council with a capital project plan that includes co-location.

The Council can also approve the Executive’s plan for co-location, waive any requirements, or agree with the Executive Branch that housing is not feasible for a certain project.



If the project is determined feasible, it would be included in the CIP for the normal budget review process to receive funding.

Bill 33-22 also includes a waiver provision if the Council determines the project would result in a loss of a site, require emergency appropriation or experience further delay not in the best interest of the public.

Planning staff has one question about the impact of the proposed affordable housing feasibility study on the existing affordable housing assessment requirement. If the County Council approves of the feasibility study in which it is determined that co-location of affordable housing is not feasible, is OMB still required to complete the affordable housing assessment later in the CIP process?

The proposed affordable housing feasibility study deals with the co-location of affordable housing and another county facility like a library or police station. The existing affordable housing assessment deals with the evaluation of feasibility of including a significant amount of affordable housing in the project, which based on a reading of County Code (Chapter 25B, section 7) may or may not include co-location.

Could the Council approve the findings of the affordable housing feasibility study that states co-location of affordable housing is not feasible, but then the affordable housing assessment find that the site could potentially support an affordable housing development without co-location? The Council may want to add language to the bill that clarifies the relationship between the feasibility and assessment.

**While Planning staff has a minor question about the relationship between the feasibility and assessment study, Planning staff supports the intent of the bill and recommends that the Planning Board send a letter of support for Bill 33-22 to the County Council.**

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#### BRIEF HISTORY OF CO-LOCATION INITIATIVES IN MONTGOMERY COUNTY

Co-location, which is the establishment of several public facilities in one place, [has a long history in Montgomery County](#). From a 2003 Office of Legislative Oversight (OLO) countywide analysis of strategic plans, to profile coordination between facilities planning, to the establishment of a series of various working groups in subsequent years, co-location has long been considered a useful tool. More recently, the County Council has funded several initiatives related to co-location. In 2015, the Council funded two studies that were companion efforts: A [Colocation White Paper](#), which addressed possible opportunities and challenges for co-location in the county, including looking at policies and practices in other jurisdictions, and a Colocation of Public Facilities Study.

The work was also overseen by an Interdepartmental Work Group (referred to as the Director's Oversight Committee or DOC) consisting of senior staff from M-NCPPC, the Montgomery County Executive's Office, the Montgomery County Department of General Services, Montgomery County Public Schools, Montgomery College, WSSC, the Housing Opportunities Commission, and the County Council. The process resulted in a high level of engagement and participation by senior staff across agencies. One recommendation from the study was to formalize and continue the operation of the DOC

through a [County Council resolution](#), which was passed in October of 2018. The DOC has continued to meet several times annually to discuss future needs and visioning early enough in agency planning processes to consider ways in which co-location may assist in meeting the needs of both agency function as well as service delivery to the community.

There are many possible interpretations and applications of the co-location concept. The studies and work of the DOC recommended keeping the definition of co-location broad in order to retain the maximum flexibility that co-location projects can provide. Further, co-location should be embraced as a standard planning practice of physically locating organizations in facilities together to save resources and increase potential collaboration. To those ends, a framework of six definitions of co-location were developed:

1. Public Uses in the Same Building –This practice can include:
  - a. Intentionally planned uses for the same building
  - b. Accidentally occurring uses ending up in the same building (i.e. backfilling excess space, adding floors, etc.).
2. Adjacent Public Uses – Adjacent but not integrated public uses (not in the same building).
3. Adjacent Private Uses – Co-location could include a public use adjacent to a private use on the same site / parcel (i.e., retail space) but not in the same building.
4. Joint Use of Space – Shared land and common areas, such as lobbies, meeting spaces, restrooms, gymnasiums, playing / ball fields and parks, including community use of public facilities.
5. Public Private Partnerships (PPP) – Implementation of co-location through a private sector venture (i.e., mixed-use projects).
6. Shared / Other Public Benefits or Interest – To include more broadly defined uses of public interest beyond County services (i.e., other governmental entities, affordable housing, non-profits and other community benefits).

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## ROLE OF PLANNING IN CO-LOCATION

The Planning Board and Planning Department have a role in co-location, generally through three avenues: master planning, mandatory referrals and development review, and the Capital Improvements Program.

### Master Planning

The M-NCPPC master and sector planning process provides a platform for county agencies to locate new facilities for future use in specific geographies. It is an established means for agency collaboration in developing frameworks for the delivery of community services. Identification of potential agency and departmental projects during the planning process facilitates eventual project



implementation, since these plans are approved by the Planning Board and adopted by the County Council.

All master planning processes follow the same procedures, whereby they are prepared in cooperation with potentially impacted county agencies and in consultation with the County Executive, County Council and residents.

### Mandatory Referrals and Development Review

Sections 20-301 through 20-308 of Division II of the Land Use Article of the Annotated Code of Maryland, Mandatory Referral Review, require all federal, state and local governments, and public utilities to submit proposed public projects to the Montgomery County Planning Board for mandatory referral review. This code requires that the Planning Board review the proposed location and character of public or utility related land use initiatives in Montgomery County. The Planning Board must also review the acquisition or sale of any land by any public board, body or official. The Planning Board communicates its approval, approval with conditions, or disapproval, along with the reasons for its decision, to the applicant. Nonetheless, mandatory referral review and comments by the Planning Board are advisory only. Although many applicants choose to work with the Board in a constructive manner and take its recommendations into account, ultimately, the applicant may do as they wish.

As it relates to affordable housing, Montgomery County and the Department of Housing and Community Affairs generally does not own housing in the long run, therefore the affordable housing element of a co-location project may not be considered a government use. For the development of affordable housing on county-owned land or in a co-located project, housing projects (at least the housing portion of the project) use the normal development review processes with preliminary and/or site plan review and are subject to normal density rules.

### Capital Improvements Program

The Montgomery County Charter requires the County Executive to prepare a comprehensive six-year program for capital improvements, called the Capital Improvements Program (CIP), no later than January 15 of each even-numbered calendar year. The charter requires that the annual capital budget be consistent with the six-year program. In odd-numbered calendar years, the approved CIP, together with any amendments, continues to guide capital investment. The CIP includes all capital projects and programs for all agencies for which the county sets tax rates or approves budgets or programs.

Some county master plans include phasing elements to provide guidance about the timing and sequence of capital facilities in order to develop a CIP that serves long-range needs.

During the Council review process, the Planning Board provides comments to the Council regarding conformance with local plans. A final determination as to consistency of projects with adopted county

plans is made by the County Council. The Council adopts the CIP and approves a list of applicable state participation projects.

### Planning Board Role in Bill 33-22

While the role of the Planning Board in co-location will remain largely unchanged should Bill 33-22 be adopted, Planning staff believes that changes will allow more transparency to the existing evaluation of projects for co-location of affordable housing and county facilities. The bill also appropriately requires more analysis, ensuring that the increasingly limited opportunities for the co-location of affordable housing and county facilities are thoroughly evaluated earlier in the planning process increasing the likelihood of co-location and increasing the county's supply of affordable housing.

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## CONCLUSION

Montgomery County and Montgomery Planning have a long history of supporting co-location initiatives. In 2018, the Council signed [a resolution](#) supporting the findings and recommendations from the Montgomery County Colocation of Public Facilities Study and the ongoing efforts of the Directors Oversight Committee. While the county has a history of pursuing co-location, Bill 33-22 seeks to build upon previous successes through a strategic approach to evaluating co-location and affordable housing. Bill 33-22 is a deliberate and comprehensive approach to prioritizing the co-location of affordable housing with public projects. Bill 33-22 also recognizes that the development of new public facilities as well as affordable housing is becoming more challenging and expensive due to limited available resources and rising construction costs. In recognition of these factors, Planning staff supports Bill 33-22 as written.

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## ATTACHMENTS / LINKS

Attachment 1 – Introduction Packet for Bill 33-22

Link 1 – [Colocation White Paper \(January 2015\)](#)

Link 2 – [Colocation of Public Facilities Report \(April 2018\)](#)

# Fiscal Impact Statement

Office of Management and Budget

## Bill 33-22

## Capital Improvement Program - Affordable Housing Feasibility Study - Required

### Bill Summary

Bill 33-22 requires the County Executive to submit an affordable housing feasibility study prior to facility planning, development of the program of requirements, site selection, or land acquisition of any proposed building project administered by the Department of General Services (DGS) or the Parking Management Division of the Department of Transportation (DOT). The feasibility assessment is to include a description of the project, outreach efforts, the program of requirements (if developed), potential site and environmental constraints, programmatic elements evaluated for co-location, the projected cost of construction and of housing co-location, and a statement of housing co-location feasibility.

### Fiscal Impact Summary

There is no anticipated fiscal impact from this legislation, as the contents of the required feasibility study are currently assessed by DGS through the capital project planning process and would be assigned to existing staff. There are a limited number of capital projects administered by the Parking Management Division to which this bill would apply. For such projects, DOT would rely on existing DGS staff capacity to complete the required analysis.

Fiscal Year	0	0	0	0	0	0	Total
Personnel Costs	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Operating Expenses	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Expenditures	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Revenues	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Impact	\$0	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00	

### Fiscal Impact Analysis

As described above, this bill is not anticipated to have a fiscal impact, as the study components can be accommodated by existing staff DGS.

### Staff Impact

The bill is not expected to impact staff time or duties.

### Actuarial Analysis

The bill is not expected to impact retiree pension or group insurance costs.

### Information Technology Impact

The bill is not expected to impact the County Information Technology (IT) or Enterprise Resource Planning (ERP) systems.

### Other Information

*Later actions that may impact revenue or expenditures if future spending is projected*

The bill does not authorize future spending.

### Contributors

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