

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 860

(Delegate Buckel, *et al.*)

Judiciary and Economic Matters

Judicial Proceedings

Public Nuisance - Common Carriers - Damage to Public Infrastructure

This bill prohibits a “common carrier” or an employee of the common carrier from causing damage to “public infrastructure” that necessitates the closure of the public infrastructure. A violation of this prohibition is a public nuisance, and the State (for State public infrastructure) or counsel designated or retained by a local government (for local government public infrastructure) may bring an action against a common carrier for a public nuisance caused by a violation. The State or a local government may seek injunctive relief, declaratory relief, and compensatory damages for the cost of the repair or replacement of the affected infrastructure. A common carrier that commits a violation may be liable to the State or local government for civil penalties of \$1,000 per day for each day the public nuisance continues until the public infrastructure is sufficiently repaired for public use or is replaced. The State or a local government may file an action against a common carrier under the bill at any time following the violation giving rise to the cause of action and until the public infrastructure is sufficiently repaired for public use or is replaced.

Fiscal Summary

State Effect: As discussed below, general fund revenues may increase from penalties imposed on common carriers. Transportation Trust Fund (TTF) finances may be impacted if the State is awarded and collects damages for repair or replacement of damaged public infrastructure. TTF and nonbudgeted expenditures may increase, at least minimally, if the Maryland Department of Transportation (MDOT) or Maryland Transportation Authority (MDTA) litigate cases, respectively.

Local Effect: Local revenues may increase from penalties imposed on common carriers. Local expenditures may decrease if a local jurisdiction is awarded and collects damages for repairs or replacement of damaged public infrastructure and may be partially offset by increased expenditures for local governments to retain outside counsel to litigate cases.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Common carrier” means a person that is engaged in the public transportation of persons for hire by land, including, among other things, a motor bus company, a railroad company, and a transit company. “Common carrier” does not include any entity owned by the State or a local government.

“Public infrastructure” means a bridge or highway owned, controlled, or maintained by the State or a county or municipal government.

Current Law:

Government Regulation of Nuisances

The State has the authority to abate nuisances (generally, conditions that adversely affect others, through injury, discomfort, or other means) in the exercise of its police power and has authorized local governments to similarly guard against and address nuisances. There are various provisions, of varying applicability, throughout State statute addressing nuisances and their abatement.

Public Nuisance – Torts

According to § 821B of the Restatement (Second) of Torts, a public nuisance is an unreasonable interference with a right common to the general public. The following are examples of factors in a public nuisance claim: whether the conduct involves a significant interference with the public health, public safety, or public convenience; whether the conduct is proscribed by statute or regulation; and whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect, and, as the actor knows or has reason to know, has a significant effect upon the public right.

Chapter 137 of 2024

Chapter 137 of 2024 established procedural requirements and options for the State in obtaining relief in an action brought by the State arising from or related to alleged or threatened injuries to the environment, infrastructure, or the natural resources of the State associated with the March 2024 collision of the Dali cargo ship into the Francis Scott Key Bridge.

The Act requires a judge or jury in an applicable action to (1) make a determination of the total liability, including damages, costs, and any other available relief; (2) assign comparative responsibility to each party joined in the action, based on the party’s relative degree of fault or responsibility for the total liability; and (3) determine the liability of a group of related persons on a collective basis, if required by equity. If the State does not

HB 860/ Page 2

obtain complete relief from a responsible person who has resolved their liability through a settlement with the State, the State may continue to pursue an action against or bring a new action against any other responsible person who has not resolved the person's liability to the State. If a responsible person resolves the person's liability to the State in a settlement of an applicable action, the person may not be liable for claims for noncontractual contribution or indemnity regarding any action or claim resolved in the settlement. A settlement of an applicable action that resolves the liability of a responsible person does not release from liability any other responsible person except as specifically provided in the terms of the settlement. However, it does reduce the potential liability of all other responsible persons liable in whole or in part by the larger of the settling person's proportionate share of liability or the amount the settling person pays to settle the action.

The Maryland Uniform Contribution Among Joint Tortfeasors Act does not apply to an action governed by the provisions within Chapter 137. The provisions within Chapter 137 may not be construed to impair any express contractual rights; create new types of actions or claims; alter the burden of proof, causation standard, or elements of an action or claim governed by the bill; or grant authority to the State or the Attorney General to bring actions or claims not otherwise authorized by law.

State Fiscal Effect: The circumstances under which the bill applies, which then determine the magnitude of the bill's fiscal impact, are unpredictable and cannot be reliably estimated in advance. However, should such applicable events occur, general fund revenues may increase from penalties imposed on common carriers; TTF and MDTA finances may also be impacted if the State recoups costs for repair or replacement of public infrastructure damaged by a common carrier.

The Office of the Attorney General advises that the bill has a minimal impact on the legal staff at MDOT (the agency most likely affiliated with State public infrastructure). MDOT advises that TTF expenditures may increase for related litigation. MDTA is funded by nonbudgeted toll revenues; MDTA may incur nonbudgeted expenditures if it engages in related litigation.

Local Fiscal Effect: Local revenues may increase from penalties imposed on common carriers. Local expenditures may increase to retain outside counsel; if county attorneys litigate these cases, then the bill has an operational effect on those offices. The bill may also reduce local expenditures for repairs to damaged infrastructure.

Small Business Effect: The bill may have a meaningful effect on small business common carriers that are sued by the State or a local jurisdiction under the bill and/or are subject to civil penalties.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1126 and SB 785 of 2024.

Designated Cross File: None.

Information Source(s): Baltimore City; Harford, Montgomery, and Wicomico counties; Maryland Association of Counties; Maryland Municipal League; Office of the Attorney General; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Maryland Department of Transportation; Department of Legislative Services

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