

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 178 (Delegate Lafferty, *et al.*)
Environment and Transportation

Natural Resources - Roadside Trees - Preservation and Protection

This bill (1) establishes criteria for the issuance of a permit for roadside tree maintenance or removal; (2) requires the replacement of roadside trees that are removed and, if necessary, the remediation of specified hazards or sources of danger; (3) establishes permit fees; and (4) authorizes a person to trim the lower limbs of a roadside tree in a manner that does not harm the tree without first obtaining a permit. In addition, the Department of Natural Resources (DNR), by April 1 of each year, must report to the General Assembly specified information on roadside tree maintenance, removal, and replacement.

The bill takes effect July 1, 2016.

Fiscal Summary

State Effect: State revenues (special or general fund) increase significantly (in the millions of dollars) due to collection of permit fees. Special fund expenditures increase by \$174,100 in FY 2017 for additional DNR staff to implement the bill, with annualized expenditures in future years. Transportation Trust Fund (TTF) and nonbudgeted expenditures may increase significantly for the State Highway Administration (SHA) and the Maryland Transportation Authority (MDTA), respectively, to comply with the bill. To the extent utility companies costs are passed through to customers, State electricity expenditures (all funds) increase.

Local Effect: Local government expenditures may increase significantly due to fee payments and compliance costs. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill states that it is the policy of the General Assembly to preserve and protect healthy roadside trees in the interests of providing environmental and ecological benefits and maintaining the social and economic benefits that roadside trees provide.

DNR may issue a permit for roadside tree maintenance or removal only if the maintenance or removal eliminates a hazard or source of danger to property, public safety, or health, or the tree is dead, dying, or deteriorating. A permit for maintenance or removal may not be issued for the purpose of improving the general aesthetic appearance of the right-of-way. An applicant for a permit to remove a roadside tree must demonstrate to the satisfaction of DNR that the applicant has made every possible effort to protect and save the tree.

A person who removes a roadside tree must replace it within two months after its removal, or if the removal occurs during an inappropriate planting season for the replacement tree species, within a timeframe established by DNR in the removal permit. DNR must ensure that all required replacement trees are planted. A person who maintains or removes a roadside tree to eliminate a hazard or source of danger caused by the tree must, if necessary, remediate the hazard or source of danger within three weeks of the removal.

The fee for a permit is \$250 for each roadside tree maintained and \$500 for each roadside tree removed. DNR must refund \$250 of the removal permit fee when the required replacement tree is planted.

DNR must adopt regulations governing the planting, maintenance, and protection of any roadside tree, including regulations authorizing without a permit the trimming of the lower limbs of a roadside tree in a manner that does not harm the tree. The bill itself also authorizes such trimming without a permit.

The bill changes certain existing references to roadside trees being “cut down or trimmed” to references to the trees being “maintained or removed.”

Violators are subject to existing penalties.

The annual report must provide, for the previous calendar year and by county, the number of (1) permits issued for the maintenance of roadside trees; (2) permits issued for the removal of roadside trees; (3) roadside trees that were removed; (4) roadside trees that were replaced; and (5) enforcement actions taken under the provisions governing maintenance and removal of roadside trees.

Current Law: A “roadside tree” is any tree or shrub growing within the right-of-way of any public road. Subject to exceptions, including cases of a tree being unrooted, broken branches contacting utility wires, or danger to persons or property, any person who desires to cut down or trim any roadside tree must apply to DNR for a permit. DNR is authorized to make rules and regulations regarding roadside trees. A person who trims, cuts, removes, or injures a roadside tree in violation of DNR regulations or a permit, or who fails to obtain a permit, is subject to a penalty of up to \$2,000 for a first offense and up to \$5,000 for a second or subsequent offense.

DNR regulations establish two types of tree care permits: (1) those issued for a specific tree or group of trees for specific tree care operations for a term not exceeding one year (fee: \$25) and (2) those issued for comprehensive and continuing programs of general tree care such as those administered by State agencies, counties, municipalities, corporations, and public utilities (fee: \$2,500 per year per tree care crew or \$250 per month per tree care crew). A fee is not required for a tree care permit issued to an applicant that is a government agency. The regulations authorize DNR’s Forest Service to issue a permit for tree care if the applicant shows that the proposed tree care will (1) eliminate a hazard to property, public safety, or health; (2) improve or prevent a deteriorated tree condition; or (3) improve the general aesthetic appearance of the right-of-way. Unless exempted by the Forest Service, if a tree is removed it must be followed by replanting of a species on a recommended tree list that is suitable to the location.

Background: DNR indicates that the law and regulations addressing roadside trees were developed to ensure proper care and protection of the millions of trees growing along the more than 30,000 miles of improved roads in Maryland. The law and regulations also were developed to ensure the trees’ compatibility with an efficient and dependable public utility system.

State Fiscal Effect:

Department of Natural Resources

Administrative Costs

Special fund (Forest or Park Reserve Fund) expenditures increase by \$174,134 in fiscal 2017, which accounts for the bill’s July 1, 2016 effective date. This estimate reflects the cost of hiring two natural resources technicians primarily to perform follow-up to determine compliance with the bill’s replacement/remediation requirements and to manage data entry necessary to meet the bill’s reporting requirement. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	\$124,271
Vehicles	37,240
Operating Expenses	<u>12,623</u>
Total FY 2017 DNR Expenditures	\$174,134

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Increased Fee Revenues

DNR special or general fund revenues increase *significantly* due to the permit fees established by the bill. The fees of \$250 for each roadside tree maintained and \$500 for each roadside tree removed are expected to significantly increase the revenue DNR receives in comparison to the existing permit fees established in regulations, which are assessed on each *permit* and not on a *per tree* basis. The Department of Legislative Services notes that it is not clear into which fund the fee revenue is deposited. Existing permit fee revenues are deposited into the Forest or Park Reserve Fund, which funds DNR’s Forest Service and Maryland Park Service. If the permit fees established by the bill are not also deposited into the Forest or Park Reserve Fund, it is assumed that they are deposited into the general fund. If the fee revenues are deposited into the general fund, general fund revenues increase and DNR special fund revenues (from existing permit fees) decrease.

DNR indicates that it received \$8,150 in revenue from issuing 326 permits for tree care operations on a specific tree or group of trees, at the rate of \$25 for each permit. DNR received \$634,907 from the permits issued for comprehensive and continuing programs of general tree care, at the rate of \$2,500 per year per tree care crew or \$250 per month per tree care crew. While information is not readily available on the number of roadside trees maintained or removed each year, it is expected that the increased revenue is in the millions of dollars.

Penalty Revenues

Due to the bill’s increased requirements for roadside tree maintenance and removal, general fund revenues from the application of existing penalties may increase.

Maryland Department of Transportation and Maryland Transportation Authority – Compliance Costs and Fee Payments

TTF and nonbudgeted expenditures may increase significantly for SHA and MDTA to meet the bill’s requirements. While current DNR regulations exempt government agencies

from the existing permit fees, there is not a similar exemption in the bill. Assuming government agencies pay the new fees, SHA indicates its fee (TTF) expenditures are in the millions of dollars, based on the number of trees it maintains and removes. MDTA, which is responsible for constructing managing, operating, and improving the State's toll facilities and for financing new revenue-producing transportation projects, expects to incur annual costs (nonbudgeted expenditures) on the order-of-magnitude of \$500,000 related to projects, maintenance, and DNR compliance.

Other agencies may also incur increased costs to the extent they obtain roadside tree care permits.

Increased Electricity Costs

DNR indicates that utility companies are issued roadside tree care permits for their vegetation management work. To the extent fee payments and/or compliance costs are passed through to utility customers, State electricity expenditures increase. The extent of any increase cannot be reliably estimated at this time.

Local Expenditures: Similar to SHA and MDTA, local governments may also be significantly impacted by the bill due to compliance costs and fee payments. Montgomery County, for example, indicates that it engages in a significant amount of tree maintenance and removal and incurs impacts in the millions of dollars in compliance costs as a result of the bill. To the extent utility company fee payments and/or compliance costs are passed through to utility customers, local government electricity expenditures increase.

Small Business Effect: Tree care businesses may be negatively impacted to the extent the bill's requirements and fees deter the businesses' clients from maintaining or removing roadside trees. To the extent utility company fee payments and/or compliance costs are passed through to utility customers, small business electricity expenditures increase.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Natural Resources; Maryland Department of Transportation; Public Service Commission; Office of People's Counsel; Montgomery, Washington, and Worcester counties; Baltimore City; City of Frostburg; Department of Legislative Services

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Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510