

# HOUSE BILL 800

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CF SB 581

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By: ~~Delegate Hucker~~ **Delegates Hucker and Manno**

Introduced and read first time: February 11, 2009

Assigned to: Environmental Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: April 4, 2009

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

### 2 **Natural Resources – Roadside Trees – Protection and Enforcement**

3 FOR the purpose of authorizing a county or municipality to adopt a local law or  
4 ordinance relating to roadside trees under certain circumstances; prohibiting a  
5 county or municipality from adopting a local law or ordinance that applies to  
6 the cutting or clearing of certain trees by public utilities under certain  
7 circumstances; authorizing a county or municipality to issue a stop work order  
8 under certain circumstances; authorizing the Department of Natural Resources  
9 to authorize a county or municipality to enforce certain provisions of law under  
10 certain circumstances; prohibiting a county or municipality from issuing a  
11 building permit under certain circumstances; establishing certain penalties for  
12 certain violations; requiring the State Highway Administration to include a  
13 certain requirement relating to roadside trees in certain contracts; making  
14 stylistic changes; and generally relating to the protection of roadside trees.

15 BY repealing and reenacting, without amendments,  
16 Article – Natural Resources  
17 Section 5–401 and 5–402  
18 Annotated Code of Maryland  
19 (2005 Replacement Volume and 2008 Supplement)

20 BY repealing and reenacting, with amendments,  
21 Article – Natural Resources  
22 Section 5–403, 5–404, and 5–406  
23 Annotated Code of Maryland  
24 (2005 Replacement Volume and 2008 Supplement)

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#### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, with amendments,  
2 Article – Transportation  
3 Section 8–614  
4 Annotated Code of Maryland  
5 (2008 Replacement Volume)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
7 MARYLAND, That the Laws of Maryland read as follows:

8 **Article – Natural Resources**

9 5–401.

10 In this subtitle, roadside tree means any tree or shrub growing within the  
11 right-of-way of any public road.

12 5–402.

13 The Department may plant trees along the roadsides, make rules and  
14 regulations governing the planting, care for and protect any roadside tree, and  
15 establish one or more State forest nurseries for the propagation of trees for any  
16 roadside planting.

17 5–403.

18 (a) If the governing body or the road supervisors of any county of the State,  
19 the Department of Transportation, the council of any municipality, or any  
20 organization or person applies to the Department to plant, care **FOR**, or protect any  
21 roadside tree, the Department shall evaluate the application and inform the applicant  
22 concerning the advisability of the requested planting, care, or protection. If, in the  
23 judgment of the Department, the requested planting, care, or protection is advisable,  
24 the Department shall prepare and submit to the applicant a plan for the same,  
25 including an estimate of the cost.

26 (b) Any plan to plant, care **FOR**, or protect roadside trees may not become  
27 operative until the applicant approves the plan and has guaranteed to the Department  
28 the cost of the work. When the applicant approves a plan the Department has  
29 prepared, and the applicant has guaranteed payment of the cost in a manner  
30 satisfactory to the Department, the Department shall perform, or cause to be  
31 performed, the specified planting, care, or protection of roadside trees.

32 (c) The Department, without being requested as provided in subsection (a) or  
33 guaranteed as provided in subsection (b), may plant, care for, and protect roadside  
34 trees and pay for the work out of any unexpended balance of the amount appropriated  
35 for the purposes of this subtitle. However, no tree may be planted under the provisions

of this section without the consent and approval of the owner of the land on which planted.

(D) ~~A~~ EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, A COUNTY OR MUNICIPALITY MAY ADOPT, WITH THE DEPARTMENT'S APPROVAL, A LOCAL LAW OR ORDINANCE FOR THE PLANTING, CARE, AND PROTECTION OF ROADSIDE TREES THAT IS MORE STRINGENT THAN THE REQUIREMENTS OF §§ 5-402 THROUGH 5-406 OF THIS SUBTITLE IF THE LOCAL LAW OR ORDINANCE DOES NOT CONFLICT WITH THE PROVISIONS OF §§ 5-402 THROUGH 5-406 OF THIS SUBTITLE.

(E) A COUNTY OR MUNICIPALITY MAY NOT ADOPT A LOCAL LAW OR ORDINANCE FOR THE PLANTING, CARE, AND PROTECTION OF ROADSIDE TREES THAT APPLIES TO:

(1) THE CUTTING OR CLEARING OF PUBLIC UTILITY RIGHTS-OF-WAY OR LAND FOR ELECTRIC GENERATING STATIONS LICENSED UNDER § 7-204, § 7-205, § 7-207, OR § 7-208 OF THE PUBLIC UTILITY COMPANIES ARTICLE, PROVIDED THAT:

(I) ANY REQUIRED CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY HAVE BEEN ISSUED IN ACCORDANCE WITH § 5-1603(F) OF THIS TITLE; AND

(II) THE CUTTING OR CLEARING OF THE FOREST IS CONDUCTED SO AS TO MINIMIZE THE LOSS OF FOREST;

(2) THE ROUTINE MAINTENANCE OF PUBLIC UTILITY RIGHTS-OF-WAY; AND

(3) THE CUTTING OR CLEARING OF PUBLIC UTILITY RIGHTS-OF-WAY OR LAND FOR NEW TRANSMISSION OR DISTRIBUTION LINES.

~~(E)~~ (F) A COUNTY OR MUNICIPALITY THAT IS AUTHORIZED TO ADOPT ADOPTS A LOCAL LAW OR ORDINANCE IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION MAY ISSUE A STOP WORK ORDER AGAINST ANY PERSON THAT VIOLATES ANY PROVISION OF THE LOCAL LAW OR ORDINANCE.

5-404.

(A) Forest wardens and other persons having police powers in the State, in addition to their regular duties, shall enforce the law for the care and protection of roadside trees. In the enforcement of these laws, they possess the same powers as a peace officer to arrest with a warrant.

**(B) THE DEPARTMENT MAY AUTHORIZE A COUNTY OR MUNICIPALITY TO ENFORCE §§ 5-402 THROUGH 5-406 OF THIS SUBTITLE.**

5-406.

**(a) [Any] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, ANY person who desires to cut down or trim any roadside tree shall apply to the Department for a permit[, except that: (1)].**

**(B) (1) A PERSON MAY REMOVE A TREE OR ITS BRANCHES WITHOUT FIRST OBTAINING A PERMIT FROM THE DEPARTMENT if [a] THE tree is unrooted or its branches broken so as to contact telephone, telegraph, electric power, or other wires carrying electric current, or if the tree or its branches endanger persons or property[, the tree or its branches may be removed without first obtaining a permit from the Department; and (2) a ].**

**(2) A TREE MAY BE CUT DOWN AND REMOVED BY AN ABUTTING LANDOWNER FOR THE LANDOWNER'S OWN USE WITHOUT FIRST OBTAINING A PERMIT IF THE tree IS standing within the right-of-way of a public road which has not been surfaced with either stone, shell, gravel, concrete, brick, asphalt, or other improved surface [may be cut down and removed by the abutting landowner for his own use without first obtaining a permit].**

**[(b)] (C) A person may not cut down, trim, mutilate, or in any manner injure any roadside tree, except as authorized by this section, without a permit from the Department.**

**(D) A COUNTY OR MUNICIPALITY MAY NOT ISSUE A BUILDING PERMIT TO AN APPLICANT FOR ANY CLEARING, CONSTRUCTION, OR DEVELOPMENT THAT WILL RESULT IN THE TRIMMING, CUTTING, REMOVAL, OR INJURY OF A ROADSIDE TREE UNTIL THE APPLICANT FIRST OBTAINS A PERMIT FROM THE DEPARTMENT IN ACCORDANCE WITH THIS SECTION.**

**~~(E) THE DEPARTMENT MAY NOT ISSUE A PERMIT UNDER THIS SECTION TO REMOVE A TREE FOR AESTHETIC PURPOSES.~~**

**~~(F)~~ A PERSON WHO TRIMS, CUTS, REMOVES, OR INJURES A ROADSIDE TREE IN VIOLATION OF A REGULATION ADOPTED UNDER § 5-402 OF THIS SUBTITLE OR A PERMIT ISSUED UNDER THIS SECTION OR WHO FAILS TO OBTAIN A PERMIT AS REQUIRED BY THIS SECTION IS LIABLE FOR THE IMPOSITION OF A PENALTY:**

**(1) NOT EXCEEDING \$2,000 FOR A FIRST OFFENSE; AND**

1                   (2)   NOT EXCEEDING \$5,000 FOR A SECOND OR SUBSEQUENT  
2 OFFENSE.

3                                   **Article – Transportation**

4   8–614.

5           (a)   All State highway projects shall be performed under the supervision of  
6 the Administration and subject to its approval, in accordance with plans and  
7 specifications prepared by the chief engineer and approved by the Administration.

8           (b)   To receive the full benefit of competitive bidding, the Administration,  
9 whenever practicable, shall separate major construction projects into two or more  
10 smaller contracts.

11           (c)   **THE ADMINISTRATION SHALL INCLUDE IN CONSTRUCTION AND**  
12 **MAINTENANCE CONTRACTS A REQUIREMENT THAT A CONTRACTOR PROTECT**  
13 **ROADSIDE TREES TO THE MAXIMUM EXTENT PRACTICABLE IN THE**  
14 **PERFORMANCE OF THE CONTRACTOR’S DUTIES UNDER THE CONTRACT.**

15           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 October 1, 2009.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.