

SENATE BILL 581

M1

9lr1226
CF HB 800

By: **Senators Frosh, Conway, Harrington, Lenett, Pinsky, ~~and Rosapepe~~
Rosapepe, and Peters**

Introduced and read first time: February 6, 2009

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 25, 2009

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

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 (2005 Replacement Volume and 2008 Supplement)

2 BY repealing and reenacting, with amendments,
3 Article – Transportation
4 Section 8–614
5 Annotated Code of Maryland
6 (2008 Replacement Volume)

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

9 **Article – Natural Resources**

10 5–401.

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

13 5–402.

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

18 5–403.

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

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

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

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

3 (D) ~~A~~ EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, A
4 COUNTY OR MUNICIPALITY MAY ADOPT, WITH THE DEPARTMENT'S APPROVAL, A
5 LOCAL LAW OR ORDINANCE FOR THE PLANTING, CARE, AND PROTECTION OF
6 ROADSIDE TREES THAT IS MORE STRINGENT THAN THE REQUIREMENTS OF §§
7 5-402 AND 5-406 OF THIS SUBTITLE IF THE LOCAL LAW OR ORDINANCE DOES
8 NOT CONFLICT WITH THE PROVISIONS OF §§ 5-402 AND 5-406 OF THIS
9 SUBTITLE.

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

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

17 (I) ANY REQUIRED CERTIFICATES OF PUBLIC
18 CONVENIENCE AND NECESSITY HAVE BEEN ISSUED IN ACCORDANCE WITH §
19 5-1603(F) OF THIS SUBTITLE TITLE; AND

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

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

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

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

30 5-404.

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

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

3 5-406.

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

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

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

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

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

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

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

34 **(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:

Governor.

President of the Senate.

Speaker of the House of Delegates.