

Department of Legislative Services  
 Maryland General Assembly  
 2010 Session

FISCAL AND POLICY NOTE  
 Revised

House Bill 611

(Delegate Frick, *et al.*)

Environmental Matters

Judicial Proceedings

**State Highways - Mobile Produce Vendors - Required State Lease**

This bill extends existing State leasing requirements for mobile seafood vendors operating on a State highway right-of-way to mobile produce vendors. “Produce” means any fruit or vegetable product of the soil that is intended for human consumption, excluding canned, frozen, dried, or pickled products. The bill authorizes the State to require a mobile seafood or produce vendor to submit an application and pay a reasonable fee to be applied to administrative costs. The State may not enter into a lease with a mobile produce vendor unless the applicable county licenses mobile produce vendors. The bill does not diminish the authority of a county to license and regulate mobile produce vendors. The State Highway Administration (SHA) is authorized to adopt implementing regulations.

The bill takes effect June 1, 2010.

**Fiscal Summary**

**State Effect:** Transportation Trust Fund (TTF) expenditures increase by \$56,100 in FY 2011 to establish a mobile produce vendor leasing program. Future year expenditures reflect annualization and inflation. TTF revenues increase to the extent the Maryland Department of Transportation (MDOT) requires vendors to pay an application fee as authorized by the bill.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
SF Revenue	-	-	-	-	-
SF Expenditure	\$56,100	\$46,900	\$48,800	\$50,700	\$52,800
Net Effect	(\$56,100)	(\$46,900)	(\$48,800)	(\$50,700)	(\$52,800)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

**Local Effect:** The bill is not expected to have a significant impact on local operations or finances.

**Small Business Effect:** Meaningful.

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## Analysis

**Current Law:** While mobile seafood vendors may be authorized to operate in a State highway right-of-way with a lease from the State, mobile produce vendors are not afforded this opportunity.

A “mobile seafood vendor” is a person who sells or offers for sale any seafood while outdoors on foot; from a vehicle of conveyance; or from a tent, temporary stand, roadside stand, roadside market, or other quarters that is not an established place of business.

An “established place of business” is a permanent building or structure from which a permanent business is conducted during normal business hours throughout the year. An “established place of business” is not a tent, temporary stand, or other temporary quarters, or permanent quarters occupied under a temporary arrangement.

Mobile seafood vendors may not sell seafood:

- within 50 yards of a vehicle entrance to or exit from a school or place of worship, unless specified permission is provided;
- within 100 yards of a vehicle entrance to or exit from a shopping center;
- in the parking lot of a shopping center, unless specified permission is provided;
- within an unsafe distance, as determined by local authorities, from the edge of any roadway;
- on a roadway; or
- on private property adjoining a State highway, unless the vendor owns or leases the property or has written permission from the property owner.

A person who violates seafood vendor requirements is guilty of a misdemeanor and is subject to a maximum fine of \$500.

Mobile seafood vendor requirements do not (1) diminish the authority of Anne Arundel County, Howard County, or a municipal corporation to license and regulate mobile seafood vendors; (2) apply to charitable or nonprofit vendors who sell seafood at short-term festivals or other short-term events; or (3) apply in Calvert County and in St. Mary’s County for those persons selling their own catch.

By rules or regulations consistent with the safety and welfare of the traveling public, SHA may govern the control and use of rest areas, scenic overlooks, roadside picnic areas, and other public use areas within a State highway right-of-way. Furthermore, individuals may not place any structure, building, or vehicle on a highway to sell or display produce or merchandise if it constitutes a traffic hazard. On the order of a police officer, individuals must remove the structure, building, or vehicle and cease any prohibited activity.

**Background:** SHA is responsible for more than 5,200 miles or approximately 16,800 lane miles of road, 2,500 bridges, 3,500 small stream crossing structures, and 80 miles of sound barriers. It also has responsibility for planning, designing, constructing, and maintaining these roads and bridges to safety and performance standards while considering sociological, ecological, and economic concerns. MDOT advises that it is not aware of any mobile seafood vendor leases being issued by SHA. Furthermore, a procedure for issuing mobile seafood vendor leases has not been established.

In July 2009, SHA determined that two produce stands located in the Bethesda area were operating on State property and presented traffic and pedestrian safety concerns. Subsequently, SHA ordered both produce stand businesses to move. The two produce stands had operating permits issued by Montgomery County. In response to SHA's action, both produce stand businesses initiated legal proceedings.

The Maryland Department of Agriculture estimates 110 farmer's markets operate in the State with an average of 10 vendors per market. The majority of vendors participate in more than one market. Licenses for farmer's markets are administered by local health department (LHDs). Most counties do not require individuals to secure a license to sell fresh farm produce, herbs, cut flowers, and bedding plants in a farmer's market. Overall, there is extensive variation across counties regarding licenses for farmer's markets. LHDs currently inspect farmer's markets in accordance with the regulations established by the Department of Health and Mental Hygiene.

**State Revenues:** The bill authorizes SHA to charge a reasonable application fee for mobile seafood and produce vendor leases, so revenues increase to the extent such application fees are charged. Because the amount of any such fee and the number of potential applicants are unknown, fee revenue cannot be reliably estimated at this time. The penalty provisions of this bill are not expected to significantly affect State revenues.

**State Expenditures:** A reliable estimate of the universe of potential mobile produce vendor lease applicants is not available. However, this estimate assumes TTF special fund expenditures increase by \$56,110 in fiscal 2011, which reflects a four-month start-up delay. This estimate reflects the cost of hiring one contractual program manager to establish implementing regulations and administer the mobile produce vendor lease

program. The estimate assumes enforcement may be handled with existing budgeted resources. It includes a salary, fringe benefits, a vehicle, other one-time start-up costs, and ongoing operating expenses.

Contractual Position	1
Salary and Fringe Benefits	\$31,553
Automobile Operations	18,009
Operating Expenses	<u>6,548</u>
<b>Total FY 2011 State Expenditures</b>	<b>\$56,110</b>

Future year expenditures reflect a full salary with 4.4% annual increases, 6.8% employee turnover, and 1% annual increases in ongoing operating expenses. If the demand for mobile produce vendor leases is greater than anticipated, the contractual position may need to be converted to a permanent position and additional staff may be required with an increase in TTF expenditures. If the demand for mobile produce vendor leases subsides after a few years, the contractual position could be reduced or eliminated and TTF expenditures decrease. If the demand for mobile produce vendors is negligible, then SHA could handle the bill's changes with existing resources.

**Small Business Effect:** Mobile produce vendors, which are primarily small businesses, are not currently authorized to operate on a State highway right-of-way. Thus, to the extent the bill allows mobile produce vendors to operate successfully along State highways, small businesses benefit.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** SB 477 (Senator Frosh, *et al.*) - Judicial Proceedings.

**Information Source(s):** Kent, Montgomery, and Worcester counties; Baltimore City; Department of Health and Mental Hygiene; Department of State Police; Judiciary (Administrative Office of the Courts); Maryland Department of Agriculture; Maryland Department of Transportation; Department of Legislative Services

**Fiscal Note History:** First Reader - February 15, 2010  
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