

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1133

(Delegate Wivell, *et al.*)

Environment and Transportation

Finance

Washington County - State Highway Rights-of-Way - Tree Planting and Signs

This bill, which applies in Washington County only, prohibits the State Highway Administration (SHA) from using tree planting on any of four specified State highway rights-of-way to implement a watershed implementation plan (WIP) (1) if the SHA right-of-way fronts property that is zoned as one of six specified types of commercial or agricultural property and (2) unless the written permission of the utility is obtained, in a specified manner near an overhead electric distribution or subtransmission line. SHA must negotiate in good faith with commercial property owners in the county regarding the placement of directional or promotional signs by commercial businesses in an SHA right-of-way located in any of the affected areas. The bill establishes other provisions regarding the placement and removal of such signs and authorizes SHA to charge an annual fee for the installation of such signs. SHA must coordinate with specified entities to minimize the financial impact of the bill and may adopt regulations concerning the signs.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures may increase significantly to the extent that SHA must devise alternative methods to comply with the WIP, but a reliable estimate cannot be made at this time. TTF revenues increase minimally to the extent that SHA charges a fee for any signs placed in Washington County under the bill. The Maryland Department of the Environment (MDE) can coordinate with SHA using existing resources.

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: Potential meaningful. Some small businesses in Washington County may benefit to the extent that the bill enables them to advertise on service signs.

Analysis

Bill Summary: SHA may not use tree planting to implement a WIP in Washington County if the SHA right-of-way fronts property along State Route 64, State Route 67, State Route 418, or U.S. Route 40 Alternate and is zoned as (1) rural business; (2) business transitional; (3) business local; (4) business general; (5) planned business; or (6) agricultural. Additionally, without the written permission of the utility, SHA may not plant any tree in a State highway right-of-way as part of implementing a WIP (1) within 30 feet of an overhead electric distribution or subtransmission line if the tree will reach a mature height exceeding 15 feet or (2) that could pose a hazard to such a transmission line within or near the right-of-way for the transmission line.

SHA must negotiate in good faith with commercial property owners in Washington County to allow the placement and installation of directional or promotional signs by commercial businesses in SHA rights-of-way located on property along the same highways and zoned in the same classifications listed above. A commercial business that installs a sign must pay the full cost of procuring, installing, maintaining, and removing the sign. SHA may not authorize the installation of a sign if the sign would cause a safety issue, and SHA may order the removal of a sign if it determines that the sign is causing a safety issue. SHA may charge an annual fee for the installation of such a sign.

To minimize the financial impact of the bill on TTF, SHA must coordinate with MDE and the appropriate (1) soil conservation district; (2) county government; and (3) private landowner.

Current Law: Along State highways, SHA may place signs to inform the traveling public of directions, distance, danger, or other information (including services). A person may not place or maintain signs on State highway rights-of-way without SHA authorization, subject to removal and, for a commercial sign, a civil penalty of up to \$25 per sign.

A State highway's right-of-way is at least 40 feet wide. Any person who removes, damages, or defaces any SHA sign, signal, or marker is guilty of a misdemeanor and subject to a fine of up to \$100.

In accordance with federal regulations, a highway right-of-way must be devoted exclusively to public highway purposes, and state highway departments must keep the right-of-way free of all public and private installations, facilities, or encroachments, except (1) if a state highway administrator finds it is in the public interest and will not impair the highway or interfere with the free and safe flow of traffic; (2) if a state highway administrator approves it as constituting a part of a highway or as necessary for its operation, use, or maintenance; or (3) if it is an informational site established and maintained in accordance with specified federal regulations.

Background:

State Highway Administration and Highway Signs

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.

Numerous federal and State requirements impact how and where outdoor advertising occurs along highways. In addition, many local zoning and sign ordinances dictate the size, illumination, and location of signs. Some local jurisdictions prohibit new off-premise outdoor advertising signs altogether. When SHA does issue permits, the requirements vary depending on whether the sign is for a business located on the property on which the sign will be placed (on premise) or for businesses located elsewhere (off premise). SHA sign permit fees range from \$10 to \$35 per advertising face, and outdoor advertising license fees range from \$50 to \$750 depending on the number of structures. Permits and licenses must be renewed annually.

Chesapeake Bay Total Maximum Daily Loads and the Watershed Implementation Plan

In December 2010, the U.S. Environmental Protection Agency (EPA) established a Chesapeake Bay Total Maximum Daily Load (TMDL), as required under the federal Clean Water Act and in response to consent decrees in Virginia and the District of Columbia. The TMDL sets the maximum amount of nutrient and sediment pollution the bay can receive and still attain water quality standards. It also identifies specific pollution reduction requirements; all reduction measures must be in place by 2025, with at least 60% of the actions completed by 2017. The State must establish pollution control measures by 2025 that, based on 2010 levels, will reduce nitrogen loads to the bay by 22.0%, phosphorus loads by 14.9%, and sediment loads by 1.9%.

As part of the Chesapeake Bay TMDL, bay jurisdictions must develop WIPs that identify the measures being put in place to reduce pollution and restore the bay. WIPs (1) identify pollution load reductions to be achieved by various source sectors and in different geographic areas and (2) help to provide reasonable assurance that sources of pollution will be cleaned up, which is a basic requirement of all TMDLs. In 2010, bay jurisdictions submitted Phase I WIPs that detail how the jurisdiction plans to achieve its pollution reduction goals under the bay TMDL. The bay jurisdictions were required to submit Phase II WIPs in early 2012 that established more detailed strategies to achieve the bay TMDL on a geographically smaller scale. A Phase III WIP, which must be submitted to

EPA by August 2018, will ensure that all practices are in place by 2025 so that water quality standards can be met.

In its *Interim Evaluation of Maryland's 2014-2015 and 2016-2017 Milestones*, EPA's modeled results reflect that Maryland met its statewide phosphorus and sediment targets for the 2014-2015 milestone period, but missed its nitrogen target – only the wastewater sector is on target. For the 2016-2017 milestone period, Maryland is on track to meet its nitrogen, phosphorus, and sediment targets and is on track to meet phosphorus and sediment targets for 2025. However, the State is not on track to meet any targets in the urban sector in 2017.

State Expenditures: SHA advises that the bill eliminates approximately 90 acres of SHA rights-of-way from being used for tree planting in Washington County. SHA further advises that it uses tree planting because it is generally the most cost-effective treatment to meet WIP requirements.

Due to the bill's prohibition, SHA must devise alternative means to implement the WIP in Washington County. Among the options available to it, SHA advises that it could purchase approximately 90 additional acres of land in the county to ensure it can continue to use tree planting, at an approximate one-time cost of \$900,000, which is based on SHA's most recent appraisal of agricultural land values of \$10,000 per acre on average. Another option is to install stormwater treatment facilities in the affected areas at an approximate cost of \$3.5 million over multiple years. To the extent that other, less costly options are not available to SHA, TTF expenditures may increase significantly as a result of the bill in order for SHA to continue meeting its nutrient and sediment reduction goals under the WIP.

As noted above, in order to minimize the impact on TTF, the bill requires SHA to coordinate with MDE and the appropriate (1) soil conservation district; (2) county government; and (3) private landowner.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Washington County; Maryland Department of the Environment; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History:
fn/mcr

First Reader - March 2, 2017

Third Reader - April 5, 2017

Revised - Amendment(s) - April 5, 2017

Revised - Updated Information - April 5, 2017

Analysis by: Richard L. Duncan

Direct Inquiries to:

(410) 946-5510

(301) 970-5510