

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 612

(Delegate Watson)

Environment and Transportation and
Judiciary

Education, Energy, and the Environment

Natural Resources - Licensed Tree Experts - Alterations

This bill makes various changes to provisions governing the licensing of tree experts, relating to (1) penalties for engaging in the work or business of a tree expert without a license; (2) the ability of a person to physically engage in treatment, care, or removal of trees for compensation under another person’s tree expert license; and (3) insurance requirements applicable to a licensed tree expert.

Fiscal Summary

State Effect: General fund revenues may increase by an indeterminate amount, beginning in FY 2024, as discussed below. Special fund revenues may decrease minimally beginning in FY 2024. Expenditures are not materially affected.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Increased Maximum Fine

The bill, in comparison to existing penalty provisions (described below under Current Law), increases the maximum fine that may be imposed for a second or subsequent

violation of the prohibition against engaging in the work or business of a tree expert without a license. The maximum fine is increased from \$1,000 to \$2,000.

Working Under Another Person's License

The bill prohibits a person from physically engaging in the work of the treatment, care, or removal of trees for compensation under a tree expert's license unless the person (1) is employed by the licensed tree expert; (2) employs a licensed tree expert who can provide oversight; (3) is employed by a company that employs a licensed tree expert who can provide oversight; or (4) is a licensed tree expert. The bill eliminates a requirement that a licensed tree expert notify the Department of Natural Resources (DNR), within a time period established by the department, of (1) any company that engages in the business or work of the treatment, care, or removal of trees for compensation under the tree expert's license, and any changes to that status and (2) the liability and property damage insurance and workers' compensation insurance carried by any company that engages or works under the tree expert's license, and any changes to the insurance.

Insurance Requirements

Finally, the bill (1) adds workers' compensation insurance as a type of insurance every licensee must possess proof of if required by law, in the form and amount required by DNR; (2) clarifies that every licensee must possess proof of *valid* liability, property damage, and, if required by law, workers' compensation insurance, in the form and amount required by DNR; and (3) requires every licensee to show proof of the required insurance with each license renewal in addition to when the license is first issued.

Current Law:

"Tree Expert" Definition

"Tree expert" is defined as a person who represents to the public that the person is skilled in the science of tree care or removal and who, whether in the business of the person or as the employee of another person and whether under the title of arborist, tree specialist, tree surgeon, tree expert, or otherwise, engages in the business or work of the treatment, care, or removal of trees for compensation by (1) making diagnoses, prescribing, and supervising the treatment for trees or (2) trimming, pruning, thinning, cabling, shaping, removing, or reducing the crown of trees. "Tree expert" does not include (1) a person engaged in commercial logging or timber harvesting operations; (2) a person engaged in the installation of underground facilities or any associated site construction; or (3) a person who treats, cares for, or removes a tree, that is 20 feet tall or less.

License Requirement and Supervision by a Licensee

State law prohibits a person from engaging in the work or business of a tree expert without a license; however, an employee under the supervision of a licensed tree expert is not required to have a license in the name of the employee.

In addition, a licensed tree expert must, within a time period established by DNR, notify the department electronically of (1) any company that engages in the business or work of the treatment, care, or removal of trees for compensation under the tree expert's license, and any changes to that status, and (2) the liability and property damage insurance and workers' compensation insurance carried by any company that engages or works under the tree expert's license, and any changes to the insurance.

License Qualifications

DNR must issue a tree expert license to any applicant who:

- pays the fee established in DNR regulations (\$30);
- has attained 18 years of age;
- (1) has had two years of approved college education in forestry, arboriculture, horticulture, applied agricultural sciences, or the equivalent education and a minimum of one year of experience with a licensed tree expert in Maryland or with an acceptable tree expert company in another state or (2) for at least three years immediately preceding the date of application has been engaged continuously in practice as a tree expert with a licensed tree expert in Maryland or with an acceptable tree expert company in another state; and
- has passed the examination given by the department.

Licensee Insurance Requirements

Every licensee must carry and show proof of liability and property damage insurance, in the form and amount required by DNR at the time it issues the license. The licensee must maintain the insurance protection for the period the license is in effect.

Pursuant to § 1-401 of the Natural Resources Article, before a license or permit may be issued under the Natural Resources Article to an employer to engage in an activity in which the employer may employ a covered employee, as defined under the Maryland Workers' Compensation Act (MWCA), the employer must file with the issuing authority (1) a certificate of compliance with MWCA or (2) the number of a workers' compensation insurance policy binder. Sole proprietors are not required to be covered by insurance under MWCA.

Penalties

A person who violates the prohibition against engaging in the work or business of a tree expert without a license is subject to penalties broadly applicable to violations of forests and parks provisions (Title 5) of the Natural Resources Article of the Maryland Code. Any person who violates any provision of Title 5 (which includes the provisions governing tree experts) is guilty of a misdemeanor and, unless other penalties are specifically provided elsewhere in the title, is subject to a fine of up to \$500 for a first violation and a fine of up to \$1,000 and/or imprisonment for up to one year for a second or subsequent violation, with costs imposed in the discretion of the court in both cases. A second or subsequent violation is one which has occurred within two years of any prior violation.

State Revenues:

General Fund Revenues

General fund revenues may increase due to the collection of additional fine revenues in District Court to the extent that:

- persons who are convicted of a second or subsequent violation of the prohibition against engaging in the work or business of a tree expert without a license are assessed higher fines as a result of the bill's increased maximum fine; or
- additional fines are imposed for unlicensed/unauthorized work due to the bill's prohibition against a person physically engaging in the work of the treatment, care, or removal of trees for compensation under a tree expert's license unless the person meets one of the criteria specified in the bill.

The extent of any increase cannot be reliability estimated. DNR indicates that the number of citations issued by the Natural Resources Police from 2019 to 2022, for engaging in the work or business of a tree expert without a license, has ranged from 17 to 46 per year. Information is not available regarding how many of those citations are for second or subsequent violations. There are also additional citations issued by local law enforcement that DNR does not have information on. Information is also not available regarding how many citations result in convictions and fines.

Special Fund Revenues

The bill's prohibition against a person physically engaging in the work of the treatment, care, or removal of trees for compensation under a tree expert's license unless the person meets one of the criteria specified in the bill may also reduce special fund revenues from license fees. DNR indicates that certain individuals work, for compensation, under a licensee's supervision, without being employed by the licensee (or meeting the other

criteria specified in the bill), in order to accumulate the necessary amount of time working with a licensed tree expert to qualify for a license. Special fund revenues decrease to the extent that the elimination of the option of working under a licensee's license without being employed by the licensee (or meeting the other criteria specified in the bill) causes any individuals who otherwise would have qualified and applied for a license in the future to no longer apply, and therefore not pay the license fee. License fees are deposited in the Forest and Park Reserve Fund. Any decrease in special fund revenues, however, is expected to be minimal.

Small Business Effect: The bill is expected to have a meaningful impact on certain small businesses due to the elimination of the option for an individual to work, for compensation (as a small business), under a licensee's supervision, without being employed by the licensee or meeting the other criteria specified in the bill, likely reducing the number of businesses allowed to operate in the industry.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 586 (Senator Hester) - Education, Energy, and the Environment.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Department of Natural Resources; Department of Legislative Services

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