

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 874

(Delegates Cassilly and Szeliga)

Environment and Transportation

Education, Health, and Environmental Affairs

Air Navigation Protection From Hazards Act of 2017

This bill exempts from the requirements of the Forest Conservation Act (FCA) the cutting or clearing of trees to comply with a specified State law requirement relating to obstructions to air navigation, provided that if a dispute arises regarding the cutting or clearing of trees, the Maryland Aviation Administration (MAA) makes the final determination whether the trees should be cut or cleared. The exemption does not apply to the cutting or clearing of trees to facilitate the expansion or extension of the boundaries of any airport or runway.

Fiscal Summary

State Effect: The bill does not materially affect State finances.

Local Effect: The bill is not expected to materially affect local government finances.

Small Business Effect: Meaningful.

Analysis

Current Law/Background:

Forest Conservation Act

The Department of Natural Resources' Forest Service administers FCA, but it is implemented on the local level. FCA and local forest conservation programs developed under it apply to any public or private subdivision plan or application for a grading or sediment control permit by any person, including a unit of State or local government, on areas 40,000 square feet or greater, subject to certain exceptions. Exceptions include:

- State or local government (or State-funded) highway construction activity that is subject to separate reforestation requirements;
- cutting or clearing of forest in areas governed by the Critical Area law;
- specified commercial logging and timber harvesting operations;
- agricultural activity that does not result in a change in land use category;
- specified cutting or clearing of public utility rights-of-way;
- routine maintenance of public utility rights-of-way;
- specified activity that does not result in the cutting, clearing, or grading of more than 20,000 square feet of forest;
- specified strip or deep mining of coal and noncoal surface mining;
- a county that has and maintains 200,000 acres or more of its land area in forest cover;
- cutting or clearing of trees to comply with federal requirements relating to objects affecting navigable airspace;
- specified stream restoration projects; and
- specified maintenance or retrofitting of a stormwater management structure.

A proposed construction activity goes through a process of evaluation of existing vegetation on a site and development of a forest conservation plan for the site defining how forest area will be retained and/or afforestation or reforestation will be undertaken. If afforestation or reforestation requirements cannot be reasonably accomplished on site or off site, payment may be made into the applicable forest conservation fund (fee-in-lieu payments) to be spent by the State or the local government on reforestation and afforestation, or into a forest mitigation bank. A State Forest Conservation Fund holds funds associated with projects reviewed by the State, and local forest conservation funds are associated with local forest conservation programs. Forest mitigation banks, which are approved and regulated by the State or a local forest conservation program, are areas of land that have been intentionally afforested or reforested for the express purpose of selling credits to others for compliance with afforestation and reforestation requirements.

Obstructions to Air Navigation

Under State aviation law, a person generally may not permit any object to grow to a height that, pursuant to MAA regulations, constitutes an obstruction to air navigation at or near any licensed public use airport. “Public use airport” is defined as any publicly or privately owned airport that is open to flight operations by the public.

MAA indicates that there are 16 small, public use airports that are subject to MAA, and not Federal Aviation Administration, obstruction requirements and therefore do not fall under the existing FCA exemption for cutting or clearing of trees to comply with federal requirements relating to objects affecting navigable airspace. MAA indicates that several

of the airports have chosen to impose runway restrictions, which have a negative operational and economic effect on the airports, rather than proceed with obstruction removal, because of FCA mitigation requirements and the associated costs of compliance.

Small Business Effect: MAA has indicated in the past that the 16 affected airports likely all meet the definition of a small business. These small businesses, under the bill, are able to cut or clear trees to remove obstructions to air navigation without the costs of mitigation required under FCA and with reduced consultant costs associated with the removal.

Additional Information

Prior Introductions: HB 238 of 2015 received an unfavorable report from the House Environment and Transportation Committee.

Cross File: None.

Information Source(s): Department of Natural Resources; Maryland Department of Transportation; Baltimore City; Kent, Montgomery, Washington, and Worcester counties; Department of Legislative Services

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