

MEMORANDUM

June 23, 2017

TO: County Council

FROM: Glenn Orlin, Deputy Council Administrator *GO*
Amanda Mihill, Legislative Attorney *AM*

SUBJECT: **Introduction:** Bill 22-17, Homeowners' Associations – Roadway Maintenance – Repeal

Bill 22-17, Homeowners' Associations – Roadway Maintenance - Repeal, sponsored by Lead Sponsor Transportation, Infrastructure, Energy and Environment Committee (Council President Berliner and Councilmembers Floreen and Hucker), is scheduled to be introduced on June 27, 2017. A public hearing is tentatively scheduled for July 18 at 1:30 p.m.

Bill 22-17 would repeal County law that provides for assistance to certain homeowners' associations to maintain certain association roadways or private maintenance roads. This program is supposed to reimburse HOAs for eligible roads at roughly the cost that the County spends to maintain its own roads, subject to the availability of appropriations. However, for two decades the Council has limited the reimbursement to around \$1,000 per eligible mile, a fraction of the cost of maintaining a County road. For the FY10 budget, the Council reduced the appropriation to only about \$250 per eligible mile, and for FY11 through FY18 funding for this program has been suspended altogether. During the FY18 budget deliberations, the Committee recommended legislation be enacted to eliminate this program.

This packet contains:

Bill 22-17

Legislative Request Report

Circle #

1

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Bill No. 22-17
Concerning: Homeowners' Associations
- Roadway Maintenance - Repeal
Revised: 05/31/2017 Draft No. 1
Introduced: June 27, 2017
Expires: December 27, 2018
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Transportation, Infrastructure, Energy & Environment Committee

AN ACT to:

- (1) repeal County law that provides for assistance to certain homeowners' associations to maintain certain association roadways or private maintenance roads; and
- (2) generally amend County law regarding certain homeowners' association roadways and private maintenance roads.

By repealing

Montgomery County Code
Chapter 24B, Homeowners' Associations
Sections 24B-1, 24B-2, 24B-3, 24B-4, 24B-5, 24B-6, 24B-7, and 24B-8

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Chapter 24B (Sections 24B-1, 24B-2, 24B-3, 24B-4, 24B-5, 24B-6,**
 2 **24B-7, and 24B-8) is repealed as follows:**

3 **[Chapter 24B. Homeowners' Associations.]**

4 **[24B-1. Definitions.]**

5 [The following definitions apply to this Chapter:

6 (a) *Association roadway* means those paved surfaces, except areas
 7 designated for parking, which:

8 (1) provide vehicular access to more than 4 dwelling units; and

9 (2) are maintained by a homeowners' association.

10 (b) *Homeowners' association* means a body that has the authority to enforce
 11 a declaration under the state homeowners' association law.

12 (c) *Private maintenance road* means a road that:

13 (1) is owned by a homeowners' association;

14 (2) has a right-of-way at least 30 feet wide (not including any portion
 15 of the right- of-way used for parking), and 2 travel lanes; and

16 (3) provides a direct or indirect general vehicular traffic connection to
 17 the County road system.]

18 **[24B-2. Program of support for roadway maintenance.]**

19 [(a) There is created a program to assist qualifying homeowners associations
 20 to maintain association roadways that are continuously open to the public
 21 as if they were public roadways.

22 (b) Assistance provided under this Chapter is not subject to Chapter 11B.]

23 **[24B-3. Qualifying homeowners' associations.]**

24 [A homeowners' association qualifies for assistance under this Chapter if the
 25 homeowners' association:

26 (a) has at least one-quarter mile of association roadway;

- 27 (b) maintains its association roadways at a level of service satisfactory to the
28 County;
- 29 (c) finances the maintenance of its association roadways with funds collected
30 by the homeowners' association;
- 31 (d) has a financial officer that is bonded or meets the requirements of
32 financial responsibility that regulations under this Chapter prescribe; and
- 33 (e) agrees that eligible disputes to which the homeowners' association is a
34 party will be submitted by the homeowners' association to either:
- 35 (1) the dispute resolution process under Article 2 of Chapter 10B; or
36 (2) other mediation or arbitration approved by the Commission on
37 Common Ownership Communities.]

38 **[24B-4. Amount of assistance.]**

- 39 [(a) The annual amount that a qualifying homeowners' association may
40 receive under this Chapter is the number of its association roadway miles
41 that qualify for assistance under this Chapter, multiplied by the average
42 locally funded cost to the County of providing maintenance and street
43 lights for a mile of County roadway during the previous year.
- 44 (b) If an association roadway that qualifies for assistance under this Chapter
45 is initially open to the public for only part of a year, the annual amount of
46 assistance must be prorated for that part of the year for which the
47 association roadway was open.]

48 **[24B-5. Limitation on expenditure.]**

- 49 [(a) All expenditures of County funds under this Chapter are subject to the
50 limits of the funds appropriated by the County Council.
- 51 (b) If the County Council does not appropriate enough funds to cover the
52 number of miles of association roadways that qualify under this Chapter,

53 the amount of assistance for each mile of association roadway is reduced
 54 proportionally.]

55 **[24B-6. Regulations.]**

56 [The County Executive must adopt regulations under method (2) to implement
 57 this Chapter.]

58 **[24B-7. Amendment of bylaws.]**

59 [Notwithstanding any association document to the contrary, a homeowners'
 60 association, as defined in state law, may amend its bylaws by a vote of a majority of
 61 the lot owners. This section applies to bylaws adopted before or after this section
 62 became law.]

63 **[24B-8. Private maintenance roads.]**

64 [(a) *Requirements for assistance.* The County may provide maintenance
 65 funding assistance to a homeowners' association for a private
 66 maintenance road if the homeowners' association:

67 (1) grants an easement to the County for the general free public use of
 68 the private maintenance road, which must include a metes and
 69 bounds description of the easement certified by a registered land
 70 surveyor or a record plat or other legal description acceptable to
 71 the County Attorney; and

72 (2) signs an agreement with the County that the homeowners'
 73 association must build and maintain the private maintenance road
 74 to standards adopted by executive regulation for private
 75 maintenance roads.

76 (b) *Contents of agreement.* In each agreement signed under subsection (a)
 77 the homeowners' association must:

78 (1) acknowledge that:

- 79 (A) granting the easement does not relieve the association of the
80 obligation to maintain the private maintenance road or to
81 provide any other services, such as snow removal, which the
82 association is required to provide by any association
83 document or law; and
- 84 (B) the easement automatically reverts to the grantor if the
85 homeowners' association does not comply with all terms of
86 the easement and the agreement it signs with the County;
- 87 (2) indemnify the County against all claims arising from the use or
88 condition of the private maintenance road; and
- 89 (3) certify that the homeowners' association has obtained and will
90 continually maintain insurance or other surety, in an amount
91 acceptable to the County, covering claims arising from the use or
92 condition of the private maintenance road, and acknowledge that
93 the County may withdraw funds allocated under this section if the
94 insurance coverage lapses.
- 95 (c) *Documents to be recorded.* Any easement and agreement signed under
96 this section must be recorded in the County land records.
- 97 (d) *Costs of documents.* The homeowners' association must pay all costs of
98 preparing and recording any easement, agreement, or other document
99 required under this section.
- 100 (e) *Amount of assistance to homeowners' association.* The County may
101 allocate to a homeowners' association for maintenance of a private
102 maintenance road an amount that does not exceed the net amount, less
103 any inspection fee or any other County expense, of highway user
104 revenues received by the County as a result of the inclusion of that private
105 maintenance road in the State Highway Administration mileage

106 inventory. The homeowners' association must use these funds to maintain
107 that private maintenance road or place them in a reserve fund which can
108 be used only to maintain that road. The County must not assist under this
109 section any road for which it provides assistance under Section 24B-2
110 through 24B-5.

111 (f) *Termination of easement.* If the County finds that an easement granted
112 under this section is not in the public interest, or that a homeowners'
113 association has not complied with the terms of an easement or other
114 agreement under this section, the County may, in its sole discretion,
115 withhold or withdraw maintenance funds or reject and terminate the
116 easement, and record documentation of the termination in the County
117 land records. The abandonment procedures in Chapter 49 do not apply to
118 the termination of an easement under this section.

119 (g) *No County obligation.* Granting an easement under this section does not
120 obligate the County to maintain or pay for the maintenance of any private
121 maintenance road.]

122 *Approved:*

123 _____
Roger Berliner, President, County Council Date

124 *Approved:*

125 _____
Isiah Leggett, County Executive Date

126 *This is a correct copy of Council action.*

127 _____
Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 22-17

Homeowners' Associations – Roadway Maintenance - Repeal

DESCRIPTION:	Bill 22-17 would repeal County law that provides for assistance to certain homeowners' associations to maintain certain association roadways or private maintenance roads and generally amend County law regarding certain homeowners' association roadways and private maintenance roads.
PROBLEM:	This program is supposed to reimburse HOAs for eligible roads at roughly the cost that the County spends to maintain its own roads, subject to the availability of appropriations. However, for two decades the Council has limited the reimbursement to around \$1,000 per eligible mile, a fraction of the cost of maintaining a County road. For the FY10 budget, the Council reduced the appropriation to only about \$250 per eligible mile, and for FY11 through FY18 the Council suspended funding for this program altogether.
GOALS AND OBJECTIVES:	To repeal the program.
COORDINATION:	Department of Transportation
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Glenn Orlin, Deputy Council Administrator, 240-777-7936 Amanda Mihill, Legislative Attorney, 240-777-7815
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	N/A

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