

**MEMORANDUM**

July 14, 2017

TO: County Council

FROM: Glenn Orlin, Deputy Council Administrator  
Amanda Mihill, Legislative Attorney *A. Mihill*

SUBJECT: **Public Hearing:** 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) and Co-Sponsors, Councilmembers Katz, Rice, Navarro, Vice President Riemer and Elrich, was introduced on June 27, 2017. A Transportation, Infrastructure, Energy and Environment Committee worksession is tentatively scheduled for September 14.

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:	<u>Circle #</u>
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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

<b>Boldface</b>	<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 meditation 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*

<b>DESCRIPTION:</b>	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.
<b>PROBLEM:</b>	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.
<b>GOALS AND OBJECTIVES:</b>	To repeal the program.
<b>COORDINATION:</b>	Department of Transportation
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Glenn Orlin, Deputy Council Administrator, 240-777-7936 Amanda Mihill, Legislative Attorney, 240-777-7815
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	To be researched.
<b>PENALTIES:</b>	N/A

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