

CHAPTER 298

(Senate Bill 666)

AN ACT concerning

Natural Resources – No Net Loss of Forest Policy – Forest Conservation Act

FOR the purpose of ~~reducing the threshold acreage of land in a proposed subdivision plan above which the Forest Conservation Act applies; reducing the threshold acreage of forest cut, cleared, or graded above which certain activities no longer qualify as exemptions to the Forest Conservation Act; repealing certain exemptions from the requirements of the Forest Conservation Act for cutting or clearing trees in a public utility right-of-way; limiting a certain exemption from the requirements of the Forest Conservation Act for intrafamily transfers; repealing the authority of a local jurisdiction to waive the requirements of the Forest Conservation Act for certain previously developed and paved areas; requiring the Public Service Commission to ensure compliance with certain requirements when reviewing an application for a certificate of public convenience and necessity;~~ authorizing the acquisition of an off-site protective easement for temporarily protected forested areas as a mitigation technique to meet afforestation or reforestation requirements; altering the standard that a person is required to meet to determine whether certain vegetation and areas of land may be disturbed; authorizing the owner of certain preserved forestland to place the forestland into the Forest Conservation and Management Program or under an approved forest management plan; altering the fee-in-lieu contribution to State or local forest conservation funds that is required under certain circumstances; altering the authorized uses of State and local forest conservation funds; ~~requiring the Department of Natural Resources to develop and implement a no net loss of forest policy by a certain date, to adopt certain regulations and propose certain legislation to achieve this goal, and to achieve this goal without reducing the acreage of a certain land use in the State; requiring the Department of Natural Resources to submit a report to the General Assembly annually after a certain date on its progress in developing and implementing a no net loss of forest policy in the State~~ requiring the Department of Natural Resources to cooperate with certain groups to develop a certain definition and policy; requiring the Department to submit a certain report on or before a certain date; ~~declaring the intent of the General Assembly;~~ making certain stylistic changes; making a technical correction; and generally relating to the Forest Conservation Act and the development and implementation of a no net loss of forest policy.

BY adding to

Article – Natural Resources

Section 5-104

Annotated Code of Maryland
(2005 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, with amendments,

Article – Natural Resources

Section 5–1602, ~~5–1603(e)(3)~~ 5–1603(c)(3), ~~(f)~~, and ~~(g)~~, ~~5–1604(a)~~, 5–1607(b)(2),
(c), and (f), and 5–1610

Annotated Code of Maryland

(2005 Replacement Volume and 2008 Supplement)

~~BY repealing~~

~~Article – Natural Resources~~

~~Section 5–1603(f)~~

~~Annotated Code of Maryland~~

~~(2005 Replacement Volume and 2008 Supplement)~~

BY repealing and reenacting, without amendments,

Article – Natural Resources

Section 5–1603(f) and (g), 5–1604(a), 5–1607(e), and 5–1611

Annotated Code of Maryland

(2005 Replacement Volume and 2008 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Natural Resources

5–104.

~~(A) THE DEPARTMENT SHALL:~~

~~(1) DEVELOP AND IMPLEMENT A NO NET LOSS OF FOREST POLICY BY DECEMBER 31, 2012;~~

~~(2) ADOPT ANY REGULATIONS AND PROPOSE ANY LEGISLATION NECESSARY TO ACHIEVE THIS GOAL; AND~~

~~(3) ACHIEVE THIS GOAL WITHOUT REDUCING THE ACREAGE OF PRIME PRODUCTIVE AGRICULTURAL LAND IN THE STATE.~~

~~(B) ON OR BEFORE DECEMBER 1, 2011 AND EACH YEAR THEREAFTER, THE DEPARTMENT SHALL REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, ON THE PROGRESS OF THE DEPARTMENT IN DEVELOPING AND IMPLEMENTING A POLICY OF NO NET LOSS OF FOREST IN THE STATE.~~

(A) THE DEPARTMENT SHALL COOPERATE WITH FORESTRY-RELATED STAKEHOLDER GROUPS TO:

(1) DETERMINE THE MEANING OF NO NET LOSS OF ~~FORESTS~~ FOREST FOR THE PURPOSES OF ANY STATE POLICY; AND

(2) DEVELOP PROPOSALS FOR THE CREATION OF A POLICY OF NO NET LOSS OF FOREST IN THE STATE.

(B) ON OR BEFORE DECEMBER 1, 2011, THE DEPARTMENT, IN CONSULTATION WITH THE FORESTRY-RELATED STAKEHOLDER GROUPS, SHALL REPORT TO THE SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE AND THE HOUSE ENVIRONMENTAL MATTERS COMMITTEE, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, ON PROPOSALS FOR THE DEVELOPMENT OF STATUTORY, BUDGETARY, AND REGULATORY POLICIES TO ACHIEVE NO NET LOSS OF ~~FORESTS~~ FOREST IN THE STATE.

5-1602.

(a) Except as provided in subsection (b) of this section, this subtitle shall 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~~ **20,000** square feet or greater.

(b) The provisions of this subtitle do not apply to:

(1) Any construction activity that is subject to § 5-103 of this title;

(2) Any cutting or clearing of forest in areas governed by the Chesapeake Bay Critical Area Protection Law (Title 8, Subtitle 18 of this article);

(3) Commercial logging and timber harvesting operations, including any harvesting conducted under the forest conservation and management program under § 8-211 of the Tax – Property Article:

(i) That were completed before July 1, 1991; or

(ii) That were completed on or after July 1, 1991 on property that is not the subject of an application for a grading permit for development within 5 years after the logging or harvesting operation. However, after this 5-year period, the property shall be subject to this subtitle;

(4) Any agricultural activity that does not result in a change in land use category, including agricultural support buildings and other related structures built using accepted best management practices;

(5) ~~¶~~The cutting or clearing of public utility rights-of-way or land for electric generating stations licensed pursuant to § 7-204, § 7-205, § 7-207, or § 7-208 of the Public Utility Companies Article, provided that:

(i) Any required certificates of public convenience and necessity have been issued in accordance with § 5-1603(f) of this subtitle; and

(ii) The cutting or clearing of the forest is conducted so as to minimize the loss of forest;

(6) Any routine maintenance of public utility rights-of-way;

(7)~~¶~~ Any activity conducted on a single lot of any size or a linear project provided that:

(i) The activity does not result in the cutting, clearing, or grading of more than [40,000] **20,000** square feet of forest; and

(ii) The activity on the lot or linear project will not result in the cutting, clearing, or grading of any forest that is subject to the requirements of a previous forest conservation plan prepared under this subtitle;

~~¶(8) (6)~~ Any strip or deep mining of coal regulated under Title 15, Subtitle 5 or 6 of the Environment Article and any noncoal surface mining regulated under Title 15, Subtitle 8 of the Environment Article;

~~¶(9) (7)~~ Any activity required for the purpose of constructing a dwelling house intended for the use of the owner, or a child [or grandchild] of the owner, if the activity does not result in the cutting, clearing, or grading of more than [40,000] **20,000** square feet of forest;

~~¶(10) (8)~~ A county that has and maintains 200,000 acres or more of its land area in forest cover; and

~~¶(11) (9)~~ The cutting or clearing of trees to comply with the requirements of 14 C.F.R. § 77.25 relating to objects affecting navigable airspace, provided that the Federal Aviation Administration has determined that the trees are a hazard to aviation.

(c) For an application for subdivision or sediment and erosion control or grading for a site with more than 50% of the net tract area governed by Title 8,

Subtitle 18 of this article, the Department or local authority may allow an applicant to extend critical area forest protection measures [in lieu] **INSTEAD** of meeting the requirements of this subtitle.

5-1603.

(c) (3) (i) A local authority shall review and amend, as appropriate, all current local ordinances, policies and procedures that are inconsistent with the intent and requirements of this subtitle such as parking, road width, setback, curb and gutter, grading, and sidewalk requirements.

(ii) A local forest conservation program, when approved by the Department, may[:

1. Allow] **ALLOW** clustering and other innovative land use techniques that protect and establish forests where open space is preserved, sensitive areas are protected, and development is physically concentrated[; and

2. Waive the requirements of this subtitle for an area that was previously developed and is covered by paved surface at the time of application for subdivision plan, grading, or sediment control permit approval].

~~[(f)~~ After December 31, 1992, the Public Service Commission shall give due consideration to the need to minimize the loss of forest and the provisions for afforestation and reforestation set forth in this subtitle together with all applicable electrical safety codes, when reviewing applications for a certificate of public convenience and necessity issued pursuant to § 7-204, § 7-205, § 7-207, or § 7-208 of the Public Utility Companies Article.]

~~[(g)]~~ ~~(F)~~ A local authority or the Department in its administration of a State forest conservation program in jurisdictions which do not have an approved local program in effect may establish reasonable and appropriate procedures for the recovery of all costs incurred in the development, implementation, administration, and enforcement of the local forest conservation program or the State forest conservation program for jurisdictions without an approved forest conservation program.

5-1604.

(a) Except as provided in subsection (b)(2) and (3) of this section, after December 31, 1992, or after the date on which a local program has been adopted under § 5-1603 of this subtitle, whichever occurs first, a person making application for subdivision or grading or sediment control permits on areas ~~[greater than 40,000]~~ **20,000** square feet ~~OR GREATER~~ shall submit a forest stand delineation for the entire site prepared by a licensed forester, licensed landscape architect, or other qualified professionals that may be approved by the State or a local authority in the manner required by the approved program.

5-1607.

(b) Standards for meeting afforestation or reforestation requirements shall be established by the State or local program using one or more of the following methods:

(2) The use of street trees in a municipal corporation with a tree management plan, in an existing population center designated in a county master plan that has been adopted to conform with the Economic Growth, Resource Protection, and Planning Act of 1992, or in any other designated area approved by the Department as part of a local program, under criteria established by the local program, subject to the approval of the Department, using:

(i) Street trees as a permissible step in the priority sequence for afforestation or reforestation and, based on a mature canopy coverage, may grant full credit as a mitigation technique; and

(ii) Acquisition as a mitigation technique of an off-site protective easement for existing forested areas not currently protected **IN PERPETUITY**, in which case the afforestation or reforestation credit granted may not exceed 50% of the area of forest cover protected.

(c) ~~(1) **TREES, SHRUBS, AND PLANTS LOCATED IN SENSITIVE AREAS INCLUDING 100-YEAR FLOODPLAINS, INTERMITTENT AND PERENNIAL STREAMS AND THEIR BUFFERS, COASTAL BAYS AND THEIR BUFFERS, STEEP SLOPES, AND CRITICAL HABITATS SHALL BE:**~~

~~(I) **CONSIDERED THE FOLLOWING TREES, SHRUBS, PLANTS, AND SPECIFIC AREAS SHALL BE CONSIDERED PRIORITY FOR RETENTION AND PROTECTION;**~~

~~(H) **LEFT, AND THEY SHALL BE LEFT IN AN UNDISTURBED CONDITION UNLESS THE APPLICANT HAS DEMONSTRATED, TO THE SATISFACTION OF THE STATE OR LOCAL AUTHORITY, THAT REASONABLE EFFORTS HAVE BEEN MADE TO PROTECT THEM AND THE PLAN CANNOT REASONABLY BE ALTERED:**~~

~~(I) **TREES, SHRUBS, AND PLANTS LOCATED IN SENSITIVE AREAS INCLUDING 100-YEAR FLOODPLAINS, INTERMITTENT AND PERENNIAL STREAMS AND THEIR BUFFERS, COASTAL BAYS AND THEIR BUFFERS, STEEP SLOPES, AND CRITICAL HABITATS; AND**~~

(II) CONTIGUOUS FOREST THAT CONNECTS THE LARGEST UNDEVELOPED OR MOST VEGETATED TRACTS OF LAND WITHIN AND ADJACENT TO THE SITE.

(2) The following trees, shrubs, plants, and specific areas shall be considered priority for retention and protection, and they shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the State or local authority, that [reasonable efforts have been made to protect them and the plan cannot reasonably be altered] **THE APPLICANT QUALIFIES FOR A VARIANCE UNDER § 5-1611 OF THIS SUBTITLE:**

~~(1) Trees, shrubs, and plants located in sensitive areas including 100-year floodplains, intermittent and perennial streams and their buffers, coastal bays and their buffers, steep slopes, and critical habitats;~~

~~(2) (I) Contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site;~~

~~(3) (H) Trees, shrubs, or plants identified on the list of rare, threatened, and endangered species of the U.S. Fish and Wildlife Service or the Department;~~

~~(4) (III) (II) Trees that are part of a historic site or associated with a historic structure or designated by the Department or local authority as a national, State, or local Champion Tree; and~~

~~(5) (IV) (III) Trees having a diameter measured at 4.5 feet above the ground of:~~

~~(i) 1. 30 inches; or~~

~~(ii) 2. 75% of the diameter, measured at 4.5 feet above the ground, of the current State Champion Tree of that species as designated by the Department.~~

(e) (1) As part of the development of a forest conservation program, the State or local government shall develop provisions for:

(i) Preservation of areas described in subsections (c) and (d)(1) and (3) of this section;

(ii) Retention as forest of all land forested, afforested, or reforested under this subtitle; and

(iii) Limitation of uses of forest to those that are not inconsistent with forest conservation, such as recreational activities and forest management under subsection (f) of this section.

(2) The provisions required in paragraph (1) of this subsection may include protective agreements for areas of forest conservation, including conservation easements, deed restrictions, and covenants.

(f) [Except for land that is preserved under subsection (e) of this section, an] **AN** owner may place land that is forested, afforested, or reforested under this subtitle in the forest conservation and management program under § 8–211 et seq. of the Tax – Property Article or in a forest management plan prepared by a licensed forester and approved by the local authority or the State. Reforestation shall be required when the final regeneration harvest is complete or if determined to be necessary due to the lack of adequate natural regeneration.

5–1610.

(a) In this section, “Fund” means the Forest Conservation Fund.

(b) There is a Forest Conservation Fund in the Department.

(c) Except as provided in subsection (h) of this section, if any person subject to this subtitle demonstrates to the satisfaction of the appropriate State or local authority that the requirements for reforestation or afforestation on–site or off–site cannot be reasonably accomplished, the person shall contribute money [at a rate of 10 cents per square foot of the area of required planting] to the Fund:

(1) UNTIL SEPTEMBER 30, 2014, AT A RATE OF 30 CENTS PER SQUARE FOOT OF THE AREA OF REQUIRED PLANTING; AND

(2) AFTER SEPTEMBER 30, 2014, AT A RATE ADJUSTED FOR INFLATION AS DETERMINED BY THE DEPARTMENT ANNUALLY BY REGULATION.

(d) Money collected by the State or a local authority under § 5–1608(c) or § 5–1612 of this subtitle for noncompliance with this subtitle or regulations adopted under this subtitle or for noncompliance with a forest conservation plan or the associated 2–year management agreement shall be deposited in the Fund.

(e) (1) The Department shall accomplish the reforestation or afforestation for which the money is deposited within 2 years or 3 growing seasons, as appropriate, after receipt of the money.

(2) Money deposited in the Fund under subsection (c) of this section shall remain in the Fund for a period of 2 years or 3 growing seasons, and at the end of

that time period, any portion that has not been used to meet the afforestation or reforestation requirements shall be returned to the person who provided the money to be used for documented tree planting in the same county or watershed beyond that required by this subtitle or other applicable statutes.

(f) (1) (i) Money deposited in the Fund under subsection (c) of this section may only be spent on reforestation and afforestation, including site identification, acquisition, and preparation, **MAINTENANCE OF EXISTING FORESTS, AND ACHIEVING URBAN CANOPY GOALS**, and may not revert to the General Fund of the State.

(ii) Any investment earnings of the Fund shall be credited to the General Fund of the State.

(2) (i) Except as provided in subparagraph (ii) or (iii) of this paragraph, the reforestation or afforestation requirement under this subsection shall occur in the county and watershed in which the project is located.

(ii) If the reforestation or afforestation cannot be reasonably accomplished in the county and watershed in which the project is located, then the reforestation or afforestation shall occur in the county or watershed in the State in which the project is located.

(iii) If the reforestation or afforestation cannot be reasonably accomplished in the county or watershed in which the project is located, then the reforestation or afforestation shall be accomplished through purchase of credits in, establishment, or maintenance of a forest mitigation bank in accordance with regulations of the Department. The Reforestation Fund may not be used to finance administrative activities associated with a mitigation bank and any credits created by the Reforestation Fund may not be sold to compensate for additional forest impacts.

(g) Money deposited in the Fund under subsection (d) of this section may be used by the Department for the purpose of implementing this subtitle.

(h) (1) In lieu of a State Forest Conservation Fund, any local authority with an approved forest conservation program may establish a forest conservation fund, to be administered by the local authority, to allow a payment by any person who has demonstrated to the satisfaction of the local authority that the requirements for reforestation and afforestation on-site and off-site cannot be reasonably accomplished.

(2) The rate shall be [10 cents per square foot of the area required to be replanted] **THE SAME AS THE RATE ESTABLISHED FOR THE STATE FOREST CONSERVATION FUND UNDER SUBSECTION (C) OF THIS SECTION.**

(i) Money deposited in the local forest conservation fund under subsection (h) of this section shall remain in the fund for a period of 2 years or 3 growing seasons. At the end of that time period, any portion that has not been used to meet the afforestation or reforestation requirements shall be returned to the person who provided the money to be used for documented tree planting in the same county or watershed beyond that required by this subtitle or other applicable statutes.

(j) (1) Money deposited in the local forest conservation fund under subsection (h) of this section may only be spent on reforestation and afforestation, including the costs directly related to site identification, acquisition, prepurchase, and preparation, **MAINTENANCE OF EXISTING FORESTS, AND ACHIEVING URBAN CANOPY GOALS**, and may not revert to any other local general fund.

(2) (i) Except as provided in subparagraph (ii) or (iii) of this paragraph, the reforestation or afforestation requirement under this subsection shall occur in the county and watershed in which the project is located.

(ii) If the reforestation or afforestation cannot be reasonably accomplished in the county and watershed in which the project is located, then the reforestation or afforestation shall occur in the county or watershed in the State in which the project is located.

(iii) If the reforestation or afforestation cannot be reasonably accomplished in the county or watershed in which the project is located, then the reforestation or afforestation shall be accomplished through purchase of credits in, establishment, or maintenance of a forest mitigation bank in accordance with regulations of the local forest conservation program. The Reforestation Fund may not be used to finance administrative activities associated with a mitigation bank and any credits created by the Reforestation Fund may not be sold to compensate for additional forest impacts.

(k) Money collected by the local authority under § 5-1608(c) of this subtitle for noncompliance with this subtitle or regulations or ordinances adopted under this subtitle for noncompliance with a forest conservation plan or the associated 2-year management agreement shall be deposited in the local fund. The rate shall be 30 cents per square foot of the area found to be in noncompliance with the required forest conservation.

(l) Money deposited in a local forest conservation fund under subsection (k) of this section may be used by the local authority for purposes related to implementing this subtitle.

5-1611.

(a) In the preparation of the State or local forest conservation programs, the State and local authorities shall provide for the granting of variances to the

requirements of this subtitle, where owing to special features of a site or other circumstances, implementation of this subtitle would result in unwarranted hardship to an applicant.

(b) Variance procedures adopted under this section shall:

(1) Be designed in a manner consistent with the spirit and intent of this subtitle; and

(2) Assure that the granting of a variance will not adversely affect water quality.

~~SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that the Public Service Commission allow a public utility company to recover the actual costs incurred in complying with the Forest Conservation Act.~~

~~SECTION 3.~~ AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009.

Approved by the Governor, May 7, 2009.