

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 766

(Delegate Healey, *et al.*)

Environment and Transportation

Forest Conservation – Technical Study and Programmatic Review

This bill requires the Department of Legislative Services (DLS), in consultation with specified State agencies and the Chesapeake Bay Program, to (1) undertake a specified technical study to review changes in forest cover and tree canopy in the State and (2) study and issue a specified programmatic review relating to the Forest Conservation Act (FCA) and local forest conservation programs. DLS must report on the technical study and programmatic review by November 15, 2018, and convene a specified work session by November 30, 2018. **The bill takes effect June 1, 2018, and terminates June 30, 2019.**

Fiscal Summary

State Effect: General fund expenditures increase significantly over the course of FY 2018 and 2019, by at least \$100,000 and potentially by several hundred thousand dollars. Revenues are not affected.

Local Effect: None.

Small Business Effect: Minimal or none.

Analysis

Bill Summary:

Technical Study

DLS, in consultation with the Department of Natural Resources (DNR), the Maryland Department of the Environment (MDE), the Maryland Department of Planning, the

Maryland Department of Agriculture, and the Chesapeake Bay Program, must undertake a technical study to review changes in forest cover and tree canopy in the State. The study, to the extent practicable, must include:

- a survey and mapping of (1) existing forest cover and tree canopy in the State and (2) potential afforestation and reforestation locations in the State;
- an analysis of the health and quality of forests in the State;
- an analysis of observed and projected changes in the amount of forest cover in the State due to development under FCA, using the Chesapeake Bay Phase 6 Model, Chesapeake Assessment Scenario Tool (CAST), and county and municipal forest conservation annual reports and land use plans, including the extent and nature of (1) mitigation activities involving tree planting, reforestation, or afforestation required under FCA; (2) forest clearing and mitigation activity inside and outside Priority Funding Areas; and (3) the clearing and mitigation of forest considered to be a priority for retention and protection under FCA;
- an analysis of observed and projected changes in the amount of tree canopy coverage in the State, based on (1) relevant State or local programs involving tree planting, reforestation, or afforestation and (2) the amount of tree canopy preserved through federal, State, and local programs, including agricultural preservation, open space, conservation easement, and other land preservation programs; and
- an analysis of observed and projected changes in the amount of forest cover in the State, based on (1) relevant State or local programs involving tree planting, reforestation, or afforestation and (2) the amount of forest preserved through federal, State, and local programs, including agricultural preservation, open space, conservation easement, and other land preservation programs.

Programmatic Review

DLS, in consultation with DNR and MDE, must study and issue a programmatic review on the status and effectiveness of:

- local sensitive area plans, local forest conservation fee-in-lieu and forest mitigation banking programs, and other local forest conservation programs, including (1) fee amounts received and expended; (2) the number of acres planted per acre of mitigation required under approved forest conservation plans that paid money into a local forest conservation fund; (3) barriers to spending fee-in-lieu funds; and (4) recent trends in forest mitigation bank creation and utilization; and
- annual reporting requirements under FCA, including an evaluation of (1) mechanisms for ensuring timely and accurate reporting and (2) how the amount of forest clearing, planting, and preservation is calculated and recorded.

Reporting and Convening of a Work Session

DLS must (1) by November 15, 2018, report the technical study and programmatic review to the Governor and the General Assembly and (2) by November 30, 2018, convene a work session with relevant stakeholders and interested parties to consider the findings of the technical study and programmatic review.

Current Law:

Forest Conservation Act, In General

The Forest Service within DNR administers FCA, but it is primarily implemented on the local level. FCA establishes minimum forest conservation requirements for land development, and local governments with planning and zoning authority are required to develop local forest conservation programs that meet or are more stringent than the requirements of FCA. FCA applies 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.

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.

Afforestation Requirements

Under FCA, if the existing forested area of a site is below a specified percentage of the net tract area, it must be afforested (establishing forested area where there is none) up to the specified percentage of the net tract area. For agricultural and resource areas and medium density residential areas, the percentage is 20%. For institutional development areas, high density residential areas, mixed use and planned unit development areas, and commercial and industrial use areas, the percentage is 15%. Local forest conservation programs adopted under FCA may include afforestation requirements, as well as conservation

thresholds and reforestation requirements (described below), that are more stringent than those under FCA.

Conservation Thresholds and Reforestation Requirements

FCA establishes requirements for reforestation (replacement of cleared forest land) which are determined based on a conservation threshold, which is a percentage of the net tract area of a site. If the portion of the net tract area which is forested is below the percentage, or if clearing causes it to be below the percentage, any clearing of forested area below the percentage must be replaced at a ratio of 2:1. For clearing above the threshold percentage, cleared forest must be replaced at a ratio of ¼:1, with the exception that each acre of forest retained above the applicable forest conservation threshold is credited against the number of acres required to be forested pursuant to the ¼:1 reforestation ratio. The conservation threshold varies by land use category:

- agricultural and resource areas – 50% of net tract area;
- medium density residential areas – 25% of net tract area;
- institutional development areas – 20% of net tract area;
- high density residential areas – 20% of net tract area;
- mixed use and planned unit development areas – 15% of net tract area; and
- commercial and industrial use areas – 15% of net tract area.

Priorities for Retention and Protection

Under FCA, certain trees, shrubs, plants, and specific areas must be considered priority for retention and protection and be left in an undisturbed condition unless certain conditions are met. The following must be left undisturbed 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:

- 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
- contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site.

The following must be left undisturbed unless the applicant has demonstrated that the applicant qualifies for a variance (which is granted if a requirement would result in unwarranted hardship to an applicant):

- trees, shrubs, or plants identified on the list of rare, threatened, and endangered species of the U.S. Fish and Wildlife Service or DNR;
- trees that are part of a historic site or associated with a historic structure or designated by DNR or the local authority as a national, State, or local Champion Tree; and
- trees having a diameter, measured at 4.5 feet above the ground, of (1) 30 inches or (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 DNR.

Fees-in-lieu

Payment of fees-in-lieu, to the State Forest Conservation Fund, are made at rates adjusted for inflation as determined by DNR annually by regulation. The rate for a project outside a priority funding area must be 20% higher than the rate for a project inside a priority funding area. The current rates identified in DNR regulations are \$0.305 per square foot for a project inside a priority funding area and \$0.366 per square foot for a project outside a priority funding area. DNR must use the funding for reforestation and afforestation.

Fee-in-lieu rates for local forest conservation funds must be at least the same as the rates for the State Forest Conservation Fund. Fees-in-lieu deposited in a local forest conservation fund 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.

Background: For additional information on FCA and other forestry programs in the State, see the 2017 report published by DLS, [*Forest Conservation Act and Other Forestry Programs in Maryland*](#).

State Expenditures: General fund expenditures increase significantly over the course of fiscal 2018 and 2019, by at least \$100,000 and potentially by several hundred thousand dollars, for consulting services to assist DLS in undertaking the full technical study and programmatic review described in the bill. DLS plans to use information and assistance provided by the other agencies identified in the bill, as well as other available information, as much as possible. However, given the scope of subject matter that must be addressed in the technical study and programmatic review, the specialized expertise likely needed for at least some of the work, and the short timeframe within which the technical study and programmatic review must be completed, consulting services are likely required.

Additional Information

Prior Introductions: None.

Cross File: SB 610 (Senator Young, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Department of Natural Resources; Maryland Department of the Environment; Department of Legislative Services

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