

Department of Legislative Services  
Maryland General Assembly  
2024 Session

FISCAL AND POLICY NOTE  
Enrolled - Revised

House Bill 1511

(Delegate Love)

Environment and Transportation

Education, Energy, and the Environment

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Forest Conservation Act – Modifications

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This bill delays the effective date of specified provisions (the majority) of Chapters 541 and 542 of 2023 – which modify State law relating to forest preservation and retention – from July 1, 2024, until July 1, 2026. The bill separately establishes provisions that are identical to *certain* provisions of Chapters 541 and 542, allowing those changes to take effect July 1, 2024 (specifically, provisions related to forest mitigation banking, priority areas/vegetation, and the exemption of solar photovoltaic facilities from Forest Conservation Act (FCA) afforestation requirements). In addition, the bill requires the Department of Natural Resources (DNR) to (1) update the model local government ordinance under FCA, for consistency with Chapters 541 and 542, by July 1, 2025, and (2) adopt regulations to carry out Chapters 541 and 542, by July 1, 2026. **As mentioned above, certain provisions established by the bill take effect July 1, 2024. Remaining provisions, including those that delay the effective date of specified provisions of Chapters 541 and 542, take effect June 1, 2024.**

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Fiscal Summary

**State Effect:** The bill delays most of the State fiscal effects of Chapters 541 and 542, until FY 2027 at the earliest, as discussed below.

**Local Effect:** The bill delays most of the local fiscal effects of Chapters 541 and 542, until FY 2027 at the earliest, as discussed below.

**Small Business Effect:** Potential meaningful.

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## Analysis

### Bill Summary/Current Law:

*Provisions of Chapters 541 and 542 Delayed by the Bill – Taking Effect July 1, 2026, Instead of July 1, 2024*

#### *State’s Policy to Encourage the Retention and Sustainable Management of Forest Lands*

Chapters 541 and 542 modify the State’s policy to encourage the retention and sustainable management of forest lands by replacing the outcome of achieving no net loss of forest with the outcomes of increasing, as measured every four years, the acreage of (1) forest land in the State and (2) land in the State covered by tree canopy, for land located inside an urban area and outside an urban area.

Chapters 541 and 542 modify the definition of “forest land” so that it means a contiguous patch of trees that is at least one acre in size exhibiting at least one transect of at least 120 feet in width. “Tree canopy” means the crowns of deciduous and evergreen woody vegetation that is (1) the product of natural growth or human planting and (2) greater than three meters in height.

#### *Forest Conservation Act*

##### *Exemptions from Forest Conservation Act Requirements*

Chapters 541 and 542 repeal an exemption from the requirements of FCA applicable to cutting or clearing of land for specified electric generating stations (see “Exemptions from the Forest Conservation Act” below under “Existing Law Prior to Chapters 541 and 542 that, under the Bill, Is Not Modified by Chapters 541 and 542 Until July 1, 2026, With the Exception of the Provisions of Existing Law that Are Modified by the Bill on July 1, 2024”), making the activity subject to FCA requirements. Chapters 541 and 542, however, establish that they do not apply to a solarvoltaic facility granted a certificate of public convenience and necessity (CPCN) by the Public Service Commission (PSC) before July 1, 2023 (under existing public utilities law, subject to limited exemptions, a CPCN must be obtained from PSC before beginning construction of an electric generating station).

Chapters 541 and 542 add exemptions from FCA requirements for:

- transit-oriented development, provided that the area of forest removed must be (1) reforested at a ratio of at least one-quarter acre replanted for each acre removed

or (2) mitigated in a manner in which one-half acre of forest is permanently protected for each acre removed;

- the construction of a new federal government facility projected to house the employment of at least 2,500 persons; and
- the construction of multifamily housing, consisting of a single structure containing at least 25 dwelling units, provided that the area of forest removed must be (1) reforested at a ratio of at least one-quarter acre replanted for each acre removed or (2) mitigated in a manner in which one-half acre of forest is permanently protected for each acre removed.

Chapters 541 and 542 also clarify that (1) an existing exemption for agricultural activity includes the operation of orchards and tree farms and (2) FCA requirements do not apply to forest management.

#### *Modified Afforestation, Reforestation, and Preservation Requirements*

Chapters 541 and 542 modify afforestation, reforestation, and preservation requirements as follows:

- *New Reforestation Requirements* – Chapters 541 and 542 replace existing conservation thresholds and reforestation requirements (described below under “Existing Law Prior to Chapters 541 and 542 that, under the Bill, Is Not Modified by Chapters 541 and 542 Until July 1, 2026, With the Exception of the Provisions of Existing Law that Are Modified by the Bill on July 1, 2024”) with a requirement that, for all existing forest cover cleared, the area of forest removed be reforested at a ratio of one acre planted for every one acre removed. However, for all existing forest cover cleared that is located in a priority funding area and not identified as a priority for retention, the area of forest removed must be reforested at a ratio of one-half acre planted for every one acre removed.
- *Additional Riparian Buffer Afforestation/Reforestation Requirement* – Chapters 541 and 542 additionally require that, upon meeting the reforestation and afforestation requirements, all unforested riparian buffers on site must be afforested and reforested, unless the applicant demonstrates to DNR or the local authority (a unit of local government administering a local forest conservation program) that afforestation in the riparian buffer (1) would be in conflict with allowable uses for the riparian buffer; (2) is located on park property and conflicts with the mission and established stewardship practices of the park; or (3) is not suitable for the

establishment and retention of the required planting materials, in which case substitute environmental protection measures must be implemented.

- *Meeting Afforestation and Reforestation Requirements in Specified Areas* – Chapters 541 and 542 clarify and add available methods that may be used for meeting afforestation and reforestation requirements in specified municipalities, existing population centers, and other areas, including adding (1) the restoration of on- or off-site degraded forest, in which case the afforestation or reforestation credit granted may not exceed 50% of the area of forest restored and (2) the establishment of planted green infrastructure or planted environmental site design practices beyond the amount required under Maryland Department of the Environment stormwater management requirements, which may be granted full credit as a mitigation technique.
- *Alternative Afforestation, Reforestation, and Preservation Requirements* – Chapters 541 and 542 also allow for a local jurisdiction, with approval of DNR, to establish alternative afforestation, reforestation, and preservation requirements from those established under FCA if the requirements are expected to result in the local forest conservation program at a minimum maintaining its existing level of forest cover over a four-year period. The bill establishes procedures and criteria for DNR’s evaluation of a local jurisdiction’s proposed alternative requirements.

Under Chapters 541 and 542, DNR must, by December 31, 2028, provide written notice requiring modification of a local forest conservation program’s alternative requirements if the local program does not (1) maintain or expand the local jurisdiction’s existing level of forest cover over two consecutive two-year periods or (2) submit specified annual reports containing local program data (required under existing law). Beginning January 1, 2029, DNR may rescind its approval of alternative requirements if a local program does not meet either of those two requirements. The bill does not modify these dates (as noted below under “Additional Comments”).

#### *Forest Conservation Plans*

Chapters 541 and 542 require DNR or the local authority to, at least 20 days before approval of a forest conservation plan:

- provide notice that is consistent with local authority notice requirements to all property owners abutting and adjacent to the boundary of the subject property of any proposed clearing of a priority retention area; and

- (1) on a net tract area of at least five acres, if at least 75% of the priority retention area is proposed to be cleared, provide an opportunity for written and verbal comment before plan approval or (2) for any other project where priority retention area is proposed for clearing, provide an opportunity for public written comment before plan approval.

Property separated from the subject property by a public right of way must be considered abutting and adjacent.

Chapters 541 and 542 require a person petitioning for judicial review of an approved forest conservation plan to file the petition in accordance with the Maryland Rules not later than 30 days after approval of the forest conservation plan. Any judicial review of a forest conservation plan must be (1) conducted in accordance with the Maryland Rules and (2) limited to the record compiled by DNR or the local authority.

#### *Local Forest Conservation Programs*

Chapters 541 and 542 add to an existing requirement, that a local authority's development of a local forest conservation program be consistent with the intent, requirements, and standards of FCA, by requiring that the local government's development of a program also afford due consideration to (1) goals established under the State Economic Growth, Resource Protection, and Planning Policy; (2) the State's agricultural land preservation goal of preserving a total of 1,030,000 acres of productive agricultural land by 2030 through specified programs; and (3) policy goals established under local comprehensive plans.

Chapters 541 and 542 also alter an authorization for a local forest conservation program, when approved by DNR, to waive the requirements under FCA for previously developed areas covered by impervious surface and located in priority funding areas at the time of the application for subdivision plan, grading, or sediment control permit approval. The Acts alter the authorization by authorizing a local program to instead provide for the waiver *or modification* of FCA requirements for those areas.

#### *Applicability of Chapters 541 and 542*

Chapters 541 and 542 may not apply to (1) a solarvoltaic facility granted a CPCN by PSC before July 1, 2023; (2) a forest conservation plan approved before July 1, 2024, that is associated with a subdivision plan, site plan, building permit, or grading or sediment control application; or (3) a revision to those plans or permits that does not materially alter the proposed or actual limits of disturbance. The bill does not modify these applicability provisions (as noted below under "Additional Comments").

*Provisions Established by the Bill That Are Identical to Provisions of Chapters 541 and 542, That Take Effect July 1, 2024*

*Forest Conservation Act*

*Qualified Conservation (Forest Mitigation Banking)*

The bill establishes provisions that make permanent, and modify, provisions enacted under Chapter 645 of 2021 that (1) modified the definition of “forest mitigation banking” under FCA to include qualified conservation (specified conservation of existing forest) and (2) allow for qualified conservation – which, by definition, is conservation of existing forest approved for the purpose of establishing a forest mitigation bank on or before December 31, 2020 – to be used to meet afforestation or reforestation requirements through afforestation or reforestation credit for up to 50% of the forest area encumbered in perpetuity.

The bill’s provisions modify the provisions enacted under Chapter 645 by (1) removing the December 31, 2020, time limitation from the definition of “qualified conservation” and (2) only allowing for qualified conservation completed in a forest mitigation bank to be used to meet up to 50% of an afforestation or reforestation requirement (and still subject to the existing requirement that afforestation or reforestation credit granted for qualified conservation not exceed 50% of the forest area encumbered in perpetuity). If a local jurisdiction proposes, and after public comment, DNR approves a written justification for the increase, qualified conservation completed in a forest mitigation bank may be used to meet up to 60% of an afforestation or reforestation requirement, with afforestation or reforestation credit not exceeding 50% of the forest area encumbered in perpetuity.

The bill also establishes that after December 31, 2020, mitigation banks using qualified conservation may be allowed only (1) if the application was submitted before December 31, 2020, or (2) if the qualified conservation is located in priority retention areas (see “Priority Areas and Vegetation” sections below).

*Priority Areas and Vegetation*

The bill clarifies and adds specified areas and vegetation that are considered priority for retention and protection and, pursuant to existing law, must be left undisturbed unless an applicant has demonstrated that reasonable efforts have been made to protect them and the applicant’s forest conservation plan cannot reasonably be altered. The bill does not modify separate specified areas and vegetation that are considered priority for retention and protection and must be left undisturbed unless an applicant has demonstrated that the applicant qualifies for a specified variance based on unwarranted hardship.

The bill requires DNR or a local authority to issue written findings and justification for any clearing of a priority retention area and establishes that any judicial review of a final determination made with respect to priority retention areas and vegetation must be conducted in accordance with the Maryland Rules and limited to the record compiled by DNR or the local authority. These requirements apply both to priority retention areas/vegetation (1) that must be left undisturbed unless an applicant has demonstrated that reasonable efforts have been made to protect them and the applicant's forest conservation plan cannot reasonably be altered and (2) that must be left undisturbed unless an applicant has demonstrated that the applicant qualifies for a specified variance based on unwarranted hardship.

#### *Solar Facilities – Afforestation Exemption*

The bill establishes that solar photovoltaic facilities are not subject to FCA afforestation requirements.

#### *Applicability of the Provisions*

The bill establishes that these provisions, like the provisions of Chapters 541 and 542, may not apply to (1) a solarvoltaic facility granted a CPCN by PSC before July 1, 2023; (2) a forest conservation plan approved before July 1, 2024, that is associated with a subdivision plan, site plan, building permit, or grading or sediment control application; or (3) a revision to those plans or permits that does not materially alter the proposed or actual limits of disturbance.

#### *Provisions of Chapters 541 and 542 That Took Effect July 1, 2023, and Are Not Affected by the Bill*

#### *Forest Conservation Fund*

Chapters 541 and 542 increase the amount of time within which DNR must accomplish reforestation or afforestation for which money is deposited in the State Forest Conservation Fund, before any portion that has not been used must 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 FCA or other applicable statutes. The amount of time is increased from two years or three growing seasons to five years or six growing seasons. Chapters 541 and 542 also establish that the money must be used, *or encumbered*, within that time period.

### *Update of State Forest Conservation Manual*

DNR must update the State Forest Conservation Manual by December 31, 2024, to make it consistent with the changes under Chapters 541 and 542, and the updates must include specified guidance and standards.

### *Workgroup on Incentives for Forest Conservation by Private Landowners*

DNR must establish a workgroup to evaluate and recommend incentives for private landowners to conserve forest, including adjusting the minimal acreage of contiguous forested land required to qualify for the Forest Conservation and Management Program (which provides a reduced and/or frozen property tax assessment in return for forest conservation and management).

### *Approval of Alternative Requirements*

By December 31, 2023, DNR must (1) issue a description of the procedures it will use to determine whether a local program is expected to maintain or expand the existing level of forest cover in the jurisdiction and (2) approve or reject alternative afforestation, reforestation, and preservation requirements adopted by a local jurisdiction before September 1, 2023.

*Existing Law Prior to Chapters 541 and 542 That, under the Bill, Is Not Modified by Chapters 541 and 542 Until July 1, 2026, with the Exception of the Provisions of Existing Law That Are Modified by the Bill on July 1, 2024 (Only Some of These Provisions of Existing Law Are Modified by the Bill and Chapters 541 and 542, as Discussed Above; Others Are Provided as Background Information)*

### *State's Policy to Encourage the Retention and Sustainable Management of Forest Lands*

It is the policy of the State to encourage the retention and sustainable management of forest lands by, among other things, achieving no net loss of forest. "Forest land" means a biological community dominated by trees and other woody plants that are capable of producing timber or other wood products with a stocking of at least 100 trees per acre with at least 50% of those trees having a 2-inch or greater diameter at 4.5 feet above the ground. "Forest land" includes forested areas that have been cut but not converted to other land uses.



## *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. However, Allegany and Garrett counties, and municipalities within those counties, are exempt from the requirements of FCA (see “Exemptions from the Forest Conservation Act” below). 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 (0.9 acres) 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 (which can include use of off-site forest mitigation banks), 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, maintenance of existing forest, and achieving urban canopy goals.

### *Local Forest Conservation Programs*

As mentioned above, a unit of local government with planning and zoning authority must develop and adopt a local forest conservation program, consistent with the intent, requirements, and standards of FCA, that meets or is more stringent than the requirements and standards established by FCA. Local governments are authorized to adopt forest conservation thresholds and afforestation and reforestation requirements as part of a local forest conservation program that are more stringent than the forest conservation thresholds and afforestation and reforestation requirements under FCA. If the local jurisdiction does not adopt a program, DNR must review and approve all forest conservation plans in that jurisdiction. A municipality may assign its obligations to develop and adopt a forest conservation program to its home county with the approval of the county and DNR.

A local program must include a policy document and all applicable new and amended local ordinances relating to implementation of the regulated activities; exemptions; review, approval, and appeal processes; incentives; protective legal instruments; enforcement; and penalties. A local program must also include a technical manual that describes application submission requirements for forest stand delineations, required information for forest

conservation plan approval, specific forest conservation criteria, and protection techniques. A local program may allow clustering or other innovative land use techniques and may waive the requirements of FCA for certain previously developed areas that are covered in impervious surface and located in priority funding areas.

DNR is required to perform a compliance review of each local program at least once every two years. If a local program is found to be deficient, DNR must notify the local authority and allow the local authority 90 days to comply with the standards and requirements of FCA. After this 90-day compliance period, DNR may (1) assume review and approval responsibilities for all forest conservation plans in that jurisdiction until the deficiencies are corrected; (2) on a finding by an auditor of misappropriation of local forest conservation funds, require payment to the State Forest Conservation Fund; or (3) request that the Attorney General investigate payments and expenditures of funds collected by the local authority under FCA.

#### *Interpretation of What Constitutes Forest Mitigation Banking*

Historically, local forest mitigation banking programs have provided credits to developers who preserve existing forested lands by recording restrictive easements that run in perpetuity. However, in October 2020, the Office of the Attorney General (OAG) issued an [opinion](#) addressing whether FCA allowed off-site forest mitigation banks that were established to preserve existing forest. In its opinion, OAG concluded that the placement of a protective easement on an *already-existing* forest, as opposed to *intentionally created or restored forest*, would not qualify as mitigation banking under FCA. As a result, at least some local governments suspended the granting of credits for existing forest.

To restore the historical interpretation and allow retention mitigation banks (conservation of existing forest), Chapter 645 altered the definition of “forest mitigation banking” to mean the intentional restoration, creation, or *qualified conservation* of forests undertaken expressly for the purpose of providing credits for afforestation or reforestation requirements with enhanced environmental benefits from future activities.

#### *Qualified Conservation*

Pursuant to Chapter 645, “qualified conservation” means the conservation of all or a part of an existing forest that (1) was approved *on or before December 31, 2020*, by the appropriate State or local forest conservation program for the purpose of establishing a forest mitigation bank and (2) is encumbered in perpetuity by a restrictive easement, covenant, or another similar mechanism recorded in the county land records to conserve its character as a forest.

Qualified conservation completed in a forest mitigation bank may be used, by a State or local forest conservation program, as a method in establishing standards for meeting

afforestation or reforestation requirements under FCA. The afforestation or reforestation credit granted for qualified conservation completed in a forest mitigation bank may not exceed 50% of the forest area encumbered in perpetuity. Credits in a mitigation bank may not be approved for debiting until qualified conservation of the mitigation bank is complete.

The forest mitigation banking provisions of Chapter 645 terminate June 30, 2024.

### *Exemptions from the Forest Conservation Act*

There are several activities that FCA does not apply to, including:

- commercial logging and timber harvesting operations on property that is not the subject of an application for a grading permit for development within five years after the logging or harvesting operation;
- 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; and
- the cutting or clearing of public utility rights-of-way or land for electric generating stations licensed pursuant to specified provisions of the Public Utilities Article of the Maryland Code, provided that (1) any required CPCNs have been issued in accordance with a requirement under FCA that PSC give due consideration to the need to minimize the loss of forest, the FCA provisions for afforestation and reforestation, and all applicable electrical safety codes, when reviewing applications for a CPCN and (2) the cutting or clearing of the forest is conducted so as to minimize the loss of forest.

FCA also does not apply to a county that has and maintains 200,000 acres or more of its land area in forest cover. DNR has indicated that Allegany and Garrett counties fall under this exemption and, as a result, development within those counties is not subject to FCA 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%. As mentioned above, 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 to 1. For clearing above the threshold percentage, cleared forest must be replaced at a ratio of one quarter to 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 one quarter to 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.

### *Priority Areas and Vegetation*

Under FCA, specified trees, shrubs, plants, and specific areas are considered priority for retention and protection for reasons such as the characteristics of the trees, shrubs, and plants or the importance of vegetation in areas such as floodplains, stream buffers, and critical habitats. The priority areas and vegetation must be left in an undisturbed condition unless an applicant (1) has demonstrated that reasonable efforts have been made to protect them and the applicant's forest conservation plan cannot reasonably be altered, for certain areas and vegetation or (2) qualifies for a specified variance based on unwarranted hardship, for other areas and vegetation.

## *Decision Procedures and Appeals*

As mentioned above, statute requires that a local forest conservation program include a policy document and all applicable new and amended local ordinances relating to – among other things – review, approval, and appeal processes. DNR’s regulations, under criteria for evaluating local forest conservation programs, require that a local government demonstrate that under the local program’s administrative review, approval, and appeal procedures, the hearing and appeal procedures are consistent with the local appellate review procedures. The Supreme Court of Maryland (formerly the Court of Appeals), in [\*Chesapeake Bay Foundation, Inc. \(CBF\) v. CREG Westport Developers I, LLC\*](#), 481 Md. 325 (2022), indicated that FCA, and DNR’s implementing regulations, “by their plain and unambiguous language, require that local forest conservation programs have ‘appeal procedures’ in place as part of their local programs.” The Court held in *CBF v. CREG Westport Developers I*, that an approval of a forest conservation plan and an associated waiver (variance) by the Harford County Department of Planning and Zoning was a final decision that could be appealed to the circuit court in Harford County pursuant to provisions of the Harford County Code.

For forest conservation plans reviewed by DNR, which include those for State projects and certain local projects using State funds, DNR regulations establish procedures for public notice of a submitted forest conservation plan and an opportunity to submit written comments or request a public hearing. The regulations require DNR to mail written notice of the approval decision or denial to the applicant and persons on an interested persons list. Notice of the decision does not need to be published. The regulations allow for a contested case hearing under the Administrative Procedure Act to be requested, within 30 days of issuance of the decision, by a person who has legal rights, duties, interests, or privileges different from the general public which are adversely affected by the department’s decision to approve, deny, or condition a final forest conservation plan. A denial of a request for a contested case hearing, and an adverse decision in a contested case, can be appealed to the circuit court.

FCA requires that DNR and local programs provide for the granting of variances from requirements of the Act where, owing to special features of a site or other circumstances, implementation of FCA would result in unwarranted hardship to an applicant. DNR regulations require that the department or the local authority make findings that an applicant has met the requirements applicable to a variance.

*Existing Law Regarding the Model Local Government Ordinance under the Forest Conservation Act*

FCA requires that DNR regulations that implement FCA include a model local government ordinance, that meets the requirements of FCA, to assist and guide local authorities in the development of their local forest conservation programs.

**State/Local Fiscal Effect:** By delaying the effective date of the majority of the provisions of Chapters 541 and 542, the bill delays, until fiscal 2027 at the earliest, most of the fiscal effects of those laws identified in the fiscal and policy notes for [House Bill 723](#) and [Senate Bill 526](#) of 2023 (enacted as Chapters 541 and 542):

- *State and Local Construction Costs* – The fiscal and policy notes for House Bill 723 and Senate Bill 526 indicated that pay-as-you-go general fund expenditures and local government capital expenditures may increase, beginning as early as fiscal 2025, due to potential additional costs overall, for State and local construction projects to comply with the modified reforestation requirements under Chapters 541 and 542 (and the riparian buffer afforestation/reforestation requirement, in any cases where it applies) to the extent forest needs to be cleared for State and local projects. Under the bill, these fiscal effects are delayed until fiscal 2027 at the earliest.
- *State Forest Conservation Fund and Local Forest Conservation Funds* – The fiscal and policy notes for House Bill 723 and Senate Bill 526 indicated that State special fund and local revenues from fee-in-lieu payments received and deposited in the State Forest Conservation Fund and local forest conservation funds are potentially affected, beginning as early as fiscal 2025, by the offsetting impacts of (1) the modified reforestation requirements under FCA, under Chapters 541 and 542, potentially increasing fee-in-lieu payments and (2) Chapters 541 and 542 allowing for greater use of forest mitigation banks to meet afforestation and reforestation requirements in place of fee-in-lieu payments, potentially decreasing fee-in-lieu payments. Under the bill, the potential increase in fee-in-lieu payments is delayed, until fiscal 2027 at the earliest; however, since the bill establishes forest mitigation banking provisions that take effect July 1, 2024, and are identical to the forest mitigation banking provisions under Chapters 541 and 542, the potential for fee-in-lieu payments to decrease beginning as early as fiscal 2025 (due to greater use of forest mitigation banks to meet afforestation and reforestation requirements) is assumed to be unaffected by the bill. While not mentioned in the fiscal and policy notes for House Bill 723 and Senate Bill 526, any decrease in fee-in-lieu payments that might result (beginning as early as fiscal 2025) from the exemption of solar photovoltaic facilities from afforestation requirements is also assumed to be unaffected by the bill, since that exemption takes effect July 1, 2024, both under the bill and under current law.

DNR can implement the bill's requirements – that the department update the model local government ordinance and adopt regulations – with existing resources.

**Small Business Effect:** By delaying the effective date of the majority of the provisions of Chapters 541 and 542, the bill delays most of the potential meaningful effects on small businesses identified in the fiscal and policy notes for House Bill 723 and Senate Bill 526 (enacted as Chapters 541 and 542). The fiscal and policy notes indicated that Chapters 541 and 542 could affect various small businesses, including those engaging in construction activity, those that own or establish forest mitigation banks, and businesses providing material and services for reforestation/afforestation and FCA or local forest conservation program compliance (nurseries, landscapers, consultants). The bill delays potential meaningful effects on these small businesses, with the exception of any effects of changes that, under the bill, still take effect July 1, 2024 (the changes relating to forest mitigation banking, priority areas/vegetation, and solar photovoltaic facilities).

The fiscal and policy notes indicated that, in cases where the changes under Chapters 541 and 542 increase reforestation and/or afforestation requirements for a given project, for example, costs increase for small businesses engaging in construction, but business increases for those supporting reforestation/afforestation efforts and FCA or local forest conservation program compliance. For certain development, however, because of the exemptions under Chapters 541 and 542, reforestation/afforestation and related compliance costs/activity decrease rather than increase, since (1) reforestation requirements may decrease for a given project, and afforestation and priority retention area preservation requirements are eliminated, for transit-oriented development and specified multifamily housing and (2) no FCA requirements apply to a specified new federal government facility (see “Exemptions from Forest Conservation Act Requirements” under “Provisions of Chapters 541 and 542 Delayed by the Bill – Taking Effect July 1, 2026 Instead of July 1, 2024”).

**Additional Comments:** This analysis assumes that the provisions of Chapters 541 and 542 that, under the bill, do not take effect until July 1, 2026, are not applied to proposed construction activity before that date. However, the Department of Legislative Services (DLS) notes that the date in § 9(2) of Chapters 541 and 542 (which states “this Act may not apply to...a forest conservation plan approved before July 1, 2024”) is left as is and not changed to July 1, 2026. This appears to leave uncertainty about whether a forest conservation plan that is approved between July 1, 2024, and July 1, 2026, must comply with the provisions of Chapters 541 and 542 (that, under the bill, do not take effect until July 1, 2026). (As discussed further above, a forest conservation plan for a proposed construction activity defines how forest area will be retained and/or afforestation or reforestation will be undertaken in accordance with FCA.)

DLS also notes that the bill delays the modification of afforestation, reforestation, and preservation requirements of Chapters 541 and 542 until July 1, 2026, including the authorization for a local jurisdiction, with approval from DNR, to establish alternative requirements; however, the bill does not modify related dates by which DNR must require modification of the alternative requirements (December 31, 2028), and on or after which DNR may rescind approval of the alternative requirements (January 1, 2029), if the local program does not maintain or expand the local jurisdiction's existing level of forest cover over *two consecutive two-year periods* (a four-year period that would begin well before the local jurisdictions' programs begin).

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** None.

**Information Source(s):** Anne Arundel, Baltimore, and Frederick counties; Maryland Association of Counties; Maryland-National Capital Park and Planning Commission; City of Annapolis; Maryland Department of the Environment; Department of Natural Resources; Department of Legislative Services

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