

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 223

Chair, Environmental Matters Committee)
(By Request – Departmental – Natural Resources)

Environmental Matters

Education, Health, and Environmental
Affairs

**Endangered and Threatened Species - Incidental Taking - Delmarva Fox
Squirrel**

This departmental bill authorizes the Secretary of Natural Resources to issue a permit for the incidental taking of the endangered Delmarva fox squirrel under specified conditions. Among other things, an applicant for a permit must submit a conservation plan with specified elements. The bill authorizes the Secretary to adopt regulations to implement and enforce the bill.

The bill takes effect June 1, 2008.

Fiscal Summary

State Effect: Since it is assumed that the Department of Natural Resources would issue only a minimal number of permits, the bill would not materially affect State finances.

Local Effect: The bill would not materially affect local operations or finances.

Small Business Effect: DNR has determined that this bill has a meaningful impact on small business (attached). Legislative Services disagrees with this assessment. Although the bill could have a meaningful impact on some entities, the overall impact to Maryland small businesses would be minimal.

Analysis

Current Law: The State's Nongame and Endangered Species Conservation Act prohibits the "take" of endangered animals except under specified conditions. "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. "Incidental taking" means the taking of listed species that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. State law does not allow for the incidental taking of endangered species, except for the Puritan tiger beetle.

The official State Threatened and Endangered Species List is established in regulation. The Delmarva fox squirrel (*Sciurus niger cinereus*) is currently listed by the State as an endangered species. The species is also listed as endangered under the federal Endangered Species Act.

Background: According to DNR, Maryland's endangered species act was modeled after the federal act in 1973. Since then, federal law has been amended to allow for the incidental taking of listed species under certain circumstances through a permitting process. State law has never been amended to allow for the incidental taking of listed species, except for the puritan tiger beetle (Chapter 406 of 2005). DNR advises that this bill is modeled after Chapter 406 and is designed to conform to the federal law.

DNR advises that it has been working with Maryland's private forest landowners to develop a regional habitat conservation plan for the Delmarva fox squirrel on the Eastern Shore. DNR is pursuing an incidental take permit from the U.S. Fish and Wildlife Service as part of that effort. Once completed, private forest owners in Maryland will be able to conduct timber harvest operations in compliance with the federal Endangered Species Act. According to DNR, State authority to incidentally take this endangered species will allow consistent management of the Delmarva fox squirrel throughout its region. Further, DNR advises that State authority will be needed in order to secure the federal permit.

According to DNR, the Delmarva fox squirrel's population and its habitat region have increased over the years. DNR advises that it is important to maintain forest habitat for the continued success of the species. Providing for sustainable resource-based economic use of land serves as an incentive to retain forest land and minimize development.

Additional Information

Prior Introductions: None.

Cross File: None

Information Source(s): Department of Natural Resources, U.S. Fish and Wildlife Service, Department of Legislative Services

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ncs/lgc

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