

# SENATE BILL 666

M1

9lr1526  
CF 9lr3024

---

By: **Senators Pinsky, Conway, Frosh, Harrington, Lenett, Madaleno, Raskin,  
and Rosapepe**

Introduced and read first time: February 6, 2009

Assigned to: Education, Health, and Environmental Affairs

---

## A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of reducing the threshold acreage of land in a proposed subdivision  
4 plan above which the Forest Conservation Act applies; reducing the threshold  
5 acreage of forest cut, cleared, or graded above which certain activities no longer  
6 qualify as exemptions to the Forest Conservation Act; repealing certain  
7 exemptions from the requirements of the Forest Conservation Act for cutting or  
8 clearing trees in a public utility right-of-way; limiting a certain exemption from  
9 the requirements of the Forest Conservation Act for intrafamily transfers;  
10 repealing the authority of a local jurisdiction to waive the requirements of the  
11 Forest Conservation Act for certain previously developed and paved areas;  
12 authorizing the acquisition of an off-site protective easement for temporarily  
13 protected forested areas as a mitigation technique to meet afforestation or  
14 reforestation requirements; altering the standard that a person is required to  
15 meet to determine whether certain vegetation and areas of land may be  
16 disturbed; authorizing the owner of certain preserved forestland to place the  
17 forestland into the Forest Conservation and Management Program or under an  
18 approved forest management plan; altering the fee-in-lieu contribution to State  
19 or local forest conservation funds that is required under certain circumstances;  
20 altering the authorized uses of State and local forest conservation funds;  
21 requiring the Department of Natural Resources to develop and implement a no  
22 net loss of forest policy by a certain date, to adopt certain regulations and  
23 propose certain legislation to achieve this goal, and to achieve this goal without  
24 reducing the acreage of a certain land use in the State; requiring the  
25 Department of Natural Resources to submit a report to the General Assembly  
26 annually after a certain date on its progress in developing and implementing a  
27 no net loss of forest policy in the State; declaring the intent of the General  
28 Assembly; making certain stylistic changes; making a technical correction; and  
29 generally relating to the Forest Conservation Act and the development and  
30 implementation of a no net loss of forest policy.

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to  
2 Article – Natural Resources  
3 Section 5–104  
4 Annotated Code of Maryland  
5 (2005 Replacement Volume and 2008 Supplement)

6 BY repealing and reenacting, with amendments,  
7 Article – Natural Resources  
8 Section 5–1602, 5–1603(c)(3) and (g), 5–1604(a), 5–1607(b)(2), (c), and (f), and  
9 5–1610  
10 Annotated Code of Maryland  
11 (2005 Replacement Volume and 2008 Supplement)

12 BY repealing  
13 Article – Natural Resources  
14 Section 5–1603(f)  
15 Annotated Code of Maryland  
16 (2005 Replacement Volume and 2008 Supplement)

17 BY repealing and reenacting, without amendments,  
18 Article – Natural Resources  
19 Section 5–1607(e) and 5–1611  
20 Annotated Code of Maryland  
21 (2005 Replacement Volume and 2008 Supplement)

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

24 **Article – Natural Resources**

25 **5–104.**

26 **(A) THE DEPARTMENT SHALL:**

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

29 **(2) ADOPT ANY REGULATIONS AND PROPOSE ANY LEGISLATION**  
30 **NECESSARY TO ACHIEVE THIS GOAL; AND**

31 **(3) ACHIEVE THIS GOAL WITHOUT REDUCING THE ACREAGE OF**  
32 **PRIME AGRICULTURAL LAND IN THE STATE.**

33 **(B) ON OR BEFORE DECEMBER 1, 2011 AND EACH YEAR THEREAFTER,**  
34 **THE DEPARTMENT SHALL REPORT TO THE GENERAL ASSEMBLY, IN**

1 ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, ON THE  
2 PROGRESS OF THE DEPARTMENT IN DEVELOPING AND IMPLEMENTING A  
3 POLICY OF NO NET LOSS OF FOREST IN THE STATE.

4 5-1602.

5 (a) Except as provided in subsection (b) of this section, this subtitle shall  
6 apply to any public or private subdivision plan or application for a grading or sediment  
7 control permit by any person, including a unit of State or local government on areas  
8 [40,000] **20,000** square feet or greater.

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

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

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

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

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

17 (ii) That were completed on or after July 1, 1991 on property  
18 that is not the subject of an application for a grading permit for development within  
19 5 years after the logging or harvesting operation. However, after this 5-year period,  
20 the property shall be subject to this subtitle;

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

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

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

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

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

32 (7)] Any activity conducted on a single lot of any size or a linear project  
33 provided that:

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

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

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

9 [(9)] **(7)** Any activity required for the purpose of constructing a  
10 dwelling house intended for the use of the owner, or a child [or grandchild] of the  
11 owner, if the activity does not result in the cutting, clearing, or grading of more than  
12 [40,000] **20,000** square feet of forest;

13 [(10)] **(8)** A county that has and maintains 200,000 acres or more of its  
14 land area in forest cover; and

15 [(11)] **(9)** The cutting or clearing of trees to comply with the  
16 requirements of 14 C.F.R. § 77.25 relating to objects affecting navigable airspace,  
17 provided that the Federal Aviation Administration has determined that the trees are a  
18 hazard to aviation.

19 (c) For an application for subdivision or sediment and erosion control or  
20 grading for a site with more than 50% of the net tract area governed by Title 8,  
21 Subtitle 18 of this article, the Department or local authority may allow an applicant to  
22 extend critical area forest protection measures [in lieu] **INSTEAD** of meeting the  
23 requirements of this subtitle.

24 5-1603.

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

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

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

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

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

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

16   5-1604.

17           (a)    Except as provided in subsection (b)(2) and (3) of this section, after  
18 December 31, 1992, or after the date on which a local program has been adopted under  
19 § 5-1603 of this subtitle, whichever occurs first, a person making application for  
20 subdivision or grading or sediment control permits on areas [greater than 40,000]  
21 **20,000** square feet **OR GREATER** shall submit a forest stand delineation for the entire  
22 site prepared by a licensed forester, licensed landscape architect, or other qualified  
23 professionals that may be approved by the State or a local authority in the manner  
24 required by the approved program.

25   5-1607.

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

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

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

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

5 (c) The following trees, shrubs, plants, and specific areas shall be considered  
6 priority for retention and protection, and they shall be left in an undisturbed condition  
7 unless the applicant has demonstrated, to the satisfaction of the State or local  
8 authority that [reasonable efforts have been made to protect them and the plan cannot  
9 reasonably be altered] **THE APPLICANT QUALIFIES FOR A VARIANCE UNDER §**  
10 **5-1611 OF THIS SUBTITLE:**

11 (1) Trees, shrubs, and plants located in sensitive areas including  
12 100-year floodplains, intermittent and perennial streams and their buffers, coastal  
13 bays and their buffers, steep slopes, and critical habitats;

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

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

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

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

22 (i) 30 inches; or

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

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

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

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

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

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

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

11 5–1610.

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

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

14           (c) Except as provided in subsection (h) of this section, if any person subject  
15 to this subtitle demonstrates to the satisfaction of the appropriate State or local  
16 authority that the requirements for reforestation or afforestation on–site or off–site  
17 cannot be reasonably accomplished, the person shall contribute money [at a rate of  
18 10 cents per square foot of the area of required planting] to the Fund:

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

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

23           (d) Money collected by the State or a local authority under § 5–1608(c) or §  
24 5–1612 of this subtitle for noncompliance with this subtitle or regulations adopted  
25 under this subtitle or for noncompliance with a forest conservation plan or the  
26 associated 2–year management agreement shall be deposited in the Fund.

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

30           (2) Money deposited in the Fund under subsection (c) of this section  
31 shall remain in the Fund for a period of 2 years or 3 growing seasons, and at the end of  
32 that time period, any portion that has not been used to meet the afforestation or  
33 reforestation requirements shall be returned to the person who provided the money to  
34 be used for documented tree planting in the same county or watershed beyond that  
35 required by this subtitle or other applicable statutes.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

30 5–1611.

31 (a) In the preparation of the State or local forest conservation programs, the  
32 State and local authorities shall provide for the granting of variances to the  
33 requirements of this subtitle, where owing to special features of a site or other  
34 circumstances, implementation of this subtitle would result in unwarranted hardship  
35 to an applicant.

36 (b) Variance procedures adopted under this section shall:

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

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

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

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