

SENATE BILL 666

M1

9lr1526
CF HB 1291

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

Introduced and read first time: February 6, 2009

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 26, 2009

CHAPTER _____

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 ~~requiring the Public Service Commission to ensure compliance with certain~~
13 ~~requirements when reviewing an application for a certificate of public~~
14 ~~convenience and necessity~~; authorizing the acquisition of an off-site protective
15 easement for temporarily protected forested areas as a mitigation technique to
16 meet afforestation or reforestation requirements; altering the standard that a
17 person is required to meet to determine whether certain vegetation and areas of
18 land may be disturbed; authorizing the owner of certain preserved forestland to
19 place the forestland into the Forest Conservation and Management Program or
20 under an approved forest management plan; altering the fee-in-lieu
21 contribution to State or local forest conservation funds that is required under
22 certain circumstances; altering the authorized uses of State and local forest
23 conservation funds; ~~requiring the Department of Natural Resources to develop~~
24 ~~and implement a no net loss of forest policy by a certain date, to adopt certain~~
25 ~~regulations and propose certain legislation to achieve this goal, and to achieve~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 ~~this goal without reducing the acreage of a certain land use in the State;~~
 2 ~~requiring the Department of Natural Resources to submit a report to the~~
 3 ~~General Assembly annually after a certain date on its progress in developing~~
 4 ~~and implementing a no net loss of forest policy in the State requiring the~~
 5 ~~Department of Natural Resources to cooperate with certain groups to develop a~~
 6 ~~certain definition and policy; requiring the Department to submit a certain~~
 7 ~~report on or before a certain date; declaring the intent of the General Assembly;~~
 8 ~~making certain stylistic changes; making a technical correction; and generally~~
 9 ~~relating to the Forest Conservation Act and the development and~~
 10 ~~implementation of a no net loss of forest policy.~~

11 BY adding to
 12 Article – Natural Resources
 13 Section 5–104
 14 Annotated Code of Maryland
 15 (2005 Replacement Volume and 2008 Supplement)

16 BY repealing and reenacting, with amendments,
 17 Article – Natural Resources
 18 Section 5–1602, 5–1603(c)(3), ~~(f), and (g), 5–1604(a),~~ 5–1607(b)(2), (c), and (f),
 19 and 5–1610
 20 Annotated Code of Maryland
 21 (2005 Replacement Volume and 2008 Supplement)

22 ~~BY repealing~~
 23 ~~Article – Natural Resources~~
 24 ~~Section 5–1603(f)~~
 25 ~~Annotated Code of Maryland~~
 26 ~~(2005 Replacement Volume and 2008 Supplement)~~

27 BY repealing and reenacting, without amendments,
 28 Article – Natural Resources
 29 Section 5–1603(f) and (g), 5–1604(a), 5–1607(e), and 5–1611
 30 Annotated Code of Maryland
 31 (2005 Replacement Volume and 2008 Supplement)

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

34 **Article – Natural Resources**

35 **5–104.**

36 ~~(A) THE DEPARTMENT SHALL:~~

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

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

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

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

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

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

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

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

23 5-1602.

24 (a) Except as provided in subsection (b) of this section, this subtitle shall
 25 apply to any public or private subdivision plan or application for a grading or sediment
 26 control permit by any person, including a unit of State or local government on areas
 27 ~~40,000~~ **20,000** square feet or greater.

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

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

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

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

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

5 (ii) That were completed on or after July 1, 1991 on property
6 that is not the subject of an application for a grading permit for development within
7 5 years after the logging or harvesting operation. However, after this 5–year period,
8 the property shall be subject to this subtitle;

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

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

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

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

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

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

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

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

27 [(8)] **(6)** Any strip or deep mining of coal regulated under Title 15,
28 Subtitle 5 or 6 of the Environment Article and any noncoal surface mining regulated
29 under Title 15, Subtitle 8 of the Environment Article;

30 [(9)] **(7)** Any activity required for the purpose of constructing a
31 dwelling house intended for the use of the owner, or a child [or grandchild] of the
32 owner, if the activity does not result in the cutting, clearing, or grading of more than
33 [40,000] **20,000** square feet of forest;

1 [(10)] (8) A county that has and maintains 200,000 acres or more of its
2 land area in forest cover; and

3 [(11)] (9) The cutting or clearing of trees to comply with the
4 requirements of 14 C.F.R. § 77.25 relating to objects affecting navigable airspace,
5 provided that the Federal Aviation Administration has determined that the trees are a
6 hazard to aviation.

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

12 5-1603.

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

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

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

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

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

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

37 5-1604.

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

9 5-1607.

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

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

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

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

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

30 **(I) CONSIDERED PRIORITY FOR RETENTION AND**
 31 **PROTECTION;**

32 **(II) LEFT IN AN UNDISTURBED CONDITION UNLESS THE**
 33 **APPLICANT HAS DEMONSTRATED, TO THE SATISFACTION OF THE STATE OR**
 34 **LOCAL AUTHORITY THAT REASONABLE EFFORTS HAVE BEEN MADE TO PROTECT**
 35 **THEM AND THE PLAN CANNOT REASONABLY BE ALTERED.**

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

7 ~~(1) Trees, shrubs, and plants located in sensitive areas including~~
 8 ~~100-year floodplains, intermittent and perennial streams and their buffers, coastal~~
 9 ~~bays and their buffers, steep slopes, and critical habitats;~~

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

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

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

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

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

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

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

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

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

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

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

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

8 5–1610.

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

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

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

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

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

20 (d) Money collected by the State or a local authority under § 5–1608(c) or §
21 5–1612 of this subtitle for noncompliance with this subtitle or regulations adopted
22 under this subtitle or for noncompliance with a forest conservation plan or the
23 associated 2–year management agreement shall be deposited in the Fund.

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

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

33 (f) (1) (i) Money deposited in the Fund under subsection (c) of this
34 section may only be spent on reforestation and afforestation, including site
35 identification, acquisition, and preparation, **MAINTENANCE OF EXISTING FORESTS,**

1 **AND ACHIEVING URBAN CANOPY GOALS**, and may not revert to the General Fund of
2 the State.

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

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

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

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

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

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

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

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

36 (j) **(1)** Money deposited in the local forest conservation fund under
37 subsection (h) of this section may only be spent on reforestation and afforestation,
38 including the costs directly related to site identification, acquisition, prepurchase, and

1 preparation, **MAINTENANCE OF EXISTING FORESTS, AND ACHIEVING URBAN**
2 **CANOPY GOALS**, and may not revert to any other local general fund.

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

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

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

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

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

27 5–1611.

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

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

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

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.