

Department of Legislative Services  
 Maryland General Assembly  
 2009 Session

FISCAL AND POLICY NOTE

House Bill 771 (Delegate Cane, *et al.*)  
 Environmental Matters

Sustainable Forestry Act of 2009

This bill makes various changes to help achieve sustainability in the management of the State’s forest resources. Among other things, the bill modifies how Forest or Park Reserve Funds may be used; eliminates the funding cap on the Woodland Incentives Fund (WIF), modifies WIF uses, and authorizes new WIF revenues; requires the Department of Natural Resources (DNR) to develop specified policies and programs; modifies specified planning and right-to-farm provisions to include forestry; and requires specified reports by December 1, 2009.

Fiscal Summary

**State Effect:** Increase in special fund expenditures in FY 2010 and subsequent years to, among other things, administer and develop programs and strategies, complete reports, and provide grants. General fund expenditures increase by \$1.7 million in FY 2010 and subsequent years for DNR’s Forest Service to offset the redirection of Forest or Park Reserve Fund revenues to WIF. General fund expenditures also increase by \$10,000 in FY 2010 only to develop a required institute. Increase in special fund revenues in FY 2010 and subsequent years due to modifying Forest or Park Reserve Fund and WIF provisions. General fund revenues decrease in FY 2010 and subsequent years due to modifying WIF provisions.

| (in dollars)   | FY 2010       | FY 2011       | FY 2012       | FY 2013       | FY 2014       |
|----------------|---------------|---------------|---------------|---------------|---------------|
| GF Revenue     | (-)           | (-)           | (-)           | (-)           | (-)           |
| SF Revenue     | -             | -             | -             | -             | -             |
| GF Expenditure | \$1,710,000   | \$1,700,000   | \$1,700,000   | \$1,700,000   | \$1,700,000   |
| SF Expenditure | -             | -             | -             | -             | -             |
| GF/SF Exp.     | -             | -             | -             | -             | -             |
| Net Effect     | (\$1,710,000) | (\$1,700,000) | (\$1,700,000) | (\$1,700,000) | (\$1,700,000) |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

**Local Effect:** Local revenues decrease due to a reduction in annual DNR payments to counties. Local expenditures increase to revise planning documents and develop specified information. **This bill may impose a mandate on a unit of local government.**

**Small Business Effect:** Meaningful. Forestry-related businesses benefit to the extent the bill contributes to sustainable forestry.

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## Analysis

**Bill Summary:** The bill's major changes are summarized below.

### *State Planning Policy*

The bill modifies the issues that may be addressed within the land use element of a local jurisdiction's comprehensive plan to include forestry, and modifies the State Economic Growth, Resource Protection, and Planning Policy to include the promotion of sustainable forestry management.

The bill expresses intent that local planning and zoning restrictions impacting silvicultural practices do not exceed restrictions imposed by State law and regulation.

### *Modifications to Existing DNR Special Funds*

Several changes are made to the Forest or Park Reserve Fund. The allowable uses are modified to include offsetting the costs to DNR for developing and implementing a forest health emergency contingency program. The bill alters the formula for calculating annual payments to local jurisdictions from the fund. The allocation to counties with State forest or park reserve comprising less than 10% of the total land area in the county is changed from 15.0% to 12.5% of the revenue derived from the State forest or park reserve located in that county. The allocation to counties with State forest or park reserve comprising 10% or more of the total land area in the county is changed from 25.0% to 22.5% of the revenue derived from the State forest or park reserve located in that county.

The bill eliminates the \$200,000 annual cap on WIF's agricultural land transfer tax revenue from woodlands. The bill expands WIF's revenue sources to include revenues derived from forestry practices on designated lands owned and managed by DNR, effectively redirecting funds from the Forest or Park Reserve Fund to WIF. WIF investment earnings may not transfer or revert to the State's general fund. DNR is required to use WIF for the following additional purposes:

- developing and approving forest stewardship plans on privately owned forest lands;
- providing annual grants to forest conservancy district boards for efforts to encourage forest land owners to develop forest stewardship and other forest conservation management plans;
- establishing a forest health emergency contingency program to help maintain the health and vitality of public and private forest lands and prevent or control large degradation by natural threats;
- administering a specified urban and community forestry program;
- providing financial assistance to enhance the production of value-added wood products;
- developing and expanding a forest mitigation banking system, a carbon credit or carbon sequestration program, a clean water credit trading system, an environmental services credit trading program, and a renewable energy credit trading system; and
- administering the Sustainable Forest Council.

*Department of Natural Resources*

DNR is required to (1) develop creative, tax-related strategies to promote the retention and improved management of privately owned forest land for General Assembly consideration during the 2010 and 2011 legislative sessions; (2) work with the Chesapeake Bay Trust to develop a strategy that better coordinates the State's urban tree canopy efforts and report on those strategies to the Governor by December 1, 2009; (3) work with Maryland's forest products industry on specified issues; (4) ensure its urban and community forestry program is consistent with specified provisions of law; (5) consider conserving working landscapes and protecting and restoring forests from specified threats when allocating State Program Open Space funding; and (6) monitor forest retention and restoration by encouraging local jurisdictions to report specified geospatial data to the State; and if funding is required to acquire that data, to use funds in WIF.

DNR is authorized to (1) work with the Maryland Higher Education Commission and institutions of higher education to develop a program that creates a wood technology institute; and (2) assume specified Maryland Department of the Environment (MDE) responsibilities and resources associated with sediment and erosion control planning and enforcement, with the transfer being subject to approval by the Governor and the General Assembly.

The bill encourages DNR to develop a forest stewardship plan on all appropriate State-owned lands.

### *Additional Modifications, Changes, and Requirements*

The bill modifies the name of the Maryland Agricultural Land Preservation Foundation (MALPF) to be the Maryland Agricultural and Forestry Land Preservation Foundation; it also encourages giving consideration to the retention of forest land and regular meetings between local agricultural and forestry boards. Also, the Forest Advisory Commission is renamed the Sustainable Forestry Council and its purpose is specified. Regulated lobbyists appointed to the Sustainable Forestry Council are exempt from specified provisions of public ethics law.

The bill modifies right-to-farm provisions to include silvicultural (forestry) operations. Forestry boards and other specified nonprofit corporations are authorized to impose fees to offset specified costs, unless those costs are met with funds from WIF. The bill encourages forest conservancy district boards and the University of Maryland Cooperative Extension to collaboratively develop a specified strategy, which must then result in a report of findings and recommendations to specified committees of the General Assembly by December 1, 2009.

The bill encourages the provision of incentives to promote in-state production of renewable energy, with consideration being given to biomass-fueled facilities.

### **Current Law:**

#### *State Policy Relating to Forests – In General*

Forests, streams, valleys, wetlands, parks, scenic, historic, and recreation areas of the State are basic assets. Their proper use, development, and preservation are necessary to protect and promote the health, safety, economy, and general welfare of the people of the State. It is the policy of the State to encourage the economic development and use of its natural resources for the improvement of local economy, preservation of the natural beauty, and promotion of the recreational and leisure interest throughout the State.

Forests, timberlands, woodlands, and soil resources of the State are basic assets and the proper use, development, and preservation of these resources are necessary to protect and promote the health, safety, and general welfare of the State. It is the policy of the State to encourage economic management and scientific development of its forests and woodlands to maintain, conserve, and improve the soil resources of the State so that an adequate source of forest products is preserved for the people.

### *Stated Importance of Forestry*

Statute specifies that forestry constitutes a traditional, fundamental, beneficial, and desirable use of the State's forest resource. Forestry is an important land management tool that contributes significantly to the economy of the State by supporting a vital forest products industry, as well as the health of forests and their wildlife, water quality, and recreational benefits by sustaining forest productivity and wildlife habitats.

In Maryland, forestry is often carried out in close proximity to populated areas. Other than development for more intensive uses, this harvest of timber may represent a major source of income for the profitable use of private property. Since it is in the State and public interests to preserve the forest land base and other natural resources, a local government with planning and zoning powers must support forestry by a reasonable exercise of those powers.

### *The Forest Conservation Act – In General*

Enacted in 1991, the Forest Conservation Act provides a set of minimum standards that developers must follow when designing a new project that affects forest land. Local governments are responsible for making sure these standards are met but may choose to implement even more stringent criteria. If there is no local agency in place to review development plans, DNR does so. In general, the Act calls for a minimum amount of forest cover on development sites based upon the site's zoning.

### *Forest or Park Reserve Fund*

The stated purpose of the Forest or Park Reserve Fund, which is administered by DNR, is to enable the department to purchase and manage in the name of the State lands suitable for forest culture, reserves, watershed protection, State parks, scenic preserves, historic monuments, parkways, and State recreational reserves. The fund, which generally consists of revenues derived from State forests and parks, may only be used for purchasing and managing those lands; certain annual payments to counties; and specified administrative costs.

### *Woodlands Incentive Fund*

The agricultural land transfer tax was created in 1981 and WIF was established five years later in 1986 (Chapter 620). The agricultural land transfer tax is collected by each county. In general, of the total collections, each county (except Montgomery) retains one-third of the funds and transfers the balance to the Comptroller. Counties with certified agricultural land preservation programs retain three-quarters of the funds and transfer the balance to the Comptroller. Funds retained by each county are generally used

for approved county agricultural preservation programs. Up to \$200,000 annually of the agricultural land transfer tax revenue from woodlands is allocated to WIF. DNR uses these funds to provide cost-share assistance to specified private forest land owners for tree planting, site preparation, and timber stand improvement.

### *Right-to-farm*

If an agricultural operation has been underway for one year or more; if the operation is in compliance with applicable federal, State, and local health, environmental, zoning, and permit requirements relating to any nuisance claim and; is not conducted in a negligent manner, the operation may not be deemed to be a public or private nuisance. Further, a private action may not be sustained on the grounds that the operation interferes or has interfered with the use or enjoyment of other property.

### *Local Comprehensive Plans*

Under Article 66B, the State's zoning and planning law, local planning commissions are required to develop comprehensive plans; these plans are required to include several specified elements. Among other things, the plans must include a land use plan element that proposes the most appropriate and desirable patterns for the general location, character, extent, and interrelationship of the uses of public and private land and may include public and private, residential, commercial, industrial, agricultural, and recreational land uses. Under current law, forestry is not specifically listed.

### *State Economic Growth, Resource Protection, and Planning Policy*

The State Economic Growth, Resource Protection, and Planning Policy sets out eight visions relating to future development and the protection of certain areas and resources. Under current law, the promotion of sustainable forestry management is not specifically identified within any of the visions.

### *Maryland Agricultural Land Preservation Foundation*

MALPF, which was established in 1977 and is part of the Maryland Department of Agriculture, purchases agricultural preservation easements that restrict development on prime farmland and woodland in perpetuity. As of January 2009, MALPF had cumulatively purchased or had a pending contract to purchase permanent conservation easements on 2,005 farms covering 274,950 acres.

**Background:** In December 2007, the Chesapeake Executive Council signed a directive that committed the bay states to permanently protect an additional 695,000 acres of forest from conversion by 2020; accelerate reforestation and conservation in urban/suburban areas and riparian forest buffers by 2020; work with local governments, legislative

delegations, land trusts, or other stakeholders to create or augment dedicated sources of local funding by 2010; and by 2009, establish and implement a mechanism to track and assess forest land cover change. Under the directive, Maryland has committed to protecting an additional 250,000 acres by 2020. Approximately 724,000 acres of forest lands in the State are already protected.

A No Net Loss of Forest Task Force was established by Chapter 176 of 2008 to (1) develop a specific plan, including programs and other necessary actions, to achieve and maintain no net loss of forests; and (2) draft legislation for the 2009 session to ensure that there is a process to achieve no net loss of forest in the State beginning in 2010. The task force submitted a final report containing findings and recommendations in January 2009.

## **State Revenues:**

### *Forest or Park Reserve Fund*

The bill makes two significant changes to Forest or Park Reserve Fund revenues. First, the State is authorized to keep a portion of the revenues currently allocated to local jurisdictions in accordance with law. Based on fiscal 2008 revenues, the State retains an estimated \$300,000 in special funds. However, DNR advises that revenues fluctuate significantly from year to year due to weather conditions at the parks and the demand and availability of timber.

Second, the bill requires revenues derived from forestry practices on lands owned and managed by DNR to be redirected from the Forest or Park Reserve Fund to WIF, effectively altering the use of existing funds. In fiscal 2008, timber revenues from State lands totaled approximately \$1.7 million. Funds currently used for costs associated with purchasing and managing State lands, annual payments to counties, and specified administrative costs must be used for other specified WIF purposes. In effect, DNR advises the Forest Service loses approximately \$1.7 million in operating funds. This reduction, which represents 16% of the Forest Services fiscal 2008 budget, has a significant impact on DNR's ability to manage 200,000 acres of State forest land, promote sustainable forest management, and protect forest resources. The Governor's proposed fiscal 2010 budget reconciliation legislation (HB 101/SB 166) includes a provision prohibiting DNR from making revenue-sharing payments to counties in fiscal 2010 and 2011, except for revenues derived from the sale of timber.

### *Woodland Incentives Fund*

As shown in **Exhibit 1**, during the fiscal 1986-2008 period, the Comptroller received a total of \$2.5 million in agricultural land transfer tax revenue from land that was entirely wooded (woodlands). Of the \$2.5 million in agricultural land transfer tax revenue from

woodlands remitted to the Comptroller between fiscal 1986 and 2008, approximately \$2.1 million was allocated to WIF and just over \$400,000 was allocated to MALPF in accordance with the statutory \$200,000 annual cap on the allocation of such revenues to WIF. The statutory cap was exceeded twice – in fiscal 1999 by \$3,022 and in fiscal 2007 by \$402,244.

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**Exhibit 1**  
**Agricultural Land Transfer Tax Revenue Remitted to Comptroller**  
**Fiscal 1986-2008**

| <u>Fiscal Year</u> | <u>Agricultural</u> | <u>Woodlands</u>   | <u>Total</u>         |
|--------------------|---------------------|--------------------|----------------------|
| 1986               | \$3,253,462         | \$0                | \$3,253,462          |
| 1987               | 7,031,351           | 91,575             | 7,122,926            |
| 1988               | 10,677,391          | 44,220             | 10,721,611           |
| 1989               | 13,111,235          | 199,523            | 13,310,758           |
| 1990               | 5,411,023           | 199,225            | 5,610,248            |
| 1991               | 1,998,236           | 75,414             | 2,073,650            |
| 1992               | 1,161,246           | 23,056             | 1,184,302            |
| 1993               | 1,571,777           | 176,139            | 1,747,916            |
| 1994               | 1,524,255           | 16,463             | 1,540,718            |
| 1995               | 1,951,104           | 86,732             | 2,037,836            |
| 1996               | 1,958,254           | 56,456             | 2,014,710            |
| 1997               | 2,237,744           | 31,444             | 2,269,188            |
| 1998               | 1,835,238           | 76,260             | 1,911,499            |
| 1999               | 2,419,238           | 203,022            | 2,622,260            |
| 2000               | 3,084,870           | 65,396             | 3,150,266            |
| 2001               | 2,907,371           | 49,496             | 2,956,867            |
| 2002               | 2,165,228           | 18,312             | 2,183,541            |
| 2003               | 4,107,339           | 28,517             | 4,135,856            |
| 2004               | 6,629,281           | 69,440             | 6,698,721            |
| 2005               | 8,378,339           | 164,207            | 8,542,546            |
| 2006               | 9,587,852           | 198,241            | 9,786,093            |
| 2007               | 4,355,326           | 602,244            | 4,957,570            |
| 2008               | 2,564,048           | 14,779             | 2,578,827            |
| <b>Total</b>       | <b>\$99,921,210</b> | <b>\$2,490,160</b> | <b>\$102,411,370</b> |

Source: Comptroller of the Treasury

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The bill redirects significant special fund revenues to WIF by eliminating the funding cap, authorizing WIF to retain investment earnings, and redirecting specified Forest or  
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Park Reserve Funds to WIF. Authorizing WIF to retain investment earnings results in an associated decrease in general fund revenue. The bill's impact on WIF revenues may vary from year to year based on the fund balance, interest rates, whether the \$200,000 cap would have been exceeded, and forest revenues.

### **State Expenditures:**

#### *Forest or Park Reserve Fund*

By expanding the allowable uses of the Forest or Park Reserve Fund to include establishing a forest health emergency contingency program, the bill may result in an increase in special fund expenditures. However, the extent to which sufficient special funds are available for these expanded purposes is unknown.

The Forest Service loses approximately \$1.7 million in operating funds to WIF without any reduction in responsibilities as discussed above. Thus, to maintain forestry programs, it is assumed \$1.7 million in general funds is required to replace the special funds redirected to WIF under the bill.

#### *Woodland Incentives Fund*

The bill expands the allowable uses of WIF to include many new efforts and programs that have a significant impact on special fund expenditures. Several examples are described below.

By expanding the allowable uses of WIF to include offsetting the costs to DNR's Forest Service for developing and approving forest stewardship plans on privately owned forest lands, the bill may result in an increase in special fund expenditures and a corresponding decrease in general/federal fund expenditures for those activities. DNR completes approximately 400 plans annually at an average annual cost of about \$320,000.

By expanding the allowable uses of WIF to include annual grants to forest conservancy district boards, special fund expenditures may increase further. According to DNR, there are 24 boards in the State. Although the amount of grants provided under the bill is unknown, *for illustrative purposes only*, if DNR were to provide grants of \$4,000 per board per year, special fund expenditures increase by \$96,000 annually.

The bill directs DNR to use WIF to acquire specified geospatial data from local governments, if necessary. DNR advises that it is unclear how much funding may be needed to acquire such data; some local jurisdictions may already have this data or can develop it easily. Others may need additional funding. Accordingly, special fund

expenditures may increase, but any such increase cannot be reliably estimated at this time.

According to DNR, the extent to which sufficient special funds are available for these expanded purposes is unknown. However, the fund had a starting balance of \$829,388 in fiscal 2009.

### *Other Changes*

The bill authorizes shifting existing responsibilities and resources related to sediment and erosion control planning and enforcement with respect to silvicultural practices from MDE to DNR. MDE currently has seven positions working in this area. To the extent this transfer occurs, funds and positions shift from MDE to DNR.

The bill directs the University of Maryland Cooperative Extension and forest conservancy district boards to develop a report by December 1, 2009. General or special fund expenditures may increase to meet this reporting requirement.

The Maryland Higher Education Commission advises \$10,000 in contractual expenses is required to develop a wood technology institute, as authorized in the bill.

### **Local Fiscal Effect:**

#### *Local Revenues*

Local revenues from State Forest or Park Reserve Fund contributions decrease significantly due to amending the allocation formula and shifting revenues to WIF. While the extent of that impact varies depending upon State earnings, revenues decrease 17% annually in those counties where forest and park lands comprise less than 10% of total area in the county, and revenues decrease 10% annually in those counties where forest and park lands comprise greater than 10% of the total area in the county. Based on fiscal 2008 revenues, local jurisdiction's revenues decrease by approximately \$300,000 in fiscal 2010 and subsequent years.

#### *Local Expenditures*

Local planning expenditures may increase for some local jurisdictions if they choose to modify their local comprehensive plans to include forestry information in their land use plan elements. Any increase will depend on the extent to which local jurisdictions already include this type of information and the extent to which this activity can be handled by existing staff.

Local governments may also incur additional costs to implement sustainable forestry management as a vision within the State's Economic Growth, Resource Protection, and Planning Policy. Any such impact cannot be reliably estimated at this time but is not anticipated to be significant.

Finally, local expenditures may also increase to the extent local jurisdictions choose to report forest retention and restoration data in a geospatial format; according to DNR, some jurisdictions may have to update their geographic information system capabilities to be able to report in this manner. However, the bill only encourages this activity. In addition, the bill directs DNR to use funds in WIF if State funding is required to acquire such data.

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### **Additional Information**

**Prior Introductions:** The Environmental Matters Committee held a hearing on HB 1552 of 2008, which contained many similar provisions, but there was no further action.

**Cross File:** SB 549 (Senator Dyson) - Education, Health, and Environmental Affairs.

**Information Source(s):** Dorchester, Garrett, and Somerset counties; City of Havre de Grace; U.S. Environmental Protection Agency (Chesapeake Bay Program); Department of Budget and Management; Department of Natural Resources; State Ethics Commission; Maryland Department of the Environment; Maryland Higher Education Commission; Judiciary (District Court and Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; University System of Maryland; Office of the Comptroller; Department of Legislative Services

**Fiscal Note History:** First Reader - February 23, 2009  
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