

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 666

(Senator Pinsky, *et al.*)

Education, Health, and Environmental Affairs

Environmental Matters

Natural Resources - No Net Loss of Forest Policy - Forest Conservation Act

This bill requires the Department of Natural Resources (DNR) to cooperate with forestry-related stakeholder groups to (1) determine the meaning of no net loss of forest for the purposes of any State policy; and (2) develop proposals for the creation of a policy of no net loss of forest in the State. By December 1, 2011, DNR must submit a report, to specified committees of the General Assembly, on proposals for the development of statutory, budgetary, and regulatory policies to achieve no net loss of forest in the State.

The bill amends several provisions of the Forest Conservation Act, including increasing the fee-in-lieu contribution rate to State and local Forest Conservation Funds.

Fiscal Summary

State Effect: Any reporting, staffing, and project review costs for DNR are assumed to be minimal and absorbable within existing budgeted resources. State Forest Conservation Fund special fund revenues increase in FY 2010 and subsequent years.

Local Effect: Local jurisdictions' expenditures may increase to complete additional project reviews. Local jurisdictions' Forest Conservation Fund revenues increase in FY 2010 and subsequent years due to changing the fee-in-lieu rate and broadening eligibility.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill modifies several provisions of the Forest Conservation Act. These changes:

- limit the exemptions for forest clearing associated with a single lot, a linear project, and a dwelling house to a maximum disturbance of 20,000 (instead of 40,000) square feet of forest;
- limit the exemption for construction of dwelling houses to owners and their children, eliminating authority for an owner's grandchildren;
- eliminate an exemption for areas that were previously developed and covered by paved surface;
- authorize the use of an off-site protective agreement that applies to forests that are temporarily protected as a mitigation practice for meeting afforestation or reforestation requirements;
- broaden the acceptable uses of State and local Forest Conservation Funds to include maintenance of existing forests and achieving urban tree canopy goals; and
- require that priority be given to specified trees, shrubs, plants, and areas for retention and protection, unless a variance is granted.

The bill alters the fee-in-lieu contribution rate to State and local conservation funds that is required under specified circumstances from 10 cents per square foot to 30 cents per square foot of the area of required planting until September 30, 2014. After September 30, 2014, the rate must be adjusted for inflation as determined annually by DNR via regulation.

Current Law: 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 they may choose to implement even more stringent criteria. If there is no local agency in place to review development plans, DNR does so. The intent of the Act is to minimize the loss of forest due to development and to ensure that priority areas for forest retention and forestation are identified and protected before development. Priority areas include nontidal floodplains, streams and accompanying buffers, steep slopes, and critical habitats.

The Act applies, subject to enumerated exceptions, to any public or private development requiring a subdivision plan, grading permit, or sediment control permit that is to apply on 40,000 square feet (approximately 0.9 acres) or greater of land. The exceptions include highway construction, cutting or clearing in the Chesapeake and Atlantic Coastal

Bays Critical Area, commercial timber harvesting, agricultural activity that does not result in a change in land use, clearing or routine maintenance of a public utility's land or right-of-way mining activity, clearing related to navigable airspace, or land in a county that maintains at least 200,000 acres of forest cover (Allegheny and Garrett counties). Clearing in the critical area is governed by regulations adopted by the Chesapeake and Atlantic Coastal Bays Critical Area Commission. The Public Service Commission is required to consider minimizing forest loss and any appropriate afforestation (the establishment of forest cover in an area where forests have long or always been absent) or reforestation (the restoration of forest cover in an area where existing forest cover has been recently altered) when reviewing Certificate of Public Convenience and Necessity applications.

An applicant for a subdivision, grading, or sediment control permit that is subject to the Act must first submit to the approval authority a forest stand delineation. Forest stand delineations identify and map existing vegetation and priority areas on a proposed development site and are used to determine the best areas for forest conservation.

DNR administers the State Forest Conservation Fund to facilitate the afforestation or reforestation requirements when an applicant cannot reasonably accomplish these requirements on- or off-site. In addition, a local approval authority may establish and administer a local forest conservation fund to apply in that local jurisdiction instead of the State fund. A State or local forest conservation fund consists of payments made by an applicant in lieu of performance of afforestation or reforestation requirements and penalties collected for noncompliance with a forest conservation program, a forest conservation plan, or an associated two-year management agreement. If an applicant demonstrates to the satisfaction of the appropriate State or local approval authority that the requirements for planting on- or off-site cannot be reasonably accomplished, the applicant must pay to the appropriate fund 10 cents per square foot of the area of required planting. Violators at the State and local level are assessed a penalty of 30 cents per square foot of the area found to be in noncompliance and are liable for a civil penalty of up to \$1,000 per day the violation continues.

Current law gives local jurisdictions the flexibility to set a fee-in-lieu contribution rate that is as stringent as, or more stringent than, the State. For example, the fee-in-lieu contribution rate is 90 cents per square foot in Montgomery County and 30 cents per square foot in Charles and Prince George's counties. To encourage local jurisdictions to adopt local forest conservation funds, the State gave concessions to several counties in the 1990s. One of these concessions involved authorizing Somerset County to establish a fee-in-lieu contribution rate of only 6 cents per square foot.

Background: The Forest Conservation Act does not currently function as a mechanism for implementing a no net loss of forest policy. The intent of the Act is to minimize the loss of forest and to target forest retention and planting to priority areas. In fact, a

10-year review of the Act (1992 through 2002) completed by DNR in 2004 found the Act had resulted in the retention of 79,174 forest acres, planting of 13,611 forest acres, and clearing of 42,906 forest acres. Thus, the Act had resulted in more forest acreage cleared than planted.

In its January 2007 report, the Maryland Transition Work Group on Environment and Natural Resources recommended that the State adopt a no net loss of forest goal through legislative and executive actions. Maryland loses 8,600 acres of forest land each year. The work group noted that the maintenance of forest is as important to restoring the Chesapeake Bay as any investments in sewage treatment or air quality controls. The work group concluded that avoidance and minimization of forest loss should be a priority over reforestation.

In December 2007, the Chesapeake Executive Council signed a directive committing 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 committed to protect an additional 250,000 acres by 2020. Approximately 724,000 acres of forest land 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 a no net loss of forest; and (2) draft legislation for the 2009 session to ensure that there is a process to achieve a no net loss of forest in the State beginning in 2010. The task force completed a final report in January 2009 that sets forth a variety of recommendations. The bill is a direct result of the task force's report.

State Fiscal Effect: In the short-term, largely due to the slowing economy and less development occurring, DNR may absorb the bill's reporting, staffing, and project review requirements with existing budgeted resources. To the extent development increases and more oversight is required, DNR special fund expenditures increase.

The number of eligible projects and amount of fee-in-lieu revenue in the State varies from year to year. While there has been a decrease in recent development proposals, as the economy improves, projects are expected to increase. State Forest Conservation Fund fee-in-lieu collections totaled approximately \$14,400 in fiscal 2008, \$34,900 in fiscal 2007, \$59,000 in fiscal 2006, and \$19,000 in fiscal 2005. Since the bill increases the fee-in-lieu rate and broadens eligibility, State Forest Conservation Fund revenues are expected to increase in fiscal 2010 and subsequent years. The magnitude of the change cannot be reliability estimated; however, it is expected to be minimal.

Local Fiscal Effect: Local Forest Conservation Fund fee-in-lieu collections totaled approximately \$2.3 million in fiscal 2007, \$2.6 million in fiscal 2006, \$2.8 million in fiscal 2005, and \$1.9 million in fiscal 2004. In fiscal 2001, when the economy was performing poorly, local Forest Conservation Fund collections totaled \$533,340. Many local jurisdictions have fee-in-lieu rates that are 30 cents per square foot or more; so DNR advises the bill's fee-in-lieu rate change impacts only seven counties (Caroline, Dorchester, Kent, Queen Anne's, Talbot, Wicomico, and Worcester counties).

Since the bill increases the fee-in-lieu rate and broadens eligibility, local Forest Conservation Fund revenues increase in fiscal 2010 and subsequent years. The magnitude of the increase cannot be reliability estimated. By expanding the authorized uses of Forest Conservation Fund revenues, the bill provides local jurisdictions with greater flexibility to implement programs that meet their specific needs and priorities.

Local jurisdictions' expenditures may increase to review additional projects for applicability or compliance with the law.

Small Business Effect: To the extent the bill requires small businesses to pay increased fees and expands Forest Conservation Act eligibility to small businesses, the bill has a meaningful impact.

Additional Information

Prior Introductions: None.

Cross File: HB 1291 is designated as a cross file; however, it is not identical.

Information Source(s): Charles, Frederick, and Somerset counties; Department of Natural Resources; Public Service Commission; Department of Legislative Services

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