

**Department of Legislative Services**  
Maryland General Assembly  
2009 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 549

(Senator Dyson)

Education, Health, and Environmental Affairs

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; modifies Woodland Incentives Fund (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.

**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. To the extent DNR Forest Service funding decreases due to the allocation of WIF revenue to the Forest or Park Reserve Fund, general fund expenditures increase in FY 2010 and subsequent years for DNR's Forest Service. General fund expenditures also increase by \$10,000 in FY 2010 only to develop a required institute. Revenues are not affected.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	10,000	-	-	-	-
SF Expenditure	-	-	-	-	-
GF/SF Exp.	-	-	-	-	-
Net Effect	(\$10,000)	\$0	\$0	\$0	\$0

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

**Local Effect:** Local expenditures increase to revise planning documents and develop specified information.

**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*

The Forest or Park Reserve Fund's allowable uses are modified to include offsetting the costs to DNR for developing and implementing a forest health emergency contingency program.

The bill expands WIF's revenue sources to include revenues derived from forestry practices on designated lands owned and managed by DNR, subject to approval by the Secretary of Natural Resources and the Board of Public Works. 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.

By June 30 annually, DNR must report to specified committees of the General Assembly on the use of funds credited to WIF, including an identification of, and the reasons for, those revenues derived from forestry practices on designated land owned and managed by DNR that were not credited to WIF.

### *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 work with the Maryland Higher Education Commission and institutions of higher education to develop a program that creates a wood technology institute.

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

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

The bill encourages the Maryland Agricultural Land Preservation Foundation (MALPF) to give fair consideration to the retention of forest land. The bill requires annual meetings between local agricultural and forestry boards. Also, the Forest Advisory Commission is renamed the Sustainable Forestry Council and its purpose is specified.

The bill modifies right-to-farm provisions to include silvicultural (forestry) operations. Forestry boards are authorized to impose fees to offset specified costs, unless those costs

are met with funds from WIF. The bill eliminates a forestry board's authority to enter upon any woodland in the county or district in performance of its duty. The bill encourages forestry 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*

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.

#### *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*

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.

#### *Woodland Incentives 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.

#### *Forest Conservancy District Boards*

Forestry boards work throughout the State to improve the environment in urban and suburban areas and educate people about the benefits of forests. The boards primarily serve as advisory, educational, and facilitating bodies. Forestry board members are appointed by DNR to three-year terms.

#### *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 authorizes revenues derived from forestry practices on lands owned and managed by DNR to be redirected from the Forest or Park Reserve Fund to WIF. In fiscal 2008, timber revenues from State lands totaled approximately \$1.7 million. To the extent DNR Forest Service operating funds decrease due to the allocation of WIF revenue to the Forest or Park Reserve Fund, general fund expenditures increase in fiscal 2010 and subsequent years for DNR Forest Service operations. Any such impact cannot be reliably quantified.

### *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.

The bill authorizes specified Forest or Park Reserve Funds to be redirected to WIF. The bill's impact on WIF revenues may vary from year to year based on the amount of forest revenues transferred to the fund.

## **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.

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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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To the extent the Forest Service loses operating funds to WIF without any reduction in responsibilities, general funds are required.

*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 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 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:** HB 771 (Delegate Cane, *et al.*) - Environmental Matters.

**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

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