

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 706

(Chair, Environmental Matters Committee)(By Request -
Departmental - Natural Resources)

Environmental Matters

Education, Health, and Environmental Affairs

Natural Resources - Forest Preservation Act of 2013

This departmental bill establishes that it is the policy of the State to achieve no net loss of forest. “No net loss of forest” means 40% of all *public and private* land in Maryland is covered by tree canopy. The bill also makes various changes aimed at preserving forest land in the State.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF)/federal fund expenditures decrease annually beginning in FY 2014 due to reduced Forest Conservation Act (FCA) compliance costs for the State Highway Administration (SHA). General fund, TTF, and Higher Education Investment Fund (HEIF) revenues decrease minimally due to the bill’s expansion of the reforestation and timber stand improvement subtraction modification. Department of Natural Resources (DNR) special fund revenues may increase due to an increase in penalties related to forest fires. Otherwise, the bill is not anticipated to materially affect State finances.

Local Effect: Local government expenditures decrease, potentially significantly, in FY 2014 and future years due to reduced FCA compliance costs. Local government revenues decrease minimally due to the expanded subtraction modification. The bill is not anticipated to materially affect local forest conservation funds.

Small Business Effect: DNR has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services disagrees with this assessment, as discussed below. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: The bill:

- requires DNR, beginning October 1, 2013, to provide a statewide forest resource inventory to local jurisdictions at least every five years, to be available for the local comprehensive plan review by local jurisdictions;
- requires the Maryland Department of Planning (MDP), by January 1, 2015, in consultation with DNR, the Sustainable Forestry Council, and other interested parties, to provide local jurisdictions with guidelines, recommendations, and technical assistance on policies and standards to protect forest land and urban tree canopy from adverse effects;
- expands the State's forest management policy to publicly owned forest lands;
- establishes that it is the policy of the State to ensure dual certification of the State's forests by the Forest Stewardship Council and the Sustainable Forestry Initiative;
- specifies that within the context of the State's reforestation law, "construction activity" means work by a constructing agency related to (1) construction of or improvements to a highway or (2) offsite environmental mitigation related to highway construction;
- authorizes DNR to adopt regulations to implement the State's reforestation law;
- expands the authorized uses of the Reforestation Fund, which generates revenue from State and local highway construction projects, to allow the fund to be used to finance planting of trees on specified private land and to finance the prevention of and response to forest health emergencies by (1) maintaining the health and vitality of forest land and urban tree canopy and (2) preventing or controlling significant forest land and urban tree canopy degradation caused by acts of nature;
- increases the amount of time DNR has to spend reforestation funds before funds are returned to the constructing agency, from one year or two growing seasons to two years or three growing seasons;
- expands the applicability of an existing income tax subtraction modification for reforestation or timber stand improvement, making it available for land ranging from 3 to 1,000 acres (instead of 10 to 500 acres) and allowing for a broader range of timber stand improvement activities;

- allows for penalties and liability for damages and firefighting costs to be imposed on an individual or corporation for starting a forest fire on the individual's or corporation's own land and increases the minimum fine for a fire started willfully, maliciously, or with intent, from \$25 to \$250.
- exempts from FCA specified "stream restoration projects" and maintenance or retrofitting of stormwater management structures, where a "stream restoration project" means an activity that (1) is designed to stabilize stream banks or enhance stream functions or habitat located within an existing stream, waterway, or floodplain; (2) avoids and minimizes impacts to forests and provides for replanting on site an equivalent number of trees to the number removed by the project; (3) may be performed under specified permits and plans; and (4) is not performed to satisfy stormwater management, wetlands mitigation, or any other regulatory requirement associated with proposed development activity;
- authorizes a local forest conservation program under FCA to waive the requirements of the Act for previously developed areas covered by impervious surface and located in priority funding areas at a specified time;
- authorizes DNR, subject to specified conditions, to require a local authority to submit payment to the State Conservation Fund for any misappropriated local conservation funds and to request that the Attorney General investigate payments and expenditures of funds collected by the local authority;
- expresses the intent of the General Assembly that (1) the policy of achieving no net loss of forest be implemented in a manner that does not incentivize the conversion of specified prime agricultural land to forest land, except for specified conservation best management practices and (2) the bill not be construed to prohibit voluntary placement of conservation best management practices on agricultural land; and
- requires DNR, following the release of the first statewide forest resource inventory after January 1, 2017, to convene a stakeholder group of representatives from local government, agriculture, forestry, development, conservation, and other interested parties to review the inventory and make recommendations in accordance with the State's forest management policy, including the achievement of no net loss of forest.

The bill does not supplement or limit the authority of the Maryland Department of Agriculture (MDA) to establish policies relating to forest land under any program regulated at MDA.

Current Law/Background:

No Net Loss of Forests

Chapter 298 of 2009 (SB 666) required 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. DNR's subsequent report in response to the legislation supported the recommendation of the department's Sustainable Forestry Council that the State implement initiatives that by 2020 ensure that 40% of all land is covered by forest.

DNR indicates that the benefits of forestland and urban tree canopy include pollution absorption, clean water, clean air, flood control, wood products, renewable energy, wildlife habitat, climate moderation, higher property values, aesthetics, and recreational opportunities. Over the last 58 years, however, Maryland has lost more than 450,000 acres of forest. DNR indicates that the bill establishes new and expands existing tools to help private landowners, local governments, and the State accomplish the no net loss of forest policy. The bill focuses on protecting forests through planning, encouraging private forest management, increasing flexibility in reforestation efforts, increasing forest fire responsibility, and improving FCA compliance.

Forest Conservation Act

Enacted in 1991, FCA 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. In general, FCA calls for a minimum amount of forest cover on development sites based upon the site's zoning. FCA 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.

DNR administers the State Forest Conservation Fund to facilitate 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.

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 retention and sustainable management of the State's privately owned forest lands by, among other things, conducting research-based educational outreach efforts and developing financial incentives.

Maryland's Reforestation Law

The purpose of Maryland's Reforestation Law is to minimize forest disturbance during highway construction activities. When highway construction using State funds causes the cutting or clearing of forest lands, the law requires that these trees be replaced. Replacement must occur on an acre-for-acre, one-to-one ratio on public lands and within one year of the completion of the project. If this is not possible, the constructing agent must make a payment into the Reforestation Fund, which is used by DNR to plant replacement trees on public lands such as schools and parks.

Incentivizing Private Forest Management

Current law allows landowners to deduct certain forestry expenses from their income tax liability. The existing tax credit applies to a person who owns or leases 10 to 500 acres of land if the land meets certain conditions and receives a certification of reforestation or timber stand improvement from DNR. Under current law, "timber stand improvement" includes tree removal, girdling, poisoning, and pruning activities that are not done only to help regeneration and do not result in immediately salable forest products.

Forest Certification

Voluntary third-party forest certification began in the 1990s in response to market concerns about forest management and illegal logging, primarily in developing countries. The Forest Stewardship Council is an international not-for-profit organization that promotes responsible management of the world's forests through standard setting, certification, and labeling of forest products. Sustainable Forestry Initiative, Inc., an international not-for-profit organization originally established by the forest products sector, also promotes responsible management of the world's forests through a sustainable forestry certification program. According to DNR, the bill's provision relating to dual certification by these entities codifies current practice.

Stream Restoration Projects/Stormwater Management

In December 2010, the U.S. Environmental Protection Agency established a Chesapeake Bay Total Maximum Daily Load (TMDL), as required under the federal Clean Water Act and in response to consent decrees in Virginia and the District of Columbia. The Chesapeake Bay TMDL sets the maximum amount of nutrient and sediment pollution the bay can receive and still attain water quality standards. It also identifies specific pollution reduction requirements; all reduction measures must be in place by 2025, with at least 60% of the actions completed by 2017. As part of the Chesapeake Bay TMDL, bay jurisdictions must develop Watershed Implementation Plans (WIPs) that identify the measures being put in place to reduce pollution and restore the bay.

Stormwater management controls, including stream restoration, are a key component of the State's efforts to restore the bay and meet the nutrient and sediment pollution reduction requirements under the Chesapeake Bay TMDL. The State's WIP includes a strategy to address urban stormwater loads that, among other things, calls for increased stormwater management controls to be implemented by State and federal agencies (most significantly SHA) and local jurisdictions that are subject to Municipal Separate Storm Sewer System (MS4) permits.

State Fiscal Effect: TTF/federal fund expenditures are expected to decrease annually beginning in fiscal 2014 as a result of the bill's provisions (1) specifying that off-site environmental mitigation related to highway construction is subject to the State's reforestation law and not FCA and (2) exempting specified stream restoration projects and maintenance or retrofitting of stormwater management structures from FCA. SHA estimates that, under current law, it will spend approximately \$200,000 per year on FCA compliance (consisting of both administrative costs and costs of actual planting or other mitigation) going forward for off-site environmental mitigation related to highway construction and TMDL/MS4 permit-related stream restoration. Maintenance or retrofitting of stormwater management structures that would be subject to FCA compliance is expected to be less common. The actual decrease in expenditures resulting from the bill will likely be only some portion of the anticipated \$200,000 spent on FCA compliance per year, because some costs will still be incurred for compliance with the reforestation law and any tree replanting required to qualify for the stream restoration project exemption from FCA.

Presumably other State entities subject to MS4 permit requirements could also experience savings under the bill. However, any savings for other State entities would likely be less significant than savings for SHA and, for the purposes of this fiscal and policy note, are assumed to be minimal on an annualized basis.

Revenues to the general fund, TTF, and HEIF from corporate and personal income tax collections decrease to the extent that individuals and corporations make greater use of the reforestation or timber stand improvement subtraction modification as a result of the bill. It appears, however, that any decrease in revenue is likely minimal. According to DNR, on average, 35 landowners use the subtraction modification each year, resulting in a reduction in income tax revenue of less than \$5,000.

Special fund revenues may increase due to the bill's changes to penalties relating to forest fires. Although a reliable estimate of any additional penalty revenue is difficult to make, DNR estimates that approximately \$30,000 in additional penalties could be recovered annually.

DNR can handle the bill's requirements with existing resources. MDP's responsibility under the bill to assist local jurisdictions is also assumed to be absorbable within existing resources.

The bill's changes are not anticipated to materially affect the finances of the State Forest Conservation Fund.

Local Fiscal Effect: The bill reduces local expenditures, potentially significantly, in fiscal 2014 and future years by making specified stream restoration projects and maintenance or retrofitting of stormwater management structures exempt from FCA compliance. Montgomery County indicates that, while projects vary in size and cost, the county can spend \$10,000 or more on FCA compliance for stream restoration projects, excluding staff resources and any costs of actual planting or other mitigation required to comply with FCA.

Local income tax revenues may decrease minimally to the extent that individuals make greater use of the reforestation or timber stand improvement subtraction modification as a result of the bill. Subtraction modifications claimed against the corporate income tax decrease local highway user revenues.

The bill's changes are not anticipated to materially affect local forest conservation funds.

Small Business Effect: It appears there is at least the potential for small businesses to be meaningfully impacted by the bill. The FCA exemption for stream restoration projects, for example, may affect small businesses that provide services for stream restoration projects, whether (1) beneficially, if the exemption leads to more projects or increases the pace of projects or (2) negatively, if small businesses that provide FCA compliance-related services experience reduced demand. The expansion of the applicability of the income tax subtraction modification for reforestation and timber stand

improvement could also benefit small businesses that generate revenue from services or sales associated with reforestation or timber stand improvement.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Natural Resources; Maryland Department of Transportation (State Highway Administration); Comptroller's Office; Maryland Department of Planning; Maryland Department of Agriculture; Maryland Department of the Environment; Office of the Attorney General; State Department of Assessments and Taxation; Kent, Montgomery, and Worcester counties; Baltimore City; City of Laurel; Town of Sykesville; Department of Legislative Services

Fiscal Note History: First Reader - February 26, 2013
mc/lgc Revised - House Third Reader/Updated Information - April 1, 2013

Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Conservation and Sustainability Act of 2013

BILL NUMBER: HB 706

PREPARED BY: Department of Natural Resources

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.