

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 365

(Senator Young, *et al.*)

Education, Health, and Environmental Affairs

Environment and Transportation

Task Force on the Forest Conservation Act Offset Policy

This bill establishes the Task Force on the Forest Conservation Act Offset Policy to review and study specified issues relating to the impact of development on forested land and the extent to which forest loss is offset through reforestation policies under the Forest Conservation Act (FCA). The task force must (1) develop findings and recommendations for legislation to implement specified policies under FCA to preserve forest land and offset forest loss and (2) report those findings and recommendations to the Governor and the General Assembly by December 1, 2017. The Department of Legislative Services (DLS) must provide staff for the task force.

The bill takes effect June 1, 2017, and terminates May 31, 2018.

Fiscal Summary

State Effect: Any expense reimbursements for task force members and staffing costs for DLS are assumed to be minimal and absorbable within existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The task force must review and study:

- the amount and nature of historical and projected future changes in forested land due to development under FCA, including changes due to activities exempt from FCA;
- the amount and nature of forest clearing based on the type and location of development, such as differentiating low-density development from development that is associated with proximity to core public infrastructure and population centers;
- the capacity of Priority Funding Areas to accommodate reforestation efforts, and alternatives for offsetting losses;
- the status and effectiveness of fee-in-lieu programs in offsetting forest loss, considering the actual costs to local jurisdictions to undertake tree plantings; and
- mechanisms for ensuring timely reporting and maintenance of public records required annually under FCA.

The task force must develop findings and recommendations for legislation to implement the findings and recommendations of the Task Force to Study a No Net Loss of Forest Policy's Final Report of 2009 and the Sustainable Forestry Council's Report on Policies to Achieve a No Net Loss of Forests in Maryland of 2011 related to FCA, which may include:

- altering FCA mitigation ratios and allowable exemptions to fully offset all forest loss;
- encouraging forest mitigation banking and other options to more efficiently replace forest lost to development;
- enhancing protection for contiguous forest patches greater than 200 acres; and
- adjusting fee-in-lieu programs as necessary to ensure all forest loss is offset or otherwise benefitting Maryland's forest goals.

The task force may consult with the Chesapeake Bay Program, the U.S. Forest Service, and other government agencies or academic institutions to obtain information about data, models, and policies useful in carrying out the duties of the task force.

Task force members may not receive compensation but are entitled to reimbursement for expenses.

Current Law/Background:

Forest Conservation Act, In General

The Forest Service within the Department of Natural Resources (DNR) administers FCA, but it is primarily implemented on the local level. FCA establishes minimum forest conservation requirements for land development, and local governments with planning and zoning authority are required to develop local forest conservation programs that meet or are more stringent than the requirements of FCA. FCA applies to any public or private subdivision plan or application for a grading or sediment control permit by any person, including a unit of State or local government, on areas 40,000 square feet or greater, subject to certain exceptions.

A proposed construction activity goes through a process of evaluation of existing vegetation on a site and development of a forest conservation plan for the site defining how forest area will be retained and/or afforestation or reforestation will be undertaken. If afforestation or reforestation requirements cannot be reasonably accomplished on site or off site, payment may be made into the applicable forest conservation fund (fee-in-lieu payments) to be spent by the State or the local government on reforestation and afforestation, or into a forest mitigation bank. A State Forest Conservation Fund holds funds associated with projects reviewed by the State, and local forest conservation funds are associated with local forest conservation programs. Forest mitigation banks, which are approved and regulated by the State or a local forest conservation program, are areas of land that have been intentionally afforested or reforested for the express purpose of selling credits to others for compliance with afforestation and reforestation requirements.

Afforestation Requirements

Under FCA, if the existing forested area of a site is below a specified percentage of the net tract area, it must be afforested (establishing forested area where there is none) up to the specified percentage of the net tract area. For agricultural and resource areas and medium density residential areas, the percentage is 20%. For institutional development areas, high density residential areas, mixed use and planned unit development areas, and commercial and industrial use areas, the percentage is 15%.

Conservation Thresholds and Reforestation Requirements

FCA establishes requirements for reforestation (replacement of cleared forest land) which are determined based on a conservation threshold, which is a percentage of the net tract area of a site. If the portion of the net tract area which is forested is below the percentage, or if clearing causes it to be below the percentage, any clearing of forested area below the percentage must be replaced at a ratio of 2:1. For clearing above the threshold percentage,

cleared forest must be replaced at a ratio of ¼:1, with the exception that each acre of forest retained above the applicable forest conservation threshold is credited against the number of acres required to be forested pursuant to the ¼:1 reforestation ratio. The conservation threshold varies by land use category:

- agricultural and resource areas – 50% of net tract area;
- medium density residential areas – 25% of net tract area;
- institutional development areas – 20% of net tract area;
- high density residential areas – 20% of net tract area;
- mixed use and planned unit development areas – 15% of net tract area; and
- commercial and industrial use areas – 15% of net tract area.

Fees-in-lieu

Payment of fees-in-lieu, to the State Forest Conservation Fund, are made at rates adjusted for inflation as determined by DNR annually by regulation. The rate for a project outside a priority funding area must be 20% higher than the rate for a project inside a priority funding area. The current rates identified in DNR regulations are \$0.305 per square foot for a project inside a priority funding area and \$0.366 per square foot for a project outside a priority funding area. DNR must use the funding for reforestation and afforestation.

Fee-in-lieu rates for local forest conservation funds must be at least the same as the rates for the State Forest Conservation Fund.

Prior Studies Referenced in the Bill

The Task Force to Study a No Net Loss of Forest Policy was established by the General Assembly in 2008 and issued a final report in 2009 that included various recommendations for modifications to FCA, relating to, among other things, limiting exemptions from FCA's requirements and improving the effectiveness of mitigation of forest loss under FCA. The Sustainable Forestry Council's 2011 *Report on Policies to Achieve No Net Loss of Forests in Maryland* similarly contained recommendations for changes to FCA policies, including enhanced protection for large contiguous forested areas, revision of existing exemptions, and improved use of fee-in-lieu funds by local governments. The Sustainable Forestry Council is an advisory body within DNR.

Additional Information

Prior Introductions: None.

Cross File: HB 599 (Delegate Healey, *et al.*) – Environment and Transportation.

Information Source(s): Department of Natural Resources; Department of Legislative Services

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