

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 599 (Delegate Healey, *et al.*)  
Environment and Transportation

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Forest Conservation Act - Exemption, Reforestation Rate, and Forest  
Conservation Fund - Alterations

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This bill, under the Forest Conservation Act (FCA), (1) increases the rate of reforestation required when forest is cleared above an applicable forest conservation threshold; (2) limits an exemption from FCA for cutting or clearing of public utility rights-of-way or land for specified electric generating stations; and (3) allows for increased rates to be established for payments made to the State Forest Conservation Fund or a local forest conservation fund.

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Fiscal Summary

**State Effect:** Bond/pay-as-you-go (PAYGO) expenditures are expected to increase due to increased FCA compliance costs associated with State construction projects. Department of Natural Resources (DNR) special fund revenues and expenditures are also expected to increase from greater amounts of fee-in-lieu collections under FCA.

**Local Effect:** Local government expenditures are similarly expected to increase due to increased costs for local government construction projects to comply with forest conservation requirements. Local government revenues and expenditures are also expected to increase from greater amounts of fee-in-lieu collections under local forest conservation programs. **This bill may impose a mandate on a unit of local government.**

**Small Business Effect:** Meaningful.

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## Analysis

**Bill Summary:** The bill increases the rate of reforestation for clearing of existing forest cover above the applicable forest conservation threshold for a project (see discussion of forest conservation thresholds below), requiring that 1 acre, instead of ¼ acre, be planted for every 1 acre removed.

The exemption from FCA's requirements for cutting or clearing of public utility rights-of-way or land for specified electric generating stations is limited so that it applies only to cutting or clearing that does not result in cutting, clearing, or grading of more than one acre of forest.

The bill allows for rates established by DNR, for payments made to the State Forest Conservation Fund in lieu of meeting requirements for reforestation or afforestation, to be increased by 20% for each acre for which money is contributed to the fund in lieu of reforestation or afforestation. Under current law, the rates for payments made to a local forest conservation fund must be at least the same as the rates established for the State Forest Conservation Fund.

### **Current Law:**

#### *Forest Conservation Act, In General*

The Forest Service within 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.

### *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.

### *Utility Exemption*

The cutting or clearing of public utility rights-of-way or land for electric generating stations licensed pursuant to specified provisions of the Public Utilities Article are exempt from FCA, provided that any required certificates of public convenience and necessity (CPCN) have been issued and the cutting or clearing of the forest is conducted so as to minimize the loss of forest. Generally, a person may not begin construction in the State of a generating station, overhead transmission line, or a qualified generator lead line unless a CPCN is first obtained from the Public Service Commission (PSC). FCA separately requires PSC to give due consideration to the need to minimize the loss of forest and the provisions for afforestation and reforestation set forth in FCA together with all applicable electrical safety codes, when reviewing applications for a CPCN.

### *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.

**State Fiscal Effect:** Bond/PAYGO expenditures are expected to increase due to additional costs for certain State construction projects to comply with the 1:1 reforestation ratio under the bill for clearing above the applicable forest conservation threshold. Public, along with private, development projects are subject to FCA. State projects are subject to the State forest conservation program administered by DNR, and related fee-in-lieu payments made are deposited in the State Forest Conservation Fund. The extent of any impact depends on the details of a project and the associated site. Under the bill, clearing of forest above the conservation threshold is more likely to require reforestation and/or a greater amount of reforestation.

*For illustrative purposes,* suppose a development project is undertaken on a 20-acre tract in an institutional development area (which has a 20% conservation threshold). The tract is 45% forested (9 acres) and 4 of the 9 forested acres need to be cleared to accommodate the project. Under current law, there would be no obligation for reforestation. While the ¼:1 reforestation requirement would require 1 acre of reforestation for the 4 acres cleared, the 1 acre of the remaining forested area (5 acres) that is above the 20% conservation threshold (4 forested acres) is credited against the reforestation requirement, eliminating the need for reforestation. If the same clearing is done under the bill, the 1:1 reforestation requirement would require 4 acres of reforestation to compensate for the 4 acres cleared. However, the 1 acre remaining above the forest conservation threshold is credited against the reforestation requirement, resulting in 3 acres needing to be reforested (whether on site, off site, or through fee-in-lieu payments or payment to a forest mitigation bank).

Costs for reforestation appear to vary relatively significantly. For example, the current State fee-in-lieu rate of \$0.305 per square foot in a priority funding area, which converts to \$13,300 per acre, is considered relatively low and generally not a market rate (though market rates in lower cost areas may be similar). In higher cost and/or urban areas, rates can be in the range of \$0.90 per square foot, or \$39,200 per acre, based on anecdotal information.

State expenditures for construction projects may also be affected by increased fee-in-lieu rate(s) under the bill if a given project needs to make payments to the State Forest Conservation Fund in lieu of reforestation. The Department of Legislative Services notes that it is unclear whether the bill's authorization for an increase in fee-in-lieu rates is authorizing DNR to increase the current rates set in regulation by 20% or to impose a

graduated rate schedule where the rate increases by 20% for each successive acre (of a project) for which fee-in-lieu payments are made.

DNR special fund revenues and expenditures also increase due to greater amounts of fee-in-lieu collections resulting from the bill's provisions. The fund collected \$40,404 in fees in fiscal 2016.

**Local Fiscal Effect:** Local government expenditures are expected to increase due to increased costs for certain local construction projects to comply with the 1:1 reforestation ratio and potentially pay higher fee-in-lieu rates. Local governments' forest conservation fund revenues and expenditures also increase due to greater amounts of fee-in-lieu collections. Some local governments currently have fee-in-lieu rates considerably higher than the rates set by DNR and, therefore, may be less affected, or not affected, by the bill's authorization of an increase in the rates set by DNR.

**Small Business Effect:** Small businesses engaging in construction activity subject to FCA or a local conservation program may be negatively impacted by the bill's provisions, including the more stringent reforestation ratio and authorization for higher fee-in-lieu rates. Small businesses that provide services for compliance with forest conservation requirements, however, may benefit.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 365 (Senator Young, *et al.*) - Education, Health, and Environmental Affairs.

**Information Source(s):** Department of Natural Resources; Public Service Commission; Baltimore City; Carroll, Montgomery, and Prince George's counties; City of Bowie; NAIOP (Maryland Chapter); Baltimore Gas and Electric Company; FirstEnergy; Southern Maryland Electric Cooperative; Department of Legislative Services

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