

HOUSE BILL 766

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CF SB 610

By: **Delegates Healey, Barkley, Carr, Fraser–Hidalgo, Frush, Hayes, Hettleman, Hill, Jones, Korman, Lafferty, Lam, R. Lewis, Lierman, Luedtke, McIntosh, Morales, Pena–Melnik, Reznik, Robinson, Turner, and P. Young**

Introduced and read first time: February 1, 2018

Assigned to: Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 **Natural Resources – Forest Conservation Act – Standards and Requirements**

3 FOR the purpose of altering the reforestation ratio required for the certain clearing of trees
4 in a priority retention area; requiring for a development project that priority
5 retention areas be retained, protected, and left in an undisturbed condition unless
6 the permit applicant has provided certain written justification that is affirmatively
7 approved with written findings by the State or local approval authority; requiring a
8 written justification for failing to retain or protect a priority retention area to include
9 certain statements; prohibiting a State or local approval authority from approving a
10 written justification based on certain factors; prohibiting the clearing of priority
11 retention areas for certain purposes; altering the process for the concurrent review
12 of certain development plans and a forest conservation plan by a State or local
13 approval authority; authorizing certain local authorities to enter into certain
14 agreements with certain entities to facilitate replanting or reforestation projects
15 under certain circumstances; requiring the Department of Natural Resources to
16 publish a Forest Conservation Act technical manual for certain purposes and to
17 review and update the technical manual over a certain interval of time; requiring
18 the Department, in consultation with the Sustainable Forestry Council, to update
19 the technical manual for certain purposes on or before a certain date; stating the
20 purpose of the Forest Conservation Act; defining the term “priority retention area”;
21 making certain conforming changes; making certain stylistic changes; and generally
22 relating to standards and requirements under the Forest Conservation Act.

23 BY repealing and reenacting, without amendments,
24 Article – Natural Resources
25 Section 5–1601(a), 5–1608(b), and 5–1610(c), (h), (j), and (k)
26 Annotated Code of Maryland
27 (2012 Replacement Volume and 2017 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Natural Resources
3 Section 5–1601(ff–1), 5–1601.1, and 5–1614
4 Annotated Code of Maryland
5 (2012 Replacement Volume and 2017 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article – Natural Resources
8 Section 5–1606, 5–1608(a), and 5–1610(i)
9 Annotated Code of Maryland
10 (2012 Replacement Volume and 2017 Supplement)

11 BY repealing and reenacting, with amendments,
12 Article – Natural Resources
13 Section 5–1607(c)
14 Annotated Code of Maryland
15 (2012 Replacement Volume and 2017 Supplement)
16 (As enacted by Chapter 298 of the Acts of the General Assembly of 2009)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
18 That the Laws of Maryland read as follows:

19 **Article – Natural Resources**

20 5–1601.

21 (a) In this subtitle the following words have the meanings indicated.

22 **(FF–1) (1) “PRIORITY RETENTION AREA” MEANS AN AREA THAT**
23 **CONTAINS HIGH–QUALITY FORESTS AND TREES.**

24 **(2) “PRIORITY RETENTION AREA” INCLUDES:**

25 **(I) TREES, SHRUBS, AND PLANTS LOCATED IN SENSITIVE**
26 **AREAS INCLUDING 100–YEAR FLOODPLAINS, INTERMITTENT AND PERENNIAL**
27 **STREAMS AND THEIR 100–FOOT BUFFERS, COASTAL BAYS AND THEIR BUFFERS,**
28 **STEEP SLOPES, AND CRITICAL HABITATS;**

29 **(II) CONTIGUOUS FOREST THAT IS AT LEAST:**

30 **1. 5 ACRES IN A PRIORITY FUNDING AREA THAT**
31 **CONNECTS THE LARGEST UNDEVELOPED OR MOST VEGETATED TRACTS OF LAND**
32 **WITHIN AND ADJACENT TO THE SITE;**

1 **2. 10 ACRES THAT IS IN A LOCAL WATERSHED THAT IS**
2 **LESS THAN 40% FORESTED; OR**

3 **3. 20 ACRES;**

4 **(III) AN AREA IDENTIFIED IN THE MERLIN OR IMAP**
5 **DATABASES AS A TARGETED ECOLOGICAL AREA OR FOREST INTERIOR DWELLING**
6 **SPECIES HABITAT, UNLESS A FOREST STAND DELINEATION SHOWS THAT THE AREA**
7 **IS NOT FORESTED OR IS DEGRADED BY WIDESPREAD DISEASE, INVASIVE SPECIES,**
8 **OR INSECT INFESTATION;**

9 **(IV) FORESTS IN A DRINKING WATER RESERVOIR WATERSHED**
10 **OR A WELLHEAD PROTECTION AREA;**

11 **(V) TREES, SHRUBS, OR PLANTS IDENTIFIED ON THE LIST OF**
12 **RARE, THREATENED, OR ENDANGERED SPECIES OF THE U.S. FISH AND WILDLIFE**
13 **SERVICE OR THE DEPARTMENT;**

14 **(VI) TREES THAT ARE PART OF A HISTORIC SITE OR ASSOCIATED**
15 **WITH A HISTORIC STRUCTURE OR DESIGNATED BY THE DEPARTMENT OR LOCAL**
16 **AUTHORITY AS A NATIONAL, STATE, OR LOCAL CHAMPION TREE; AND**

17 **(VII) TREES HAVING A DIAMETER MEASURED AT 4.5 FEET ABOVE**
18 **THE GROUND OF:**

19 **1. 30 INCHES; OR**

20 **2. 75% OF THE DIAMETER OF THE CURRENT STATE**
21 **CHAMPION TREE OF THAT SPECIES AS DESIGNATED BY THE DEPARTMENT.**

22 **5-1601.1.**

23 **FOR THE BENEFIT OF THE CITIZENS OF MARYLAND AND IN RECOGNITION OF**
24 **THE FINDINGS OF THE GENERAL ASSEMBLY UNDER § 5-102 OF THIS TITLE, IT IS THE**
25 **PURPOSE OF THIS SUBTITLE TO MINIMIZE FOREST CLEARING DURING THE**
26 **DEVELOPMENT PROCESS, ENSURE THE PROTECTION AND RETENTION OF THE MOST**
27 **DESIRABLE FOREST STANDS, AND ESTABLISH AREAS WHERE NEW FORESTS MAY BE**
28 **PLANTED TO OFFSET LOSSES FROM UNAVOIDABLE FOREST CLEARING.**

29 **5-1606.**

30 **(a) (1) For the following land use categories, tracts having less than 20% of the**
31 **net tract area in forest cover shall be afforested up to 20% of the net tract area:**

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1 (i) Agriculture and resource areas; and

2 (ii) Medium density residential areas.

3 (2) For the following land use categories, tracts having less than 15% of the
4 net tract area in forest cover shall be afforested up to 15% of the net tract area:

5 (i) Institutional development areas;

6 (ii) High density residential areas;

7 (iii) Mixed use and planned unit development areas; and

8 (iv) Commercial and industrial use areas.

9 (3) Afforestation requirements must conform to the conditions in §§ 5–1607
10 and 5–1610 of this subtitle, including payment into the Forest Conservation Fund, if
11 afforestation on–site or off–site cannot be reasonably accomplished.

12 (4) (i) The afforestation requirements under this subsection shall be
13 accomplished within 1 year or 2 growing seasons after the completion of the development
14 project.

15 (ii) If afforestation cannot be reasonably accomplished on–site or
16 off–site, the requirement to contribute money to a Forest Conservation Fund under §
17 5–1610 of this subtitle shall be met within 90 days after the completion of the development
18 project.

19 (5) Linear projects that involve no change in land use may not be subject
20 to afforestation requirements.

21 (b) (1) There is a forest conservation threshold established for all land use
22 categories as provided in subsection (c) of this section.

23 (2) The forest conservation threshold means the percentage of the net tract
24 area at which the reforestation requirement changes from a ratio of 1/4 acre planted for
25 every 1 acre removed **OR 1 ACRE PLANTED FOR EVERY 1 ACRE OF PRIORITY**
26 **RETENTION AREA REMOVED** to a ratio of 2 acres planted for every 1 acre removed.

27 (c) After every reasonable effort to minimize the cutting or clearing of trees and
28 other woody plants is exhausted in the development of a subdivision plan and grading and
29 sediment control activities and implementation of the forest conservation plan, the forest
30 conservation plan shall provide for reforestation, or payment into the Forest Conservation
31 Fund, according to the formula set forth in subsection (b) of this section and consistent with
32 the following forest conservation thresholds for the applicable land use category:

33 (1) Agricultural and resource areas: 50% of net tract area;

- 1 (2) Medium density residential areas: 25% of net tract area;
- 2 (3) Institutional development areas: 20% of net tract area;
- 3 (4) High density residential areas: 20% of net tract area;
- 4 (5) Mixed use and planned unit development areas: 15% of net tract area;
- 5 and
- 6 (6) Commercial and industrial use areas: 15% of net tract area.

7 (d) (1) (I) Subject to [the provisions of] paragraph (2) of this subsection, for
8 all existing forest cover **NOT LOCATED IN A PRIORITY RETENTION AREA** measured to the
9 nearest 1/10 acre cleared on the net tract area above the applicable forest conservation
10 threshold, the area of forest removed shall be reforested at a ratio of 1/4 acre planted for
11 every 1 acre removed.

12 (II) **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, FOR ALL**
13 **EXISTING PRIORITY RETENTION AREA MEASURED TO THE NEAREST 1/10 ACRE**
14 **CLEARED ON THE NET TRACT AREA ABOVE THE APPLICABLE FOREST**
15 **CONSERVATION THRESHOLD, THE AREA OF FOREST REMOVED SHALL BE**
16 **REFORESTED AT A RATIO OF 1 ACRE PLANTED FOR EVERY 1 ACRE REMOVED.**

17 (2) Each acre of forest retained on the net tract area above the applicable
18 forest conservation threshold shall be credited against the total number of acres required
19 to be reforested under paragraph (1) of this subsection.

20 (e) For all existing forest cover measured to the nearest 1/10 acre cleared on the
21 net tract area below the applicable forest conservation threshold, the area of forest removed
22 shall be reforested at a ratio of 2 acres planted for every 1 acre removed.

23 (f) (1) The reforestation requirements under this section shall be
24 accomplished within 1 year or 2 growing seasons after completion of the development
25 project.

26 (2) If reforestation cannot be reasonably accomplished on-site or off-site,
27 the requirement to contribute money to a Forest Conservation Fund under § 5-1610 of this
28 subtitle shall be met within 90 days after completion of the development project.

29 (g) A unit of local government with planning and zoning authority may adopt
30 forest conservation thresholds and afforestation and reforestation requirements as part of
31 its local forest conservation program that are more stringent than the forest conservation
32 thresholds and afforestation and reforestation requirements in this section.

1 (c) (1) (I) [The following trees, shrubs, plants, and specific areas shall be
 2 considered priority for retention and protection, and they shall be left in an undisturbed
 3 condition unless the applicant has demonstrated, to the satisfaction of the State or local
 4 authority, that reasonable efforts have been made to protect them and the plan cannot
 5 reasonably be altered:

6 (i) Trees, shrubs, and plants located in sensitive areas including
 7 100-year floodplains, intermittent and perennial streams and their buffers, coastal bays
 8 and their buffers, steep slopes, and critical habitats; and

9 (ii) Contiguous forest that connects the largest undeveloped or most
 10 vegetated tracts of land within and adjacent to the site.

11 (2) The following trees, shrubs, plants, and specific areas shall be
 12 considered priority for retention and protection, and they shall be left in an undisturbed
 13 condition unless the applicant has demonstrated, to the satisfaction of the State or local
 14 authority, that the applicant qualifies for a variance under § 5-1611 of this subtitle:

15 (i) Trees, shrubs, or plants identified on the list of rare, threatened,
 16 and endangered species of the U.S. Fish and Wildlife Service or the Department;

17 (ii) Trees that are part of a historic site or associated with a historic
 18 structure or designated by the Department or local authority as a national, State, or local
 19 Champion Tree; and

20 (iii) Trees having a diameter measured at 4.5 feet above the ground
 21 of:

22 1. 30 inches; or

23 2. 75% of the diameter, measured at 4.5 feet above the
 24 ground, of the current State Champion Tree of that species as designated by the
 25 Department] **SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, PRIORITY
 26 RETENTION AREAS SHALL BE RETAINED, PROTECTED, AND LEFT IN AN
 27 UNDISTURBED CONDITION UNLESS THE APPLICANT HAS PROVIDED WRITTEN
 28 JUSTIFICATION THAT IS AFFIRMATIVELY APPROVED WITH WRITTEN FINDINGS BY
 29 THE STATE OR LOCAL AUTHORITY.**

30 (II) **PRIORITY RETENTION AREAS MAY NOT BE CLEARED TO
 31 ACCOMMODATE THE CONSTRUCTION OF TEMPORARY:**

32 1. **SEDIMENT AND EROSION CONTROL DEVICES; OR**

33 2. **STORMWATER MANAGEMENT DEVICES.**

1 **(2) THE WRITTEN JUSTIFICATION FOR THE FAILURE TO RETAIN OR**
2 **PROTECT A PRIORITY RETENTION AREA SHALL INCLUDE STATEMENTS:**

3 **(I) EXPLAINING THE REASONS THAT THE DEVELOPMENT**
4 **CANNOT BE ALTERED TO PRESERVE THE PRIORITY RETENTION AREA;**

5 **(II) OF THE ALTERNATIVES THAT WERE CONSIDERED,**
6 **INCLUDING APPLICATIONS FOR LOCAL VARIANCES THAT WOULD FACILITATE**
7 **FOREST CONSERVATION BUT NOT AFFECT PUBLIC SAFETY, AND THAT NO OTHER**
8 **ALTERNATIVES EXIST; AND**

9 **(III) OF THE FOREST CONSERVATION BEST PRACTICES OR**
10 **TECHNIQUES THAT WERE CONSIDERED AND REJECTED AND THE REASONS FOR ANY**
11 **REJECTIONS.**

12 **(3) A STATE OR LOCAL AUTHORITY MAY NOT APPROVE A WRITTEN**
13 **JUSTIFICATION UNDER THIS SUBSECTION BASED:**

14 **(I) SOLELY ON COST;**

15 **(II) ON A PREFERENCE TO MAINTAIN A PREFERRED SITE**
16 **DESIGN;**

17 **(III) ON A DESIRE TO OBTAIN MAXIMUM ZONING DENSITY OR**
18 **INTENSITY; OR**

19 **(IV) ON A DESIRE TO CONDUCT MASS GRADING OR CLEARING OF**
20 **THE DEVELOPMENT SITE.**

21 5-1608.

22 (a) The review of the forest conservation plan shall be concurrent with the review
23 process of the State or local authority for the **SKETCH OR CONCEPT PLANS, SITE**
24 **DEVELOPMENT PLANS, OR PRELIMINARY REVIEW PLANS,** subdivision [plan] **PLANS,**
25 or the grading or sediment control [permit] **PERMITS,** whichever may be submitted first.

26 (b) Before the approval of the final subdivision plan, or the issuance of the grading
27 or sediment control permit by the State or local authority, the applicant shall have an
28 approved forest conservation plan that shall include the requirements in §§ 5-1605,
29 5-1606, and 5-1607 of this subtitle.

30 5-1610.

1 (c) Except as provided in subsection (h) of this section, if any person subject to
2 this subtitle demonstrates to the satisfaction of the appropriate State or local authority
3 that the requirements for reforestation or afforestation on-site or off-site cannot be
4 reasonably accomplished, the person shall contribute money to the Fund:

5 (1) On or before September 30, 2014:

6 (i) For a project inside a priority funding area, at a rate of 30 cents
7 per square foot of the area of required planting; and

8 (ii) For a project outside a priority funding area, at a rate of 36 cents
9 per square foot of the area of required planting; and

10 (2) After September 30, 2014:

11 (i) For a project inside a priority funding area, at a rate adjusted for
12 inflation as determined by the Department annually by regulation; and

13 (ii) For a project outside a priority funding area, at a rate that is 20%
14 higher than the rate set under item (2)(i) of this subsection.

15 (h) (1) In lieu of a State Forest Conservation Fund, any local authority with
16 an approved forest conservation program may establish a forest conservation fund, to be
17 administered by the local authority, to allow a payment by any person who has
18 demonstrated to the satisfaction of the local authority that the requirements for
19 reforestation and afforestation on-site and off-site cannot be reasonably accomplished.

20 (2) (i) Subject to subparagraph (ii) of this paragraph, the rates shall be:

21 1. For a project inside a priority funding area, at least the
22 same as the rates established for the State Forest Conservation Fund under subsection (c)
23 of this section; and

24 2. For a project outside a priority funding area, 20% higher
25 than the rates established under item 1 of this subparagraph.

26 (ii) Subject to subparagraph (iii) of this paragraph, if a local
27 jurisdiction establishes rates for projects that are higher than the minimum rates
28 established under subsection (c) of this section, the local authority may use a rate for a
29 project:

30 1. Inside a priority funding area that is 20% lower than the
31 rate calculated under subparagraph (i)2 of this paragraph; or

32 2. Outside a priority funding area that is 20% higher than
33 the rate calculated under subparagraph (i)1 of this paragraph.

1 (iii) The rate established under subparagraph (ii)1 of this paragraph
2 for a project inside a priority funding area may not be lower than the rate established for
3 the State Forest Conservation Fund under subsection (c) of this section.

4 (i) (1) **(I)** Money deposited in the local forest conservation fund under
5 subsection (h) of this section may [only] be spent **ONLY** on reforestation and afforestation,
6 including the costs directly related to site identification, acquisition, prepurchase, and
7 preparation, maintenance of existing forests, and achieving urban canopy goals, and may
8 not revert to any other local general fund.

9 **(II) A LOCAL AUTHORITY MAY ENTER INTO A MEMORANDUM OF**
10 **UNDERSTANDING OR ANOTHER SIMILAR AGREEMENT WITH THE MARYLAND**
11 **FORESTRY FOUNDATION, DISTRICT FORESTRY BOARDS, OR OTHER STATE, LOCAL,**
12 **OR NONPROFIT ORGANIZATIONS ENGAGED IN TREE PLANTINGS ON PRIVATE**
13 **FORESTLAND TO:**

14 **1. COLLABORATE ON REPLANTING REQUIREMENTS; OR**

15 **2. PROVIDE GRANTS FOR REFORESTATION PROJECTS.**

16 (2) (i) Except as provided in subparagraph (ii) or (iii) of this paragraph,
17 the reforestation or afforestation requirement under this subsection shall occur in the
18 county and watershed in which the project is located.

19 (ii) If the reforestation or afforestation cannot be reasonably
20 accomplished in the county and watershed in which the project is located, then the
21 reforestation or afforestation shall occur in the county or watershed in the State in which
22 the project is located.

23 (iii) If the reforestation or afforestation cannot be reasonably
24 accomplished in the county or watershed in which the project is located, then the
25 reforestation or afforestation shall be accomplished through purchase of credits in,
26 establishment, or maintenance of a forest mitigation bank in accordance with regulations
27 of the local forest conservation program. The Reforestation Fund may not be used to finance
28 administrative activities associated with a mitigation bank and any credits created by the
29 Reforestation Fund may not be sold to compensate for additional forest impacts.

30 (j) Money collected by the local authority under § 5-1608(c) of this subtitle for
31 noncompliance with this subtitle or regulations or ordinances adopted under this subtitle
32 for noncompliance with a forest conservation plan or the associated 2-year management
33 agreement shall be deposited in the local fund. The rate shall be 30 cents per square foot of
34 the area found to be in noncompliance with the required forest conservation.

35 (k) Money deposited in a local forest conservation fund under subsection (j) of this
36 section may be used by the local authority for purposes related to implementing this
37 subtitle.

1 **5-1614.**

2 **THE DEPARTMENT SHALL:**

3 **(1) PUBLISH A FOREST CONSERVATION ACT TECHNICAL MANUAL TO**
4 **ASSIST INTERESTED PARTIES IN IMPLEMENTING AND COMPLYING WITH THIS**
5 **SUBTITLE; AND**

6 **(2) REVIEW AND UPDATE THE TECHNICAL MANUAL AT LEAST EVERY**
7 **10 YEARS.**

8 SECTION 2. AND BE IT FURTHER ENACTED, That on or before December 1,
9 2018, the Department of Natural Resources, in consultation with the Sustainable Forestry
10 Council, shall update the Forest Conservation Act technical manual to reflect statutory and
11 regulatory changes made since 1997, to incorporate current best practices for planting and
12 mitigation efforts, and to ensure that priority retention areas are protected to the maximum
13 extent when development occurs.

14 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2018.