

SENATE BILL 234

M1

(9lr1047)

ENROLLED BILL

— *Education, Health, and Environmental Affairs/Environment and Transportation* —

Introduced by **Senators Young, Elfreth, Feldman, Griffith, Lee, Pinsky, Rosapepe, Washington, and West** ~~West~~, **Lam, Ellis, Nathan-Pulliam, Patterson, and Simonaire**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Natural Resources – State and Local Forest Conservation Funds**

3 FOR the purpose of requiring a person that is subject to the Forest Conservation Act to
4 demonstrate that appropriate credits generated by a forest mitigation bank in the
5 same county or watershed are not available before the person may pay money to a
6 State or local forest conservation fund to meet any afforestation or reforestation
7 requirements; requiring a local authority that has established a forest conservation
8 fund to provide to the Department of Natural Resources a certain plan ~~for~~ identifying
9 areas for mitigation projects and certain accounting procedures to track money into
10 and out of the fund; requiring that local forest conservation fund mitigation plans
11 and accounting procedures be made available to the public; prohibiting a local
12 authority from collecting money for deposit into its forest conservation fund unless
13 it has ~~identified afforestation, reforestation, or conservation projects sufficient to~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 ~~provide full mitigation~~ submitted to the Department ~~a certain~~ *the mitigation plan*
 2 *and accounting procedures*; requiring a local authority to ensure that ~~acreage a~~
 3 ~~certain amount~~ *the equivalent number of acres* for which money is collected and paid
 4 into its local forest conservation fund is ~~fully~~ mitigated in accordance with certain
 5 provisions of law; altering the information that the Department is required to include
 6 in its annual report to certain committees of the General Assembly under the Forest
 7 Conservation Act; providing for the application of this Act; making a certain
 8 technical correction; and generally relating to State and local forest conservation
 9 funds.

10 BY repealing and reenacting, with amendments,

11 Article – Natural Resources
 12 Section 5–1610 and 5–1613
 13 Annotated Code of Maryland
 14 (2018 Replacement Volume)

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

17 **Article – Natural Resources**

18 5–1610.

19 (a) (1) In this section the following words have the meanings indicated.

20 (2) “Fund” means the Forest Conservation Fund.

21 (3) “Priority funding area” has the meaning stated in § 5–7B–02 of the
 22 State Finance and Procurement Article.

23 (b) There is a Forest Conservation Fund in the Department.

24 (c) Except as provided in subsection (h) of this section, if any person subject to
 25 this subtitle demonstrates to the satisfaction of the appropriate State or local authority
 26 that the requirements for reforestation or afforestation on–site or off–site cannot be
 27 reasonably accomplished **AND APPROPRIATE CREDITS GENERATED BY A FOREST**
 28 **MITIGATION BANK IN THE SAME COUNTY OR WATERSHED ARE NOT AVAILABLE**, the
 29 person shall contribute money to the Fund:

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

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

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

1 (2) After September 30, 2014:

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

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

6 (d) Money collected by the State or a local authority under § 5–1608(c) or §
7 5–1612 of this subtitle for noncompliance with this subtitle or regulations adopted under
8 this subtitle or for noncompliance with a forest conservation plan or the associated 2–year
9 management agreement shall be deposited in the Fund.

10 (e) (1) The Department shall accomplish the reforestation or afforestation for
11 which the money is deposited within 2 years or 3 growing seasons, as appropriate, after
12 receipt of the money.

13 (2) Money deposited in the Fund under subsection (c) of this section shall
14 remain in the Fund for a period of 2 years or 3 growing seasons, and at the end of that time
15 period, any portion that has not been used to meet the afforestation or reforestation
16 requirements shall be returned to the person who provided the money to be used for
17 documented tree planting in the same county or watershed beyond that required by this
18 subtitle or other applicable statutes.

19 (f) (1) (i) Money deposited in the Fund under subsection (c) of this section
20 may only be spent on reforestation and afforestation, including site identification,
21 acquisition, and preparation, maintenance of existing forests, and achieving urban canopy
22 goals, and may not revert to the General Fund of the State.

23 (ii) Any investment earnings of the Fund shall be credited to the
24 General Fund of the State.

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

28 (ii) If the reforestation or afforestation cannot be reasonably
29 accomplished in the county and watershed in which the project is located, then the
30 reforestation or afforestation shall occur in the county or watershed in the State in which
31 the project is located.

32 (iii) If the reforestation or afforestation cannot be reasonably
33 accomplished in the county or watershed in which the project is located, then the
34 reforestation or afforestation shall be accomplished through purchase of credits in,
35 establishment, or maintenance of a forest mitigation bank in accordance with regulations
36 of the Department. The Reforestation Fund may not be used to finance administrative

1 activities associated with a mitigation bank and any credits created by the Reforestation
2 Fund may not be sold to compensate for additional forest impacts.

3 (g) Money deposited in the Fund under subsection (d) of this section may be used
4 by the Department for the purpose of implementing this subtitle.

5 (h) (1) In lieu of a State Forest Conservation Fund, any local authority with
6 an approved forest conservation program may establish a forest conservation fund, to be
7 administered by the local authority, to allow a payment by any person who has
8 demonstrated to the satisfaction of the local authority that [the]:

9 (I) THE requirements for reforestation and afforestation on-site
10 and off-site cannot be reasonably accomplished; AND

11 (II) APPROPRIATE CREDITS GENERATED BY A FOREST
12 MITIGATION BANK IN THE SAME COUNTY OR WATERSHED ARE NOT AVAILABLE.

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

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

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

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

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

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

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

30 (H-1) (1) A LOCAL AUTHORITY THAT HAS AN ESTABLISHED FOREST
31 CONSERVATION FUND SHALL PROVIDE TO THE DEPARTMENT:

32 (I) A GENERAL PLAN ~~FOR~~ IDENTIFYING APPROPRIATE AND
33 POTENTIALLY AVAILABLE AREAS FOR MITIGATION PROJECTS; AND

1 (II) DETAILED ACCOUNTING PROCEDURES FOR ACCURATELY
 2 TRACKING MONEY RECEIVED INTO AND EXPENDED OUT OF THE FOREST
 3 CONSERVATION FUND.

4 (2) LOCAL FOREST CONSERVATION FUND MITIGATION PLANS AND
 5 ACCOUNTING PROCEDURES SHALL BE MADE AVAILABLE TO THE PUBLIC.

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

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

14 (ii) If the reforestation or afforestation cannot be reasonably
 15 accomplished in the county and watershed in which the project is located, then the
 16 reforestation or afforestation shall occur in the county or watershed in the State in which
 17 the project is located.

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

25 (3) A LOCAL AUTHORITY, CONSISTENT WITH § 5-1606 OF THIS
 26 SUBTITLE:

27 (I) MAY NOT COLLECT MONEY FOR DEPOSIT INTO ITS FOREST
 28 CONSERVATION FUND UNLESS THE LOCAL AUTHORITY HAS ~~IDENTIFIED~~
 29 ~~AFFORESTATION, REFORESTATION, OR CONSERVATION PROJECTS SUFFICIENT TO~~
 30 ~~PROVIDE THE FULL MITIGATION ACREAGE REQUIRED FOR THE UNDERLYING~~
 31 ~~DEVELOPMENT PROJECT SUBMITTED TO THE DEPARTMENT THE GENERAL~~
 32 MITIGATION PLAN AND ACCOUNTING PROCEDURES REQUIRED UNDER SUBSECTION
 33 (H-1) OF THIS SECTION; AND

34 (II) SHALL ENSURE THAT ~~THE ACREAGE AN EQUAL THE~~
 35 EQUIVALENT NUMBER OF ACRES FOR WHICH MONEY IS COLLECTED AND PAID INTO
 36 ITS FOREST CONSERVATION FUND IS FULLY MITIGATED IN ACCORDANCE WITH

1 **AFFORESTATION, REFORESTATION, AND CONSERVATION PRIORITIES AND**
2 **TECHNIQUES AUTHORIZED UNDER § 5-1607 OF THIS SUBTITLE.**

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

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

11 5-1613.

12 On or before September 30 of each year, the Department shall submit, subject to §
13 2-1246 of the State Government Article, to the Senate Education, Health, and
14 Environmental Affairs Committee and the House [Environmental Matters]
15 **ENVIRONMENT AND TRANSPORTATION** Committee a statewide report, compiled from
16 local authorities' reports to the Department, on:

17 (1) The number, location, and type of projects subject to the provisions of
18 this subtitle;

19 (2) The amount and location of acres cleared, conserved, and planted,
20 including any areas which utilize forest mitigation bank credits or areas located in the 100
21 year floodplain, in connection with a development project;

22 (3) The amount of reforestation and afforestation fees and noncompliance
23 penalties collected and expended, **THE NUMBER OF ACRES FOR WHICH THE FEES WERE**
24 **COLLECTED, AND THE NUMBER OF ACRES REFORESTED, AFFORESTED, OR**
25 **CONSERVED USING THE FEES;**

26 (4) The costs of implementing the forest conservation program;

27 (5) The size, location, and protection of any local forest mitigation banks
28 which are created under a local or State program;

29 (6) The number, location, and type of violations and type of enforcement
30 activity conducted in accordance with this subtitle; and

31 (7) To the extent practicable, the size and location of all conserved and
32 planted forest areas, submitted in an electronic geographic information system or computer
33 aided design format.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
2 apply only prospectively and may not be applied or interpreted to have any effect on or
3 application to any money deposited into the Forest Conservation Fund or a local forest
4 conservation fund before the effective date of this Act.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2019.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.