

SENATE BILL 234

M1

9lr1047
CF 9lr1106

By: **Senators Young, Elfreth, Feldman, Griffith, Lee, Pinsky, Rosapepe, Washington, and West**

Introduced and read first time: January 25, 2019

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

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 are not
5 available before the person may pay money to a State or local forest conservation
6 fund to meet any afforestation or reforestation requirements; requiring a local
7 authority that has established a forest conservation fund to provide to the
8 Department of Natural Resources a certain plan for identifying areas for mitigation
9 projects and certain accounting procedures to track money into and out of the fund;
10 requiring that local forest conservation fund mitigation plans and accounting
11 procedures be made available to the public; prohibiting a local authority from
12 collecting money for deposit into its forest conservation fund unless it has identified
13 afforestation, reforestation, or conservation projects sufficient to provide full
14 mitigation; requiring a local authority to ensure that acreage for which money is
15 collected and paid into its local forest conservation fund is fully mitigated in
16 accordance with certain provisions of law; altering the information that the
17 Department is required to include in its annual report to certain committees of the
18 General Assembly under the Forest Conservation Act; providing for the application
19 of this Act; making a certain technical correction; and generally relating to State and
20 local forest conservation funds.

21 BY repealing and reenacting, with amendments,
22 Article – Natural Resources
23 Section 5–1610 and 5–1613
24 Annotated Code of Maryland
25 (2018 Replacement Volume)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Natural Resources

5–1610.

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

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

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

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

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

(1) On or before September 30, 2014:

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

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

(2) After September 30, 2014:

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

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

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

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

(2) Money deposited in the Fund under subsection (c) of this section shall remain in the Fund for a period of 2 years or 3 growing seasons, and at the end of that time period, any portion that has not been used to meet the afforestation or reforestation

1 requirements shall be returned to the person who provided the money to be used for
2 documented tree planting in the same county or watershed beyond that required by this
3 subtitle or other applicable statutes.

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

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

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

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

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

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

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

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

32 (II) APPROPRIATE CREDITS GENERATED BY A FOREST
33 MITIGATION BANK ARE NOT AVAILABLE.

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

35 1. For a project inside a priority funding area, at least the

1 same as the rates established for the State Forest Conservation Fund under subsection (c)
2 of this section; and

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

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

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

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

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

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

18 **(I) A PLAN FOR IDENTIFYING APPROPRIATE AND POTENTIALLY**
19 **AVAILABLE AREAS FOR MITIGATION PROJECTS; AND**

20 **(II) DETAILED ACCOUNTING PROCEDURES FOR ACCURATELY**
21 **TRACKING MONEY RECEIVED INTO AND EXPENDED OUT OF THE FOREST**
22 **CONSERVATION FUND.**

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

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

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

33 (ii) If the reforestation or afforestation cannot be reasonably
34 accomplished in the county and watershed in which the project is located, then the

1 reforestation or afforestation shall occur in the county or watershed in the State in which
2 the project is located.

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

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

12 (I) MAY NOT COLLECT MONEY FOR DEPOSIT INTO ITS FOREST
13 CONSERVATION FUND UNLESS THE LOCAL AUTHORITY HAS IDENTIFIED
14 AFFORESTATION, REFORESTATION, OR CONSERVATION PROJECTS SUFFICIENT TO
15 PROVIDE THE FULL MITIGATION ACREAGE REQUIRED FOR THE UNDERLYING
16 DEVELOPMENT PROJECT; AND

17 (II) SHALL ENSURE THAT THE ACREAGE FOR WHICH MONEY IS
18 COLLECTED AND PAID INTO ITS FOREST CONSERVATION FUND IS FULLY MITIGATED
19 IN ACCORDANCE WITH AFFORESTATION, REFORESTATION, AND CONSERVATION
20 PRIORITIES AND TECHNIQUES AUTHORIZED UNDER § 5-1607 OF THIS SUBTITLE.

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

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

29 5-1613.

30 On or before September 30 of each year, the Department shall submit, subject to §
31 2-1246 of the State Government Article, to the Senate Education, Health, and
32 Environmental Affairs Committee and the House [Environmental Matters]
33 ENVIRONMENT AND TRANSPORTATION Committee a statewide report, compiled from
34 local authorities' reports to the Department, on:

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

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

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

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

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

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

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

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

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