

Chapter 602

(Senate Bill 234)

AN ACT concerning

Natural Resources – State and Local Forest Conservation Funds

FOR the purpose of requiring a person that is subject to the Forest Conservation Act to demonstrate that appropriate credits generated by a forest mitigation bank in the same county or watershed are not available before the person may pay money to a State or local forest conservation fund to meet any afforestation or reforestation requirements; requiring a local authority that has established a forest conservation fund to provide to the Department of Natural Resources a certain plan ~~for~~ identifying areas for mitigation projects and certain accounting procedures to track money into and out of the fund; requiring that local forest conservation fund mitigation plans and accounting procedures be made available to the public; prohibiting a local authority from collecting money for deposit into its forest conservation fund unless it has ~~identified afforestation, reforestation, or conservation projects sufficient to provide full mitigation~~ submitted to the Department ~~a certain~~ the mitigation plan and accounting procedures; requiring a local authority to ensure that ~~acreage a certain amount~~ the equivalent number of acres for which money is collected and paid into its local forest conservation fund is ~~fully~~ mitigated in accordance with certain provisions of law; altering the information that the Department is required to include in its annual report to certain committees of the General Assembly under the Forest Conservation Act; providing for the application of this Act; making a certain technical correction; and generally relating to State and local forest conservation funds.

BY repealing and reenacting, with amendments,

Article – Natural Resources

Section 5–1610 and 5–1613

Annotated Code of Maryland

(2018 Replacement Volume)

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

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 IN THE SAME COUNTY OR WATERSHED 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 requirements shall be returned to the person who provided the money to be used for documented tree planting in the same county or watershed beyond that required by this subtitle or other applicable statutes.

(f) (1) (i) Money deposited in the Fund under subsection (c) of this section may only be spent on reforestation and afforestation, including site identification,

acquisition, and preparation, maintenance of existing forests, and achieving urban canopy goals, and may not revert to the General Fund of the State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

reforestation or afforestation shall be accomplished through purchase of credits in, establishment, or maintenance of a forest mitigation bank in accordance with regulations of the local forest conservation program. The Reforestation Fund may not be used to finance administrative activities associated with a mitigation bank and any credits created by the Reforestation Fund may not be sold to compensate for additional forest impacts.

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

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

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

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

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

5-1613.

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

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

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

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

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

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

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

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

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

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

Enacted under Article II, § 17(c) of the Maryland Constitution, May 25, 2019.