

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 735

(Delegate Healey, *et al.*)

Environment and Transportation

Education, Health, and Environmental Affairs

Technical Study on Changes in Forest Cover and Tree Canopy in Maryland

This bill requires the Harry R. Hughes Center for Agro-Ecology (Hughes Center), in consultation with the Department of Natural Resources (DNR), the Maryland Department of the Environment, the Maryland Department of Planning, the Maryland Department of Agriculture, and the Chesapeake Bay Program, as appropriate, to conduct a specified technical study to review changes in forest cover and tree canopy in the State. By December 1, 2019, the Hughes Center must report its findings from the technical study to the Governor and the General Assembly. **The bill takes effect June 1, 2019, and terminates June 30, 2020.**

Fiscal Summary

State Effect: General fund expenditures increase by approximately \$390,000 in FY 2020 only. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The technical study must, to the extent practicable, include:

- a survey and mapping of (1) existing forest cover and tree canopy in the State and (2) potential afforestation and reforestation locations in the State;
- an analysis of the health and quality of forests in the State;

- an analysis of the progress toward the State’s commitment to expand urban tree canopy acres and plant riparian forest buffers under the 2014 Chesapeake Bay Agreement;
- an analysis of observed and projected changes in land cover and the amount of forest cover in the State due to development or other causes, using the Chesapeake Bay Phase 6 Model, Chesapeake Assessment Scenario Tool, and county and municipal forest conservation annual reports and land use plans, including the extent and nature of (1) mitigation activities involving existing forest conserved, tree planting, reforestation, or afforestation required under the Forest Conservation Act (FCA); (2) forest clearing, planting, and mitigation activity inside and outside priority funding areas and locally designated growth areas; and (3) the clearing and mitigation of forest considered to be a priority for retention and protection under FCA and in State-identified targeted ecological areas and greenways, hubs, and corridors, and the zoned density and sewer status of those areas;
- an analysis of observed and projected changes in the amount of forest cover in the State, based on (1) relevant State or local programs involving tree planting, reforestation, or afforestation and (2) the amount of forest preserved through federal, State, and local programs, including agricultural preservation, open space, conservation easement, and other land preservation programs;
- a review of forest mitigation banking in the State, including: (1) capacity and location of active banks; (2) regulation of siting and creation of new banks; (3) geographic limitations on the use of mitigation banks; (4) the relationship between fee-in-lieu rates under FCA and the market for forest mitigation banks; and (5) whether expanding the use of forest mitigation banks could provide water quality improvements and other beneficial results; and
- a programmatic and funding review of federal, State, and local tree and forest planting programs such as (1) Marylanders Plant Trees; (2) Lawn to Woodland; (3) Backyard Buffers; (4) Conservation Reserve Enhancement Program; and (5) other programs used to further Total Maximum Daily Load (TMDL) Watershed Implementation Plans and Municipal Separate Storm Sewer System (MS4) permit compliance.

Current Law/Background:

Forest Conservation Act

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 (0.9 acres) 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 (which can include use of off-site forest mitigation banks), 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, maintenance of existing forest, and achieving urban canopy goals. 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.

2014 Chesapeake Bay Watershed Agreement

The 2014 Chesapeake Bay Watershed Agreement (referenced in the bill) – an agreement among the states in the watershed, the Chesapeake Bay Commission, and federal partners – sets 10 overall goals relating to different aspects of restoration and protection of the bay. Some address clean water, while others address aspects such as climate resiliency, land conservation, and fish and wildlife habitats. One of the goals – restoring, enhancing, and protecting vital habitats – includes (1) restoring and conserving riparian forest buffers until at least 70% of riparian areas throughout the Chesapeake Bay watershed are forested and (2) expanding urban tree canopy by 2,400 acres by 2025.

The agreement's water quality goal is based on the Chesapeake Bay TMDL established by the U.S. Environmental Protection Agency. The TMDL sets the maximum amount of nutrient and sediment pollution the bay can receive and still attain water quality standards. It also identifies specific pollution reduction requirements; all reduction measures must be in place by 2025. Watershed implementation plans developed by the bay jurisdictions detail the strategies and specific actions that are being implemented to reduce pollution.

Municipal Separate Storm Sewer System (MS4) Permits

The federal Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States. The National Pollutant Discharge Elimination System (NPDES), a component of CWA, regulates stormwater discharges from MS4s. There are 10 jurisdictions in Maryland that hold NPDES Phase I

MS4 permits (Anne Arundel, Baltimore, Carroll, Charles, Frederick, Harford, Howard, Montgomery, and Prince George's counties and Baltimore City).

Additional Information

For additional information on FCA and other forestry programs in the State, see the 2017 report published by the Department of Legislative Services, [*Forest Conservation Act and Other Forestry Programs in Maryland*](#).

State Expenditures: General fund expenditures increase by approximately \$390,000 in fiscal 2020 only to conduct the technical study. This estimate reflects the cost of:

- contractual services to conduct surveying and mapping of potential afforestation and reforestation locations in the State (\$240,000) – based on an estimate by DNR of the cost for statewide analysis of land cover and land use zoning to identify afforestation and reforestation locations; and
- contractual services for research and analysis relating to the remaining portions of the technical study (\$150,000) – based on Hughes Center past experience commissioning research of a similar scope and communication with researchers.

The estimate assumes:

- costs are incurred in fiscal 2020 (yet work may begin, and some costs may end up being incurred, in fiscal 2019); and
- general funds are needed to cover the costs of the technical study, if other funds are not obtained/allocated.

Assistance or consultation provided to the Hughes Center by the Chesapeake Bay Program (in relation to the Chesapeake Bay Phase 6 Model or otherwise) and the State agencies mentioned in the bill is not expected to result in increased costs.

Additional Comments: The Hughes Center is a nonprofit organization affiliated with the University of Maryland College Park and the University System of Maryland. The center brings together diverse interests from the agricultural, forestry, and environmental communities for the purpose of retaining Maryland's working landscapes and the industries they support, while protecting and improving the health of the Chesapeake Bay and its tributaries.

Additional Information

Prior Introductions: None.

Cross File: SB 729 (Senator Guzzone, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Department of Natural Resources; University System of Maryland; Maryland Department of Agriculture; Maryland Department of Planning; Harry R. Hughes Center for Agro-Ecology; Chesapeake Bay Program; Department of Legislative Services

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Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510