

Support of HB 530 - Natural Resources – Forest Mit

Uploaded by: Colby Ferguson

Position: FAV



Maryland Farm Bureau, Inc.

3358 Davidsonville Road • Davidsonville, MD 21035 • (410) 922-3426

March 1, 2023

To: House Environment & Transportation Committee

From: Maryland Farm Bureau, Inc.

Re: **Support of HB 530 - Natural Resources – Forest Mitigation Banks and the Forest Conservation Fund – Alterations**

On behalf of our member families, I submit this written testimony in support of HB 530, legislation that removes the requirement that a forest mitigation bank had to be approved on or before December 31, 2020, to be eligible, and it extends the deadline from 2 years to 5 or from 3 growing seasons to 6 for the Department of Natural Resources to accomplish the reforestation or afforestation for which certain money is deposited to the Forest Conservation Fund.

A bill 2 years ago (HB991) was amended at the end of session to include the deadline date. Unfortunately, that date kicked out many projects that had been in the pipeline for several years but had been held up because of the Attorney General's ruling in 2020. This bill looks to correct that unintended consequence and allow those projects to complete the long and expensive process.

MARYLAND FARM BUREAU SUPPORTS HB 530 AND REQUEST A FAVORABLE REPORT

A handwritten signature in black ink, appearing to read 'Colby Ferguson'.

Colby Ferguson
Director of Government Relations

For more information contact Colby Ferguson at (240) 578-0396

HB 530 FAV_Fred Co_DEE Testimony_DA_3.1.23.pdf

Uploaded by: Dawn Ashbacher

Position: FAV



FREDERICK COUNTY GOVERNMENT

DIVISION OF ENERGY & ENVIRONMENT

Department of Climate & Energy

Jessica Fitzwater
County Executive

Shannon Moore, Director
Dawn Ashbacher, Manager

HB 530 – Natural Resources – Forest Mitigation Banks and the Forest Conservation Fund – Alterations

DATE: March 1, 2023
COMMITTEE: House Environment and Transportation Committee
POSITION: Favorable
FROM: Dawn Ashbacher, Climate and Energy Manager, Division of Energy and Environment, Frederick County Government

Thank you for your consideration of HB 530- Natural Resources- Forest Mitigation Banks and the Forest Conservation Fund – Alterations. As the Frederick County Climate and Energy Manager in the Division of Energy and Environment, I urge the committee to give HB 530 a FAVORABLE report.

There are several reasons we support this bill. One is that in 2020, according to the Metropolitan Washington Council of Governments, forests in Frederick County drew down 18% of county-wide greenhouse gas emissions. Our ability to extend the use of existing fees helps us to do additional afforestation and protection.

Another reason we support this bill is that the Forest Conservation Act programs contribute to protecting local water quality and the Chesapeake Bay. These waterbodies have listed impairments, including Total Maximum Daily Loads, which are directly impacted by pollutants that are conveyed by stormwater. Forests prevent pollution from new development. We have performed studies using our local stream survey data indexed by surrounding land use that confirm forested land use is the best predictor of water quality and biodiversity in streams.

Conversely, the more forest land we use, the more our waterways degrade. This is especially true for native brook trout, which are heavily affected by thermal impacts from even small amounts of development activity.

We have targeted Forest Conservation Act funds in sensitive watersheds. For example, these funds were used in the Linganore Watershed surrounding Lake Linganore, which has a drinking water intake for the City of Frederick. Forest protection and afforestation in this area has enabled us to reduce sedimentation to the lake, which was recently dredged.

The more forest that is protected during the development process, the less we have to clean up through watershed restoration in our Municipal Separate Storm Sewer System (MS4) permits.

Thank you for your consideration of HB 530. On behalf of Frederick County Government, I urge a FAVORABLE report.

Respectfully,



Dawn Ashbacher
Manager, Climate and Energy Department
Frederick County Division of Energy and Environment
30 North Market Street
Frederick, MD 21701
301-600-1416
dashbacher@frederickcountymd.gov

HB0530-ET_MACo_SUP.pdf

Uploaded by: Dominic Butchko

Position: FAV



House Bill 530

Natural Resources - Forest Mitigation Banks and the Forest Conservation Fund - Alterations

MACo Position: **SUPPORT**

To: Environment and Transportation
Committee

Date: March 1, 2023

From: Dominic J. Butchko

The Maryland Association of Counties (MACo) **SUPPORTS** HB 530. The bill would modify certain aspects of the Forest Conservation Fund to give counties more time to use the resources distributed under the program.

Forest mitigation is an essential practice in ensuring that development does not come at the cost of our trees. Forest mitigation banks allow project developers to meet off-site forest conservation requirements by purchasing easements on established forestlands, protecting them in perpetuity. In areas where replanting on-site is not feasible, forest mitigation banks account for a reasonable forest conservation practice by providing "credits" to developers. Many counties use mitigation banking to comply with the Forest Conservation Act.

HB 530 would serve to strengthen the Forest Conservation Fund in several ways. The primary benefits would be the extension of time by which local jurisdictions can use forest conservation funds for reforestation or afforestation; and the restoration of the ability for counties to use the forest banking as a mitigation measure. The bill also removes a December 2020 deadline for approval of forest conservation plans, preserving the practice of forest banking that was intended to be paused until the completion of the Harry R. Hughes Center's study, which was published in December 2023.

HB 530 serves to improve a program that counties have relied on since 1990 to aid forest mitigation. Accordingly, MACo urges a **FAVORABLE** report for HB 530.

HB0530_DNR_SUP_E&T_3-1-23.pdf

Uploaded by: Emily Wilson

Position: FAV



Wes Moore, Governor
Aruna Miller, Lt. Governor
Josh Kurtz, Acting Secretary
Allan Fisher, Deputy Secretary

March 1, 2023

BILL NUMBER: House Bill 530 – First Reader

SHORT TITLE: Natural Resources - Forest Mitigation Banks and the Forest Conservation Fund - Alterations

DEPARTMENT'S POSITION: SUPPORT

EXPLANATION OF DEPARTMENT'S POSITION:

The Department of Natural Resources supports HB530. The bill clarifies that retention mitigation banking is an acceptable means of mitigating for the Maryland Forest Conservation Act (FCA). Qualified conservation banks will be permitted as a mitigation option and a means to protect stands of grown trees of interest at no cost to the state. Retention mitigation banking is one of few developed-area conservation strategies for mature forests. Holding on to older forests recognizes the tremendous benefits of carbon storage and sequestration, as well as the potential for carbon markets. The extension of time to achieve reforestation also provides flexibility for mitigation plantings, helping address challenges with site identification and site preparation needed prior to planting.

BACKGROUND INFORMATION:

HB 530 has been proposed to address a technical issue with the existing qualified conservation bank language as approved during the 2021 Session and allows new retention mitigation banks to be used to meet FCA requirements. Retention mitigation banking at a ratio of two acres of existing forest conserved for each one required had been used for over 20 years as an allowed method of meeting FCA requirements. In 2020, the Office of the Attorney General issued an opinion which determined that new tree planting was the only clearly authorized mitigation banking, and that those counties implementing retention of existing forest banking programs were in noncompliance. HB 991 in 2021 (Chapter 645) authorized use of retention mitigation banking for those approved prior to 2021, but did not authorize any new retention mitigation banks to be created. This bill clarifies the existing language to enable those retention banks or qualified conservation banks that were submitted or approved before December 31, 2020 to still be utilized, and allows retention mitigation banking to be used where local programs have authorized it to meet their FCA requirements

The Maryland FCA (NRA 5-1601–5-1613) applies to any subdivision plan or application for grading or sediment control permit by any person, including local, state and federal government, on areas of 40,000 square feet or greater. The Act requires that mitigation be accomplished for the land disturbance onsite, offsite, by creation of forest land banks, or by fee-in-lieu. The statute provides preferred sequences for afforestation and reforestation, priority areas for retention and protection, and priority areas for afforestation or reforestation. Prior to the Office of the Attorney General opinion, retention of existing forest banks which required preservation at a 2:1 ratio (two acres of existing forest protected for each one acre of required mitigation) was occurring in those approximately 14 counties that adopted the language in their forest conservation ordinances.

Contact: Emily Wilson, Director, Legislative and Constituent Services (Acting)
emilyh.wilson@maryland.gov ♦ 410-260-8426 (office) ♦ 443-223-1176 (cell)

The Harry R. Hughes Center for Agro-Ecology recently released a report that stated that existing forest banks comprise 81% of reported bank acreage with a total of 13,997 acres. These add up to large acres of existing forest ('usually larger trees') that are protected from development by easements and provide landowners with a source of income. This is a means of protecting existing forest without cost to the state in locations where few other avenues are available to conserve mature forest.

BILL EXPLANATION:

HB 530 revises the definition of qualified conservation and adds a definition for qualified project as it relates to forest mitigation banks. The bill also extends the period of time allowed to achieve reforestation, and clarifies that funds can be encumbered as well as fully used by the deadlines that would otherwise trigger return of fee-in-lieu funds.

HB 530 FAV OCE Testimony JF LS23.pdf

Uploaded by: Jessica Fitzwater

Position: FAV



FREDERICK COUNTY GOVERNMENT
OFFICE OF THE COUNTY EXECUTIVE

Jessica Fitzwater
County Executive

**HB 530 - Natural Resources – Forest Mitigation Banks and the Forest Conservation Fund
– Alterations**

DATE: March 1, 2023
COMMITTEE: House Environment and Transportation Committee
POSITION: Favorable
FROM: The Office of Frederick County Executive Jessica Fitzwater

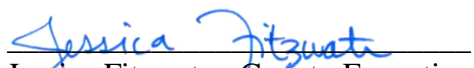
As the County Executive of Frederick County, I urge the committee to give HB 530 - Natural Resources – Forest Mitigation Banks and the Forest Conservation Fund – Alterations a favorable report.

This bill is a priority of Frederick County Government and was introduced by Delegate Kerr by my request. This legislation will help local governments balance growth and economic activities with the commitment to protect natural resources. Frederick County has a strong forest conservation ordinance and is committed to continue our policies that ensure no net-loss of forest cover. The minor changes proposed in this bill will not reduce the impact of our strong conservation policies but rather restore the ability of local jurisdictions to preserve existing forests and provide a more viable timeline for reforestation and afforestation projects.

This bill makes two key changes to existing law. First, by removing the approval deadline of December 31, 2020 for a forest conservation plan it allows counties and municipalities to continue to save existing forests and preserve existing forest ecosystems through the banking program. Second, it extends the timeframe for local jurisdictions to use forest conservation funds for reforestation or afforestation from two years (or three growing periods) to five years (or six growing periods) to provide sufficient time to effectively use these funds for planting projects. This is a particularly important change for smaller municipalities such as Emmitsburg, which may need more time to accrue sufficient funds, plan, and execute a qualifying project.

The minor changes to the state's forest conservation programs proposed in this bill will give local governments more tools and flexibility for reforestation and afforestation projects. I believe this will help local governments throughout Maryland make the most out of our forest conversation policies.

Thank you for your consideration of HB 530. Thank you to the bill sponsor, Del. Ken Kerr for introducing this important legislation. I urge the committee to give this bill a favorable report.



Jessica Fitzwater, County Executive
Frederick County, MD

HB 530, FAV, DPP, Testimony, MW, LS23.pdf

Uploaded by: Michael Wilkins

Position: FAV



FREDERICK COUNTY GOVERNMENT

Jessica Fitzwater
County Executive

DIVISION OF PLANNING & PERMITTING

Department of Development Review & Planning

Steven C. Horn, Division Director

Michael L. Wilkins, Director

HB 530 - Natural Resources – Forest Mitigation Banks and the Forest Conservation Fund – Alterations

DATE: March 1, 2023
COMMITTEE: House Environment and Transportation Committee
POSITION: Favorable
FROM: Michael Wilkins, Frederick County Department of
Development Review and Planning Director

As the Director of the Frederick County Department of Development Review and Planning, within the Division of Planning and Permitting, I respectfully request a favorable report on HB 530 - Natural Resources – Forest Mitigation Banks and the Forest Conservation Fund – Alterations.

In my role, I manage Frederick County’s forest banking program and work closely with stakeholders impacted by state and local forest conservation policies. I am proud of the strong conservation policies Frederick County has enacted and come to this body with the changes proposed in HB 530 to help local governments throughout Maryland make the most out of our forest conservation program and fund.

This bill makes two key changes to existing law. First, by removing the approval deadline of December 31, 2020, for a forest conservation plan, counties and municipalities will be able to continue to save existing forests and preserve existing forest ecosystems through the banking program. Since the adoption of the changes to the Forest Banking Program in the “Trees Solution Now Act of 2021,” Frederick County has to reject proposals to permanently preserve existing forest along streams, wetlands, and floodplains, leading to forest banking plans that establish newly planted forest easements along portions of high priority hydrological systems while leaving the existing forest adjacent to the planting unprotected. Removing the ability to place existing forest into the banking program discourages entry into the program. Many applicants use the sale of the existing forest credit to finance the planting and maintenance of new forest on the property. Prior to the change in State law, Frederick County permanently preserved 2,500 acres of existing forest in priority conservation areas and the majority of these forest banks included new forest plantings to establish important stream buffers.

Second, it extends the timeframe that local jurisdictions have to use forest conservation funds for reforestation or afforestation from two years (or three growing periods) to five years (or six growing periods) to provide sufficient time to effectively use these funds for planting projects. Spending these funds within 2 years is challenging for a number of reasons;

- There have been many state, local, and non-profit tree planting programs established since the creation of the fee-in-lieu program. While these numerous tree planting programs are of great benefit for increasing forest coverage across the state, they have made it more challenging for local forest conservation

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programs to efficiently utilize monies within 2 years due to the various programs competing for planting sites.

- It takes a significant amount of time to find suitable planting sites, negotiate with property owners, write and execute legal agreements, create reforestation plans, and obtain surveyor and tree planting services through the RFP processes.
- When planting projects are identified there are times when the project must be placed on hold until the appropriate amount of funds are collected. In some cases it may take longer than 2 years to acquire the necessary funds. Having to return money after two years would jeopardize these planting efforts.

These changes will help Frederick County and our municipalities by providing tools and flexibility for forest conservation projects. It will also benefit key stakeholders including farmers and landowners while prioritizing the need to protect sensitive areas like stream buffers and vulnerable habitats.

Thank you for your consideration of HB 530. I urge the committee to give this bill with a favorable report.

Respectfully,

Michael Wilkins
Director, Development Review and Planning
Frederick County, MD Division of Planning and Permitting
30 North Market Street,
Frederick, MD 21701
301-600-2329
mwilkins@FrederickCountyMD.gov

MBIA letter HB 530.pdf

Uploaded by: Lori Graf

Position: UNF

March 1, 2023

The Honorable Kumar P. Barve
Environment & Transportation Committee
House Office Building, Room 251,
6 Bladen St., Annapolis, MD, 21401

RE: MBIA Letter of Opposition to HB 530 Natural Resources – Forest Mitigation Banks and the Forest Conservation Fund– Alterations

Dear Chairman Barve:

The Maryland Building Industry Association, representing 100,000 employees statewide, appreciates the opportunity to participate in the discussion surrounding **HB 530 Natural Resources – Forest Mitigation Banks and the Forest Conservation Fund – Alterations**. MBIA **Opposes** the act.

This bill would change the definition of qualified conservation to mean any project that uses qualified conservation for which an application was submitted on or before December 31, 2020. MBIA requests that the date be removed from the bill. This bill as currently written does allow new forest banks to be established but the demand is limited to only projects that were approved prior to December 31, 2020 many of these projects have already reached completion and new projects will still not qualify for the forest banks.

Mitigation banking is used as a second to last option for fulfilling mitigation requirements. It is only used when forest is not saved on site and you can't plant offsite. By the time a project has reached the banking stage the options for moving forward are extremely limited and placing further restrictions does not necessarily produce more forest and raises costs by sending projects to fee in lieu. MBIA recommends that the restriction on when projects qualify for use of forest banks be removed.

For these reasons, MBIA respectfully requests the Committee give this bill, in its current form, an unfavorable report. However, we would support the bill should the date be removed from the legislation to allow for the creation of new banks. This is an important tool used to build new housing and it needs to be restored. Thank you for your consideration.

For more information about this position, please contact Lori Graf at 410-800-7327 or lgraf@marylandbuilders.org.

cc: Members of the House Environment & Transportation Committee

HB 530 - Forest Conservation - Forest Banking - NA

Uploaded by: Tom Ballentine

Position: UNF



February 27, 2023

The Honorable Kumar P. Barve, Chair
House Environment and Transportation Committee
House Office Building, Room 251
6 Bladen St., Annapolis, MD 21401

Favorable: HB 530 – Natural Resources – Forest Mitigation Banks and Forest Conservation Fund - Alterations

Dear, Chair Barve and Committee Members:

The NAIOP Maryland Chapters representing more than 700 companies involved in all aspects of commercial, industrial, and mixed-use real estate, recommend your unfavorable report on House Bill 530.

House Bill 530 would end eligibility for forest retention banks for development projects approved after December 31, 2020. This change eliminates most off-site forest mitigation options for future development projects and removes the incentive to create new forest retention banks by eliminating demand.

Several key policy benefits both for the regulated development community and the public serve as the basis for our support:

- + Current law requires twice as much acreage to be purchased in an off-site forest retention bank than if the mitigation is completed through planting forest on-site or buying into a planted forest conservation bank. This can increase to four times the amount of forest mitigation if a project clears forest below the conservation threshold.
- + Forest retention banks are often located on agricultural land that is exempt from the protections of the Forest Conservation Act. These banks provide a revenue stream to agricultural property owners without clearing forest.
- + Both Maryland’s climate and bay restoration strategies depend on containing future growth in the water and sewer service areas of the central Maryland counties. Offsite forest mitigation banks are vital to urban, mixed-use, commercial, and industrial projects that often require more lot coverage to achieve necessary density.
- + Because the mitigation bank is professionally managed and regulated, the air and water quality performance of the forest are increased compared to unmanaged tree stands. On-site planting for projects like those that use forest banks often create isolated forest stands that are difficult to manage and provide limited environmental benefits. Because banks are located adjacent to streams and contiguous to larger forest stands, banking usually results in the preservation of higher quality forest than what is cleared during development.
- + During the 2019 session, the General Assembly prioritized forest mitigation banks over fee in lieu. The removal of access to this mitigation banking option means urban projects will revert to paying fees rather than mitigation through approved forest banks.

For these reasons, NAIOP respectfully recommends your unfavorable report on House Bill 530.

Sincerely,

Tom Ballentine, Vice President for Policy
NAIOP Maryland Chapters -*The Association for Commercial Real Estate*

cc: House Environment and Transportation Committee Members
Nick Manis – Manis, Canning Assoc.