



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

March 1, 2023

BILL NUMBER: House Bill 723 – First Reader

SHORT TITLE: Natural Resources - Forest Preservation and Retention

DEPARTMENT’S POSITION: SUPPORT WITH AMENDMENTS

EXPLANATION OF DEPARTMENT’S POSITION:

The Department of Natural Resources supports HB 723 with amendments, and the Department welcomes the opportunity to continue working with the sponsors and others on specifics.

HB 723 proposes to address a recent study’s analysis of existing tree canopy and forest cover by replacing the no net loss policy with a net increase policy. The Department supports this intent, however the policy statement assumes an indefinite availability of land to plant over an indefinite period of time, should consider natural disasters or electrical reliability clearing, and assumes timely availability of the data sources. It would be worth considering a more quantitative goal and one which addresses changes beyond the control of jurisdictions. Additionally, the definition of forest land should not specify the patch width since widths other than 240 feet are in use and planned by the Chesapeake Bay Program and the United States Forest Service’s forest inventory and analysis (FIA). Finally, to help clarify or further define priority areas for conservation, the Department would recommend referencing existing processes like the state-led priority urban tree mapping initiative.

HB 723 addresses the use of existing forest or qualified conservation for mitigation bank purposes. 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 bill narrowly defines the land available for this use by removing specific land types that could be considered priority areas for retention and protection as stated in the Maryland Forest Conservation Act (FCA). The study states 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. With this bill language, qualified conservation banks will be permitted as a mitigation option that has the ability to conserve forests of interest at no cost to the state.

Other provisions authorize the use of forest restoration as required mitigation at two acres restored to one acre of requirement and expand the minimum mitigation requirements. The addition of another mitigation option on top of new tree planting and retention mitigation banking will expand flexibility in meeting mitigation requirements.

HB 723 also reduces the minimum acreage eligibility for the Forest Conservation Management Agreement (FCMA) program from five acres to two acres, which may increase the number of participants.

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

BACKGROUND INFORMATION:

The Harry R. Hughes Center for Agro-Ecology recently released a technical study on Changes in Forest Cover and Tree Canopy in Maryland, November 2022. This study was originally required per 2019 Session Chapter 405, and then extended per 2021 Session Chapter 645. The study looked at existing tree canopy and forest cover and changes in cover, as well as Maryland FCA’s mitigation banking option.

Another aspect of the study reports on existing forest mitigation banking practices - both planted and existing forest banks - at the local jurisdiction level across the state, and states 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 mature 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.

The bill proposes to address a technical issue with the existing qualified conservation bank language as approved during the 2021 Session and following a 2020 Office of the Attorney General opinion determined that new tree planting was the only clearly authorized mitigation for FCA requirements. That language enabled the use of existing forest as a mitigation banking site to meet mitigation requirements under the Maryland FCA but only using banks approved prior to December 30, 2020. 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 going forward where local jurisdictions have authorized. This bill also adds restrictions to where banks can be located.

Lastly HB 723 reduces the acreage eligibility for the FCMA program from five acres to two acres in specific counties. This change will result in a 110% eligibility increase in parcel eligibility by making an additional 17,314 parcels eligible. The FCMA program reduces property tax to the agricultural rate for those who enter the program with five acres. For properties under five acres, which would become eligible for the program via this bill, the assessment value would be frozen at the property’s current rate when it enters the program.

During the 2021 Session, Chapter 645 established qualified conservation banking as an allowable form of FCA mitigation. However, the bill did not address those existing forest retention banks that were established prior to December 31, 2020.

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 (2 acres of existing forest protected for each 1 acre of required mitigation) was occurring in those approximately 14 counties that adopted the language in their forest conservation ordinances.

BILL EXPLANATION:

HB 723 revises the previous no net loss of forest policy language to a net increase every four years.

HB 723 revises the definition of qualified conservation which affects qualified conservation mitigation banking through the Maryland FCA. The bill revises the method for calculating reforestation mitigation and enables the local jurisdiction, if they wish, to propose alternative mitigation requirements to maintain its existing level of forest cover over a two-year period. The department may approve this alternative and if approved, the department can rescind the approval if expected results are not achieved at the end of the two consecutive two-year periods. The bill also adds to the mitigation methods allowed in specifically

designated municipal corporations and adds to the list of priority areas for retention and protection as well as the narrower list of these areas that require a variance if designated for disturbance on the forest conservation plan. Lastly, the bill reduces the eligibility threshold to enter into the FCMA program in specific counties.