

# HOUSE BILL 1291

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CF SB 666

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By: **Delegates Bobo, Carr, Frush, Healey, and Hucker**

Introduced and read first time: February 13, 2009

Assigned to: Environmental Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Natural Resources – No Net Loss of Forest Policy – Forest Conservation Act**

3 FOR the purpose of reducing the threshold acreage of land in a proposed subdivision  
4 plan above which the Forest Conservation Act applies; reducing the threshold  
5 acreage of forest cut, cleared, or graded above which certain activities no longer  
6 qualify as exemptions to the Forest Conservation Act; repealing certain  
7 exemptions from the requirements of the Forest Conservation Act for cutting or  
8 clearing trees in a public utility right-of-way; limiting a certain exemption from  
9 the requirements of the Forest Conservation Act for intrafamily transfers;  
10 repealing the authority of a local jurisdiction to waive the requirements of the  
11 Forest Conservation Act for certain previously developed and paved areas;  
12 authorizing the acquisition of an off-site protective easement for temporarily  
13 protected forested areas as a mitigation technique to meet afforestation or  
14 reforestation requirements; altering the standard that a person is required to  
15 meet to determine whether certain vegetation and areas of land may be  
16 disturbed; authorizing the owner of certain preserved forestland to place the  
17 forestland into the Forest Conservation and Management Program or under an  
18 approved forest management plan; altering the fee-in-lieu contribution to State  
19 or local forest conservation funds that is required under certain circumstances;  
20 altering the authorized uses of State and local forest conservation funds;  
21 requiring the Department of Natural Resources to submit a report to the  
22 General Assembly annually after a certain date on its progress in developing  
23 and implementing a no net loss of forest policy in the State; declaring the intent  
24 of the General Assembly; making certain stylistic changes; making a technical  
25 correction; and generally relating to the Forest Conservation Act and the  
26 development and implementation of a no net loss of forest policy.

27 BY adding to

28 Article – Natural Resources

29 Section 5–104

30 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2005 Replacement Volume and 2008 Supplement)

2 BY repealing and reenacting, with amendments,

3 Article – Natural Resources

4 Section 5–1602, 5–1603(c)(3), (f), and (g), 5–1604(a), 5–1607(b)(2), (c), and (f),  
5 and 5–1610

6 Annotated Code of Maryland

7 (2005 Replacement Volume and 2008 Supplement)

8 BY repealing and reenacting, without amendments,

9 Article – Natural Resources

10 Section 5–1607(e) and 5–1611

11 Annotated Code of Maryland

12 (2005 Replacement Volume and 2008 Supplement)

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

15 **Article – Natural Resources**

16 **5–104.**

17 **ON OR BEFORE DECEMBER 1, 2011 AND EACH YEAR THEREAFTER, THE**  
18 **DEPARTMENT SHALL REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE**  
19 **WITH § 2–1246 OF THE STATE GOVERNMENT ARTICLE, ON THE PROGRESS OF**  
20 **THE DEPARTMENT IN DEVELOPING AND IMPLEMENTING A POLICY OF NO NET**  
21 **LOSS OF FOREST IN THE STATE.**

22 5–1602.

23 (a) Except as provided in subsection (b) of this section, this subtitle shall  
24 apply to any public or private subdivision plan or application for a grading or sediment  
25 control permit by any person, including a unit of State or local government on areas  
26 [40,000] **20,000** square feet or greater.

27 (b) The provisions of this subtitle do not apply to:

28 (1) Any construction activity that is subject to § 5–103 of this title;

29 (2) Any cutting or clearing of forest in areas governed by the  
30 Chesapeake Bay Critical Area Protection Law (Title 8, Subtitle 18 of this article);

31 (3) Commercial logging and timber harvesting operations, including  
32 any harvesting conducted under the forest conservation and management program  
33 under § 8–211 of the Tax – Property Article:

34 (i) That were completed before July 1, 1991; or

1 (ii) That were completed on or after July 1, 1991 on property  
2 that is not the subject of an application for a grading permit for development within  
3 5 years after the logging or harvesting operation. However, after this 5-year period,  
4 the property shall be subject to this subtitle;

5 (4) Any agricultural activity that does not result in a change in land  
6 use category, including agricultural support buildings and other related structures  
7 built using accepted best management practices;

8 (5) [The cutting or clearing of public utility rights-of-way or land for  
9 electric generating stations licensed pursuant to § 7-204, § 7-205, § 7-207, or § 7-208  
10 of the Public Utility Companies Article, provided that:

11 (i) Any required certificates of public convenience and necessity  
12 have been issued in accordance with § 5-1603(f) of this subtitle; and

13 (ii) The cutting or clearing of the forest is conducted so as to  
14 minimize the loss of forest;

15 (6) Any routine maintenance of public utility rights-of-way;

16 (7)] Any activity conducted on a single lot of any size or a linear project  
17 provided that:

18 (i) The activity does not result in the cutting, clearing, or  
19 grading of more than [40,000] **20,000** square feet of forest; and

20 (ii) The activity on the lot or linear project will not result in the  
21 cutting, clearing, or grading of any forest that is subject to the requirements of a  
22 previous forest conservation plan prepared under this subtitle;

23 [(8)] **(6)** Any strip or deep mining of coal regulated under Title 15,  
24 Subtitle 5 or 6 of the Environment Article and any noncoal surface mining regulated  
25 under Title 15, Subtitle 8 of the Environment Article;

26 [(9)] **(7)** Any activity required for the purpose of constructing a  
27 dwelling house intended for the use of the owner, or a child [or grandchild] of the  
28 owner, if the activity does not result in the cutting, clearing, or grading of more than  
29 [40,000] **20,000** square feet of forest;

30 [(10)] **(8)** A county that has and maintains 200,000 acres or more of its  
31 land area in forest cover; and

32 [(11)] **(9)** The cutting or clearing of trees to comply with the  
33 requirements of 14 C.F.R. § 77.25 relating to objects affecting navigable airspace,

1 provided that the Federal Aviation Administration has determined that the trees are a  
2 hazard to aviation.

3 (c) For an application for subdivision or sediment and erosion control or  
4 grading for a site with more than 50% of the net tract area governed by Title 8,  
5 Subtitle 18 of this article, the Department or local authority may allow an applicant to  
6 extend critical area forest protection measures [in lieu] **INSTEAD** of meeting the  
7 requirements of this subtitle.

8 5-1603.

9 (c) (3) (i) A local authority shall review and amend, as appropriate, all  
10 current local ordinances, policies and procedures that are inconsistent with the intent  
11 and requirements of this subtitle such as parking, road width, setback, curb and  
12 gutter, grading, and sidewalk requirements.

13 (ii) A local forest conservation program, when approved by the  
14 Department, may[:

15 1. Allow] **ALLOW** clustering and other innovative land  
16 use techniques that protect and establish forests where open space is preserved,  
17 sensitive areas are protected, and development is physically concentrated[; and

18 2. Waive the requirements of this subtitle for an area  
19 that was previously developed and is covered by paved surface at the time of  
20 application for subdivision plan, grading, or sediment control permit approval].

21 (f) [After December 31, 1992, the Public Service Commission shall give due  
22 consideration to the need to minimize the loss of forest and the provisions for  
23 afforestation and reforestation set forth in this subtitle together with all applicable  
24 electrical safety codes, when reviewing applications for a certificate of public  
25 convenience and necessity issued pursuant to § 7-204, § 7-205, § 7-207, or § 7-208 of  
26 the Public Utility Companies Article.

27 (g)] A local authority or the Department in its administration of a State forest  
28 conservation program in jurisdictions which do not have an approved local program in  
29 effect may establish reasonable and appropriate procedures for the recovery of all costs  
30 incurred in the development, implementation, administration, and enforcement of the  
31 local forest conservation program or the State forest conservation program for  
32 jurisdictions without an approved forest conservation program.

33 5-1604.

34 (a) Except as provided in subsection (b)(2) and (3) of this section, after  
35 December 31, 1992, or after the date on which a local program has been adopted under  
36 § 5-1603 of this subtitle, whichever occurs first, a person making application for  
37 subdivision or grading or sediment control permits on areas [greater than 40,000]

1 **20,000** square feet **OR GREATER** shall submit a forest stand delineation for the entire  
2 site prepared by a licensed forester, licensed landscape architect, or other qualified  
3 professionals that may be approved by the State or a local authority in the manner  
4 required by the approved program.

5 5-1607.

6 (b) Standards for meeting afforestation or reforestation requirements shall  
7 be established by the State or local program using one or more of the following  
8 methods:

9 (2) The use of street trees in a municipal corporation with a tree  
10 management plan, in an existing population center designated in a county master plan  
11 that has been adopted to conform with the Economic Growth, Resource Protection, and  
12 Planning Act of 1992, or in any other designated area approved by the Department as  
13 part of a local program, under criteria established by the local program, subject to the  
14 approval of the Department, using:

15 (i) Street trees as a permissible step in the priority sequence for  
16 afforestation or reforestation and, based on a mature canopy coverage, may grant full  
17 credit as a mitigation technique; and

18 (ii) Acquisition as a mitigation technique of an off-site  
19 protective easement for existing forested areas not currently protected **IN**  
20 **PERPETUITY**, in which case the afforestation or reforestation credit  
21 granted may not exceed 50% of the area of forest cover protected.

22 (c) The following trees, shrubs, plants, and specific areas shall be considered  
23 priority for retention and protection, and they shall be left in an undisturbed condition  
24 unless the applicant has demonstrated, to the satisfaction of the State or local  
25 authority that [reasonable efforts have been made to protect them and the plan cannot  
26 reasonably be altered] **THE APPLICANT QUALIFIES FOR A VARIANCE UNDER §**  
27 **5-1611 OF THIS SUBTITLE:**

28 (1) Trees, shrubs, and plants located in sensitive areas including  
29 100-year floodplains, intermittent and perennial streams and their buffers, coastal  
30 bays and their buffers, steep slopes, and critical habitats;

31 (2) Contiguous forest that connects the largest undeveloped or most  
32 vegetated tracts of land within and adjacent to the site;

33 (3) Trees, shrubs, or plants identified on the list of rare, threatened,  
34 and endangered species of the U.S. Fish and Wildlife Service or the Department;

35 (4) Trees that are part of a historic site or associated with a historic  
36 structure or designated by the Department or local authority as a national, State, or  
37 local Champion Tree; and

1 (5) Trees having a diameter measured at 4.5 feet above the ground of:

2 (i) 30 inches; or

3 (ii) 75% of the diameter, measured at 4.5 feet above the ground,  
4 of the current State Champion Tree of that species as designated by the Department.

5 (e) (1) As part of the development of a forest conservation program, the  
6 State or local government shall develop provisions for:

7 (i) Preservation of areas described in subsections (c) and (d)(1)  
8 and (3) of this section;

9 (ii) Retention as forest of all land forested, afforested, or  
10 reforested under this subtitle; and

11 (iii) Limitation of uses of forest to those that are not inconsistent  
12 with forest conservation, such as recreational activities and forest management under  
13 subsection (f) of this section.

14 (2) The provisions required in paragraph (1) of this subsection may  
15 include protective agreements for areas of forest conservation, including conservation  
16 easements, deed restrictions, and covenants.

17 (f) [Except for land that is preserved under subsection (e) of this section, an]  
18 **AN** owner may place land that is forested, afforested, or reforested under this subtitle  
19 in the forest conservation and management program under § 8–211 et seq. of the Tax –  
20 Property Article or in a forest management plan prepared by a licensed forester and  
21 approved by the local authority or the State. Reforestation shall be required when the  
22 final regeneration harvest is complete or if determined to be necessary due to the lack  
23 of adequate natural regeneration.

24 5–1610.

25 (a) In this section, “Fund” means the Forest Conservation Fund.

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

27 (c) Except as provided in subsection (h) of this section, if any person subject  
28 to this subtitle demonstrates to the satisfaction of the appropriate State or local  
29 authority that the requirements for reforestation or afforestation on–site or off–site  
30 cannot be reasonably accomplished, the person shall contribute money [at a rate of  
31 10 cents per square foot of the area of required planting] to the Fund:

32 (1) **UNTIL SEPTEMBER 30, 2014, AT A RATE OF 30 CENTS PER**  
33 **SQUARE FOOT OF THE AREA OF REQUIRED PLANTING;**

1           **(2) AFTER SEPTEMBER 30, 2014, AT A RATE ADJUSTED FOR**  
2 **INFLATION AS DETERMINED BY THE DEPARTMENT ANNUALLY BY REGULATION.**

3           (d) Money collected by the State or a local authority under § 5–1608(c) or §  
4 5–1612 of this subtitle for noncompliance with this subtitle or regulations adopted  
5 under this subtitle or for noncompliance with a forest conservation plan or the  
6 associated 2–year management agreement shall be deposited in the Fund.

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

10           (2) Money deposited in the Fund under subsection (c) of this section  
11 shall remain in the Fund for a period of 2 years or 3 growing seasons, and at the end of  
12 that time period, any portion that has not been used to meet the afforestation or  
13 reforestation requirements shall be returned to the person who provided the money to  
14 be used for documented tree planting in the same county or watershed beyond that  
15 required by this subtitle or other applicable statutes.

16           (f) (1) (i) Money deposited in the Fund under subsection (c) of this  
17 section may only be spent on reforestation and afforestation, including site  
18 identification, acquisition, and preparation, **MAINTENANCE OF EXISTING FORESTS,**  
19 **AND ACHIEVING URBAN CANOPY GOALS,** and may not revert to the General Fund of  
20 the State.

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

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

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

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

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

3 (h) (1) In lieu of a State Forest Conservation Fund, any local authority  
4 with an approved forest conservation program may establish a forest conservation  
5 fund, to be administered by the local authority, to allow a payment by any person who  
6 has demonstrated to the satisfaction of the local authority that the requirements for  
7 reforestation and afforestation on-site and off-site cannot be reasonably  
8 accomplished.

9 (2) The rate shall be [10 cents per square foot of the area required to  
10 be replanted] **THE SAME AS THE RATE ESTABLISHED FOR THE STATE FOREST  
11 CONSERVATION FUND UNDER SUBSECTION (C) OF THIS SECTION.**

12 (i) Money deposited in the local forest conservation fund under subsection  
13 (h) of this section shall remain in the fund for a period of 2 years or 3 growing seasons.  
14 At the end of that time period, any portion that has not been used to meet the  
15 afforestation or reforestation requirements shall be returned to the person who  
16 provided the money to be used for documented tree planting in the same county or  
17 watershed beyond that required by this subtitle or other applicable statutes.

18 (j) (1) Money deposited in the local forest conservation fund under  
19 subsection (h) of this section may only be spent on reforestation and afforestation,  
20 including the costs directly related to site identification, acquisition, prepurchase, and  
21 preparation, **MAINTENANCE OF EXISTING FORESTS, AND ACHIEVING URBAN  
22 CANOPY GOALS**, and may not revert to any other local general fund.

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

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

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

38 (k) Money collected by the local authority under § 5-1608(c) of this subtitle  
39 for noncompliance with this subtitle or regulations or ordinances adopted under this

1 subtitle for noncompliance with a forest conservation plan or the associated 2-year  
2 management agreement shall be deposited in the local fund. The rate shall be 30 cents  
3 per square foot of the area found to be in noncompliance with the required forest  
4 conservation.

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

8 5-1611.

9 (a) In the preparation of the State or local forest conservation programs, the  
10 State and local authorities shall provide for the granting of variances to the  
11 requirements of this subtitle, where owing to special features of a site or other  
12 circumstances, implementation of this subtitle would result in unwarranted hardship  
13 to an applicant.

14 (b) Variance procedures adopted under this section shall:

15 (1) Be designed in a manner consistent with the spirit and intent of  
16 this subtitle; and

17 (2) Assure that the granting of a variance will not adversely affect  
18 water quality.

19 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the  
20 General Assembly that:

21 (a) This Act be the first step in a continuing effort to develop and implement  
22 a no net loss of forest policy in the State;

23 (b) The State achieve this goal without reducing the acreage of prime  
24 agricultural land in the State; and

25 (c) The Department of Natural Resources continue to promote and  
26 implement any additional measures necessary to achieve a no net loss of forest policy.

27 SECTION 3. AND BE IT FURTHER ENACTED, That it is further the intent of  
28 the General Assembly that the Public Service Commission allow a public utility  
29 company to recover the actual costs incurred in complying with the Forest  
30 Conservation Act.

31 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
32 October 1, 2009.