

HOUSE BILL 1291

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9lr3024
CF SB 666

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

Introduced and read first time: February 13, 2009

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: April 7, 2009

CHAPTER _____

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~~ requiring the Department of Natural Resources to
25 cooperate with certain groups to develop a certain definition and policy;
26 requiring the Department to submit a certain report on or before a certain date;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 making certain stylistic changes; making a technical correction; and generally
 2 relating to the Forest Conservation Act and the development and
 3 implementation of a no net loss of forest policy.

4 BY adding to
 5 Article – Natural Resources
 6 Section 5–104
 7 Annotated Code of Maryland
 8 (2005 Replacement Volume and 2008 Supplement)

9 BY repealing and reenacting, with amendments,
 10 Article – Natural Resources
 11 Section 5–1602, 5–1603(c)(3), ~~(f), and (g), 5–1604(a),~~ 5–1607(b)(2), (c), and (f),
 12 and 5–1610
 13 Annotated Code of Maryland
 14 (2005 Replacement Volume and 2008 Supplement)

15 BY repealing and reenacting, without amendments,
 16 Article – Natural Resources
 17 Section ~~5–1603(f) and (g), 5–1604(a),~~ 5–1607(e), and 5–1611
 18 Annotated Code of Maryland
 19 (2005 Replacement Volume and 2008 Supplement)

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

22 **Article – Natural Resources**

23 **5–104.**

24 ~~ON OR BEFORE DECEMBER 1, 2011 AND EACH YEAR THEREAFTER, THE~~
 25 ~~DEPARTMENT SHALL REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE~~
 26 ~~WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, ON THE PROGRESS OF~~
 27 ~~THE DEPARTMENT IN DEVELOPING AND IMPLEMENTING A POLICY OF NO NET~~
 28 ~~LOSS OF FOREST IN THE STATE.~~

29 **(A) THE DEPARTMENT SHALL COOPERATE WITH FORESTRY-RELATED**
 30 **STAKEHOLDER GROUPS TO:**

31 **(1) DETERMINE THE MEANING OF NO NET LOSS OF FOREST FOR**
 32 **THE PURPOSES OF ANY STATE POLICY; AND**

33 **(2) DEVELOP PROPOSALS FOR THE CREATION OF A POLICY OF NO**
 34 **NET LOSS OF FOREST IN THE STATE.**

1 **(B) ON OR BEFORE DECEMBER 1, 2011, THE DEPARTMENT, IN**
2 **CONSULTATION WITH THE FORESTRY-RELATED STAKEHOLDER GROUPS, SHALL**
3 **REPORT TO THE SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS**
4 **COMMITTEE AND THE HOUSE ENVIRONMENTAL MATTERS COMMITTEE, IN**
5 **ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, ON**
6 **PROPOSALS FOR THE DEVELOPMENT OF STATUTORY, BUDGETARY, AND**
7 **REGULATORY POLICIES TO ACHIEVE NO NET LOSS OF FOREST IN THE STATE.**

8 5-1602.

9 (a) Except as provided in subsection (b) of this section, this subtitle shall
10 apply to any public or private subdivision plan or application for a grading or sediment
11 control permit by any person, including a unit of State or local government on areas
12 ~~40,000~~ **20,000** square feet or greater.

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

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

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

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

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

21 (ii) That were completed on or after July 1, 1991 on property
22 that is not the subject of an application for a grading permit for development within
23 5 years after the logging or harvesting operation. However, after this 5-year period,
24 the property shall be subject to this subtitle;

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

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

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

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

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

2 (7) Any activity conducted on a single lot of any size or a linear project
3 provided that:

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

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

9 ~~[(8)] (6)~~ Any strip or deep mining of coal regulated under Title 15,
10 Subtitle 5 or 6 of the Environment Article and any noncoal surface mining regulated
11 under Title 15, Subtitle 8 of the Environment Article;

12 ~~[(9)] (7)~~ Any activity required for the purpose of constructing a
13 dwelling house intended for the use of the owner, or a child [or grandchild] of the
14 owner, if the activity does not result in the cutting, clearing, or grading of more than
15 [40,000] **20,000** square feet of forest;

16 ~~[(10)] (8)~~ A county that has and maintains 200,000 acres or more of its
17 land area in forest cover; and

18 ~~[(11)] (9)~~ The cutting or clearing of trees to comply with the
19 requirements of 14 C.F.R. § 77.25 relating to objects affecting navigable airspace,
20 provided that the Federal Aviation Administration has determined that the trees are a
21 hazard to aviation.

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

27 5-1603.

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

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

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

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

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

13 (g)~~¶~~ A local authority or the Department in its administration of a State forest
14 conservation program in jurisdictions which do not have an approved local program in
15 effect may establish reasonable and appropriate procedures for the recovery of all costs
16 incurred in the development, implementation, administration, and enforcement of the
17 local forest conservation program or the State forest conservation program for
18 jurisdictions without an approved forest conservation program.

19 5-1604.

20 (a) Except as provided in subsection (b)(2) and (3) of this section, after
21 December 31, 1992, or after the date on which a local program has been adopted under
22 § 5-1603 of this subtitle, whichever occurs first, a person making application for
23 subdivision or grading or sediment control permits on areas ~~¶~~greater than 40,000]
24 ~~20,000~~ square feet ~~OR GREATER~~ shall submit a forest stand delineation for the entire
25 site prepared by a licensed forester, licensed landscape architect, or other qualified
26 professionals that may be approved by the State or a local authority in the manner
27 required by the approved program.

28 5-1607.

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

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

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

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

8 (c) **(1)** The following trees, shrubs, plants, and specific areas shall be
 9 considered priority for retention and protection, and they shall be left in an
 10 undisturbed condition unless the applicant has demonstrated, to the satisfaction of the
 11 State or local authority, that ~~reasonable efforts have been made to protect them and~~
 12 ~~the plan cannot reasonably be altered~~ **THE APPLICANT QUALIFIES FOR A**
 13 **VARIANCE UNDER § 5-1611 OF THIS SUBTITLE:**

14 ~~(1)~~ **(I)** Trees, shrubs, and plants located in sensitive areas
 15 including 100-year floodplains, intermittent and perennial streams and their buffers,
 16 coastal bays and their buffers, steep slopes, and critical habitats; **AND**

17 ~~(2)~~ **(II)** Contiguous forest that connects the largest undeveloped or
 18 most vegetated tracts of land within and adjacent to the ~~site~~; **SITE.**

19 **(2) THE FOLLOWING TREES, SHRUBS, PLANTS, AND SPECIFIC**
 20 **AREAS SHALL BE CONSIDERED PRIORITY FOR RETENTION AND PROTECTION,**
 21 **AND THEY SHALL BE LEFT IN AN UNDISTURBED CONDITION UNLESS THE**
 22 **APPLICANT HAS DEMONSTRATED, TO THE SATISFACTION OF THE STATE OR**
 23 **LOCAL AUTHORITY, THAT THE APPLICANT QUALIFIES FOR A VARIANCE UNDER §**
 24 **5-1611 OF THIS SUBTITLE:**

25 ~~(3)~~ **(I)** Trees, shrubs, or plants identified on the list of rare,
 26 threatened, and endangered species of the U.S. Fish and Wildlife Service or the
 27 Department;

28 ~~(4)~~ **(II)** Trees that are part of a historic site or associated with a
 29 historic structure or designated by the Department or local authority as a national,
 30 State, or local Champion Tree; and

31 ~~(5)~~ **(III)** Trees having a diameter measured at 4.5 feet above the
 32 ground of:

33 ~~(i)~~ **1.** 30 inches; or

34 ~~(ii)~~ **2.** 75% of the diameter, measured at 4.5 feet above the
 35 ground, of the current State Champion Tree of that species as designated by the
 36 Department.

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

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

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

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

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

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

20 5–1610.

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

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

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

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

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

32 (d) Money collected by the State or a local authority under § 5–1608(c) or §
33 5–1612 of this subtitle for noncompliance with this subtitle or regulations adopted

1 under this subtitle or for noncompliance with a forest conservation plan or the
2 associated 2-year management agreement shall be deposited in the Fund.

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

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

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

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

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

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

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

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

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

1 reforestation and afforestation on-site and off-site cannot be reasonably
2 accomplished.

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

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

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

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

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

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

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

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

4 5-1611.

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

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

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

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

15 SECTION 2. ~~AND BE IT FURTHER ENACTED, That it is the intent of the~~
16 ~~General Assembly that:~~

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

19 ~~(b) The State achieve this goal without reducing the acreage of prime~~
20 ~~agricultural land in the State; and~~

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

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

27 ~~SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect~~
28 ~~October 1, 2009.~~