

**Department of Legislative Services**  
 Maryland General Assembly  
 2019 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 272 (Delegate Lafferty, *et al.*)  
 Environment and Transportation

**Natural Resources - State and Local Forest Conservation Funds**

This bill makes specified changes relating to State and local forest conservation funds under the Forest Conservation Act (FCA), requiring (1) a demonstration of the unavailability of appropriate forest mitigation bank credits before a payment is made into the funds; (2) specified mitigation plans and detailed accounting procedures for local forest conservation funds; (3) prior identification of projects to be funded by local forest conservation funds and assurance of full mitigation by those projects; and (4) inclusion, in an existing annual report, of acreage information relating to fees collected by the funds. The bill applies only prospectively.

**Fiscal Summary**

**State Effect:** General fund expenditures increase by \$64,100 in FY 2020, with ongoing costs in future years. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	64,100	78,900	81,500	84,300	87,200
Net Effect	(\$64,100)	(\$78,900)	(\$81,500)	(\$84,300)	(\$87,200)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** Local government expenditures increase for additional personnel in some jurisdictions. Local forest conservation fund revenues and expenditures may also be affected. **This bill imposes a mandate on a unit of local government.**

**Small Business Effect:** Minimal.

## Analysis

### **Bill Summary:**

#### *Demonstration of Unavailability of Forest Mitigation Bank Credits*

The bill requires a person that is subject to FCA to demonstrate that appropriate credits generated by a forest mitigation bank are not available before the person may pay money to a State or local forest conservation fund to meet any afforestation or reforestation requirements.

#### *Local Forest Conservation Fund Mitigation Plans and Accounting Procedures*

The bill also requires a local authority that has an established local forest conservation fund to provide to the Department of Natural Resources (DNR) (1) a plan for identifying appropriate and potentially available areas for mitigation projects and (2) detailed accounting procedures for accurately tracking money received into and expended out of the local forest conservation fund. Local forest conservation fund mitigation plans and accounting procedures must be made available to the public.

#### *Identification of Projects and Assurance of Full Mitigation*

A local authority, consistent with statutory afforestation and reforestation requirements, (1) may not collect money for deposit into its local forest conservation fund unless the local authority has identified afforestation, reforestation, or conservation projects sufficient to provide the full mitigation acreage required for the underlying development project and (2) must ensure that the acreage for which money is collected and paid into its forest conservation fund is fully mitigated in accordance with afforestation, reforestation, and conservation priorities and techniques authorized under FCA.

#### *Inclusion of Acreage Information in Annual Report*

The bill also requires an annual report submitted by DNR to specified legislative committees, compiled from local authorities' reports to DNR, to include the number of acres for which reforestation and afforestation fees were collected, and the number of acres reforested, afforested, or conserved using the fees.

## **Current Law:**

### *Forest Conservation Act, In General*

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.

### *Afforestation Requirements*

Under FCA, if the existing forested area of a site is below a specified percentage of the net tract area, it must be afforested (establishing forested area where there is none) up to the specified percentage of the net tract area. For agricultural and resource areas and medium density residential areas, the percentage is 20%. For institutional development areas, high density residential areas, mixed use and planned unit development areas, and commercial and industrial use areas, the percentage is 15%. Local forest conservation programs adopted under FCA may include afforestation requirements, as well as conservation thresholds and reforestation requirements (described below), that are more stringent than those under FCA.

### *Conservation Thresholds and Reforestation Requirements*

FCA establishes requirements for reforestation (replacement of cleared forest land) which are determined based on a conservation threshold, which is a percentage of the net tract area of a site. If the portion of the net tract area which is forested is below the percentage, or if clearing causes it to be below the percentage, any clearing of forested area below the percentage must be replaced at a ratio of 2:1. For clearing above the threshold percentage, cleared forest must be replaced at a ratio of ¼:1, with the exception that each acre of forest retained above the applicable forest conservation threshold is credited against the number of acres required to be forested pursuant to the ¼:1 reforestation ratio. The conservation threshold varies by land use category:

- agricultural and resource areas – 50% of net tract area;
- medium density residential areas – 25% of net tract area;
- institutional development areas – 20% of net tract area;
- high density residential areas – 20% of net tract area;
- mixed use and planned unit development areas – 15% of net tract area; and
- commercial and industrial use areas – 15% of net tract area.

### *Fees-in-lieu*

Payment of fees-in-lieu, to the State Forest Conservation Fund, are made at rates adjusted for inflation as determined by DNR annually by regulation. The rate for a project outside a priority funding area must be 20% higher than the rate for a project inside a priority funding area. The current rates identified in DNR regulations are \$0.305 per square foot for a project inside a priority funding area and \$0.366 per square foot for a project outside a priority funding area. DNR must use the funding for reforestation and afforestation (including site identification, acquisition, and preparation), maintenance of existing forests, and achieving urban canopy goals, and the funding may not revert to the general fund.

Fee-in-lieu rates for local forest conservation funds must be at least the same as the rates for the State Forest Conservation Fund. Fees-in-lieu deposited in a local forest conservation fund may only be spent on reforestation and afforestation (including the costs directly related to site identification, acquisition, prepurchase, and preparation), maintenance of existing forests, and achieving urban canopy goals, and may not revert to any other local general fund.

### *Forest Mitigation Banks*

DNR is required to develop standards and adopt regulations for the creation and use of forest mitigation banks, including criteria for tracking, crediting, maintaining, bonding, and

reporting mitigation bank activities. In addition, a local jurisdiction may develop procedures for establishing forest mitigation banks as part of its local forest conservation program. Additional specified requirements apply to forest mitigation banks.

A person that is subject to FCA may meet afforestation or reforestation requirements through the use of a forest mitigation bank designated in advance by the State or local forest conservation program generally if on-site alternatives for afforestation or reforestation have been exhausted or off-site afforestation or reforestation would have greater environmental benefits than on-site planting.

Funds spent from the State and local forest conservation funds may be spent on the purchase of credits in, or the establishment or maintenance of, a forest mitigation bank if reforestation or afforestation cannot be reasonably accomplished in the county or watershed in which the associated project is located.

### *Annual Report*

By September 30 each year, DNR must submit to the Senate Education, Health, and Environmental Affairs Committee and the House Environmental Matters Committee (now referred to as the House Environment and Transportation Committee) a statewide report, compiled from local forest conservation programs' reports to the department, on, among other things, (1) the number, location, and type of projects subject to FCA; (2) the amount and location of acres cleared, conserved, and planted, including any areas which utilize forest mitigation bank credits or areas located in the 100-year floodplain, in connection with a development project; (3) the amount of reforestation and afforestation fees and noncompliance penalties collected and expended; and (4) the size, location, and protection of any local forest mitigation banks which are created under a local or State program.

**Background:** 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 \$64,061 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date. This estimate reflects the cost of hiring an auditor to (1) review the detailed accounting procedures provided to DNR by local forest conservation programs and (2) monitor the programs' compliance with those procedures and other provisions of the bill. The Maryland Forest Service's staff does not include an auditor, and other auditing staff within DNR cannot handle that additional work. The estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position(s)	1
Salaries and Fringe Benefits	\$58,702
Operating Expenses	<u>5,359</u>
<b>Total FY 2020 State Expenditures</b>	<b>\$64,061</b>

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

**Local Fiscal Effect:**

*Personnel*

Local government expenditures are expected to increase in some jurisdictions to comply with the bill’s requirements, including the development of mitigation plans and accounting procedures, and assuring that full mitigation of forest clearing is accomplished with any money collected for deposit in local forest conservation funds. Varying circumstances exist in different jurisdictions with respect to staffing of the local forest conservation programs, level of activity under FCA, and available mitigation options, and, as a result, some jurisdictions may be better able to handle the bill’s requirements with existing resources than others.

Of a small number of counties contacted, for example, (1) Anne Arundel County indicates that the bill’s requirements can be absorbed with existing resources, (2) the Maryland-National Capital Park and Planning Commission indicates that current staffing is adequate to handle the bill’s requirements on the Montgomery County side of the commission, while one new position is required on the Prince George’s County side of the commission (at a cost of \$112,171 in fiscal 2020 and similar costs in future years); and (3) Baltimore County indicates an additional position is needed (at a cost of \$63,401 in fiscal 2020 and similar costs in future years).

*Local Forest Conservation Fund Revenues and Expenditures*

The bill effectively limits the extent to which money collected for deposit into a local forest conservation fund can remain in the fund for any extended amount of time without subsequent use for full mitigation. This may result in reduced fund revenues (if a local government adopts an approach that limits the extent to which it collects fees-in-lieu from persons subject to FCA) and/or increased fund expenditures due to a local forest conservation program making greater and/or more timely use of the funds collected, pursuant to the bill’s requirements.

DNR's most recent annual report on FCA (October 2018) shows counties collecting \$1.7 million in fees-in-lieu and spending \$2.1 million, and municipalities collecting \$454,000 and spending \$163,000, in fiscal 2018.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 234 (Senator Young, *et al.*) - Education, Health, and Environmental Affairs.

**Information Source(s):** Department of Natural Resources; Anne Arundel, Baltimore, and Charles counties; Maryland-National Capital Park and Planning Commission; Department of Legislative Services

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