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FISCAL AND POLICY NOTE
First Reader

Senate Bill 610 (Senator Young, *et al.*)
Education, Health, and Environmental Affairs

Natural Resources - Forest Conservation Act - Standards and Requirements

This bill modifies the Forest Conservation Act (FCA) by (1) redefining what forests areas are priorities for retention and protection; (2) modifying the standards for approval of clearing of priority retention areas; (3) increasing the reforestation requirement for approved clearing of priority retention areas; (4) modifying the timing of the review of a forest conservation plan; (5) authorizing local governments to enter into agreements for tree planting; and (6) requiring the Department of Natural Resources (DNR) to publish and periodically update an FCA technical manual.

Fiscal Summary

State Effect: State expenditures (multiple fund types) may increase, potentially significantly, to comply with the bill in relation to State construction projects. General fund expenditures increase by \$132,500 in FY 2019 and by \$60,000 annually thereafter for contractual services to implement the bill. Special fund fee-in-lieu payment revenues and expenditures may be affected.

Local Effect: Local government expenditures may increase to comply with the bill in relation to local government construction projects and for additional local forest conservation program personnel. Local fee-in-lieu payment revenues and expenditures may be affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Priority Retention Areas Redefined

The bill redefines what areas are considered priorities for retention and protection (“priority retention areas”) under FCA. A “priority retention area” is broadly defined under the bill as an area that contains high-quality forests and trees. It includes certain defined areas that are included as priority for retention and protection under existing law, but also modifies and adds others.

One existing type of priority retention area – contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site – is redefined under the bill to be contiguous forest that is at least (1) 5 acres in a priority funding area that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site; (2) 10 acres that is in a local watershed that is less than 40% forested; or (3) 20 acres.

The bill adds, as priority retention areas (1) an area identified in the Maryland’s Environmental Resources and Land Information Network (MERLIN) or iMap databases as a targeted ecological area or forest interior dwelling species habitat, unless a forest stand delineation shows that the area is not forested or is degraded by widespread disease, invasive species, or insect infestation and (2) forests in a drinking water reservoir watershed or a wellhead protection area.

Modified Standards for Approval of Clearing of Priority Retention Areas

The bill requires that priority retention areas be retained, protected, and left in an undisturbed condition unless the applicant has provided written justification that is affirmatively approved with written findings by the State or local authority (*i.e.*, DNR or the applicable local forest conservation program).

A State or local authority may not approve a written justification based (1) solely on cost; (2) on a preference to maintain a preferred site design; (3) on a desire to obtain maximum zoning density or intensity; or (4) on a desire to conduct mass grading or clearing of the development site. Priority retention areas also may not be cleared to accommodate the construction of temporary (1) sediment and erosion control devices or (2) stormwater management devices.

The written justification for the failure to retain or protect a priority retention area must include statements (1) explaining the reasons that the development cannot be altered to

preserve the priority retention area; (2) of the alternatives that were considered, including applications for local variances that would facilitate forest conservation but not affect public safety, and that no other alternatives exist; and (3) of the forest conservation best practices or techniques that were considered and rejected and the reasons for any rejections.

These standards replace requirements that, for certain priority retention areas, the applicant demonstrate that reasonable efforts have been made to protect them and the plan cannot reasonably be altered and, for other priority areas, the applicant demonstrate that the applicant qualifies for a variance (granted if a requirement would result in unwarranted hardship to an applicant).

Increased Reforestation Ratio for Clearing of Priority Retention Areas

For a priority retention area, if it is approved to be cleared, the area of forest removed above the applicable forest conservation threshold must be reforested at a ratio of one acre planted for every one acre removed, instead of at a ratio of one-quarter acre planted for every one acre removed. An existing provision allowing forest retained above the applicable forest conservation threshold to be credited against the number of acres required to be reforested is not altered by the bill.

Timing of Forest Conservation Plan Review

The bill modifies an existing provision that requires review of a forest conservation plan to be concurrent with the review process of the State or local authority for the subdivision plan, or the grading or sediment control permit, whichever may be submitted first. The bill instead requires the review to be concurrent with review of the sketch or concept plans, site development plans, preliminary review plans, subdivision plans, or the grading or sediment control permits, whichever may be submitted first.

Agreements for Tree Planting

The bill authorizes a local authority to enter into a memorandum of understanding or another similar agreement with the Maryland Forestry Foundation, district forestry boards, or other State, local, or nonprofit organizations engaged in tree plantings on private forestland to (1) collaborate on replanting requirements or (2) provide grants for reforestation projects.

Forest Conservation Act Technical Manual

DNR must (1) publish an FCA technical manual to assist interested parties in implementing and complying with the Act and (2) review and update the technical manual at least every 10 years. DNR, in consultation with the Sustainable Forestry Council, must, by

December 1, 2018, update the FCA technical manual to reflect statutory and regulatory changes made since 1997, to incorporate current best practices for planting and mitigation efforts, and to ensure that priority retention areas are protected to the maximum extent when development occurs.

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 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, 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, or into a forest mitigation bank. 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.

Priorities for Retention and Protection

Under FCA, certain trees, shrubs, plants, and specific areas must be considered priority for retention and protection and be left in an undisturbed condition unless certain conditions are met. The following must be left undisturbed unless the applicant has demonstrated, to the satisfaction of the State or local authority that reasonable efforts have been made to protect them and the plan cannot reasonably be altered:

- trees, shrubs, and plants located in sensitive areas including 100-year floodplains, intermittent and perennial streams and their buffers, coastal bays and their buffers, steep slopes, and critical habitats; and

- contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site.

The following must be left undisturbed unless the applicant has demonstrated that the applicant qualifies for a variance (which is granted if a requirement would result in unwarranted hardship to an applicant):

- trees, shrubs, or plants identified on the list of rare, threatened, and endangered species of the U.S. Fish and Wildlife Service or DNR;
- trees that are part of a historic site or associated with a historic structure or designated by DNR or the local authority as a national, State, or local Champion Tree; and
- trees having a diameter, measured at 4.5 feet above the ground, of (1) 30 inches or (2) 75% of the diameter, measured at 4.5 feet above the ground, of the current State Champion Tree of that species as designated by DNR.

Conservation Thresholds and Reforestation Requirements

If forest is cleared, 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 1/4:1, 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 1/4:1 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.

Timing of Review of a Forest Conservation Plan

Review of a forest conservation plan must be concurrent with the review process of the State or local authority for the subdivision plan, or the grading or sediment control permit, whichever may be submitted first.

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.

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.

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 Fiscal Effect:

State Construction Projects

State expenditures (including bond, PAYGO, Transportation Trust Fund, and nonbudgeted expenditures) may increase, potentially significantly, to comply with FCA, as modified by the bill, for State construction projects. The bill's modification of what areas are considered priority retention areas and the bill's modification of the standards for approval of clearing of priority retention areas may limit the extent to which forest area can be cleared for a given State construction project, which could increase construction costs for an alternative design of the construction. In addition, the increase in reforestation requirements for any approved clearing of priority retention areas may increase costs to meet reforestation requirements for a State construction project.

DNR Updates to Geographic Information Systems Data and Technical Manual

General fund expenditures increase by \$132,500 in fiscal 2019, reflecting the cost of (1) contractual services to perform geographic information systems (GIS) work to update the MERLIN database so that it can serve as a basis for identifying targeted ecological areas and forest interior dwelling species habitat and (2) contractual services for assistance in updating and publishing the FCA technical manual. DNR indicates that relevant GIS information in the MERLIN database is currently made available only for informational

guidance and has not been updated in at least 10 years. It will need to be upgraded in order for it to be relied on to determine what areas are priority retention areas as a result of being targeted ecological areas or forest interior dwelling species habitat.

MERLIN database update	\$120,000
FCA technical manual update and publishing	<u>12,500</u>
Total FY 2019 DNR Expenditures	\$132,500

Future year expenditures reflect ongoing annual costs of \$60,000 for contractual services to maintain targeted ecological area and forest interior dwelling species habitat GIS data in the MERLIN database.

Fee-in-Lieu Revenues and Expenditures

DNR special fund revenues and expenditures from fee-in-lieu payments made to the State Forest Conservation Fund may be affected (in a corresponding manner, either both increasing or both decreasing), but it cannot be reliably estimated whether revenues and expenditures increase or decrease overall, or to what extent. Fee-in-lieu payments are an alternative way of meeting reforestation or afforestation requirements if the developer cannot reasonably accomplish the reforestation or afforestation. If the bill's modification of what areas are considered priority retention areas and the modification of the standards for approval of clearing of priority areas limit the extent to which forest is cleared for development, fee-in-lieu payments may decrease. However, larger fee-in-lieu payments are likely received from clearing of priority retention areas that is approved.

Local Fiscal Effect: Local governments are expected to be affected in a similar manner as the State, potentially incurring increased costs for local government construction projects and experiencing changes in fee-in-lieu revenues and associated expenditures.

Local forest conservation programs' workload may be affected by the bill's changes, but it is difficult to predict what the net effect of the bill's changes will be on the programs' workload of reviewing forest conservation plans and administering local forest conservation funds. Of a small number of local governments contacted, two expect an increased workload, one of which indicates that an additional position is required, and others indicated that there is no material impact.

Small Business Effect: Small businesses (*e.g.*, developers/builders and potentially others affected by the cost and/or rate of development) are expected to be meaningfully impacted by the bill to the extent that it limits the forest area in the State that can be cleared for development and/or increases costs to meet reforestation requirements for forest area that is cleared.

Additional Information

Prior Introductions: None.

Cross File: HB 766 (Delegate Healey, *et al.*) - Environment and Transportation.

Information Source(s): Department of Natural Resources; Maryland Department of Transportation; Department of General Services; Kent, Montgomery, Washington, and Worcester counties; cities of Salisbury and Westminster; Town of Leonardtown; NAIOP (Maryland Chapter); Maryland Building Industry Association; Department of Legislative Services

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Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510