

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 29

(Senator Pinsky)

Education, Health, and Environmental Affairs

Environment and Transportation

Natural Resources - Forest Conservation Act - Forest Conservation Thresholds
and Afforestation and Reforestation Requirements

This bill clarifies that a unit of local government with planning and zoning authority may adopt forest conservation thresholds and afforestation and reforestation requirements as part of its local forest conservation program that are more stringent than specified forest conservation thresholds and afforestation and reforestation requirements under the Forest Conservation Act (FCA).

The bill takes effect June 1, 2017.

Fiscal Summary

State Effect: The bill does not directly affect State finances.

Local Effect: To the extent the bill results in local governments adopting more stringent forest conservation thresholds and afforestation and reforestation requirements, local government fee-in-lieu revenues and expenditures and/or development project costs may increase.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Forest Conservation Act, In General

The Forest Service of the Department of Natural Resources (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.

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%.

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.

Background: The Attorney General’s Office issued an opinion in October 2015 which concluded that FCA allows local jurisdictions to adopt forest conservation measures that are more stringent than FCA’s provisions, including the conservation thresholds and afforestation and reforestation requirements. That conclusion was based on the plain language of the Act’s provisions that require each local government with planning and zoning authority to develop and adopt a local forest conservation program that meets, or is more stringent than, the requirement and standards of FCA. The opinion, however, references indications from DNR at the time that the department did not interpret FCA to allow for the conservation thresholds and reforestation ratios under a local forest conservation program to deviate from the thresholds and ratios in the Act.

DNR indicates that, currently, the conservation thresholds and afforestation and reforestation requirements in all local forest conservation programs are the same as those under FCA.

Local Fiscal Effect: The bill is only clarifying that local governments have the *authority* to adopt more stringent forest conservation thresholds and afforestation and reforestation requirements, but to the extent local governments do so, local government revenues and expenditures may be affected by:

- Increased fee-in-lieu revenues and expenditures – Under current law, local governments with an approved forest conservation program may establish a local forest conservation fund to receive payments by persons who have demonstrated that the requirements for reforestation or afforestation on site and off site for a project cannot be reasonably accomplished. The funding must then be used by the local government for reforestation and afforestation. In fiscal 2015, counties collected a total of \$1.7 million and spent \$1.6 million. Municipalities collected \$1.0 million and spent \$71,000. More stringent afforestation or reforestation requirements adopted by a local government could result in a greater amount of fee-in-lieu revenues and expenditures.
- Increased costs for local government development projects – Both public and private development projects are subject to forest conservation requirements and adopting more stringent requirements could increase costs for local government development projects subject to the local program.

Small Business Effect: To the extent the bill results in local governments adopting more stringent forest conservation thresholds and afforestation and reforestation requirements, small businesses may be meaningfully affected. Small businesses involved in or otherwise benefitting from development may be negatively impacted, while small businesses that provide services for compliance with forest conservation requirements may benefit.

Additional Information

Prior Introductions: None.

Cross File: HB 617 (Delegate Healey, *et al.*) – Environment and Transportation.

Information Source(s): Department of Natural Resources; *100 Op. Att’y Gen. 120*; Anne Arundel, Dorchester, Garrett, Howard, and Montgomery counties; Maryland Association of Counties; City of College Park; Maryland Municipal League; NAIOP (Maryland Chapter); Department of Legislative Services

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