



# Montgomery County

## Office of Intergovernmental Relations

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**SB 526**

**DATE: March 2, 2023**

**SPONSOR: Senator Elfreth, et al.**

**ASSIGNED TO: Education, Energy, and the Environment**

**CONTACT PERSON: Steven Shofar (steven.shofar@montgomerycountymd.gov)**

**POSITION: Support with Amendments**

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### **Natural Resources – Forest Preservation and Retention**

The intent of this bill is to increase forest and canopy cover across Maryland beyond a no-net-loss threshold. This is a very timely and appropriate goal that aligns with many of Montgomery County's long-term goals for environmental protection, climate change, carbon emissions, and livable communities. The bill recognizes that retention of forests and canopy is needed in addition to reforestation and other plantings. It aims to increase forest retention and planting requirements to maintain, at a minimum, no net loss and move towards increasing forests and canopy across the State over time.

Given the complexity of the Forest Conservation Act (FCA), the Montgomery County Department of Environmental Protection (DEP) recommends a number of clarifying and technical changes to facilitate smooth implementation and avoid unintended circumstances. I have attached specific comments developed by DEP that identify issues that could be addressed in technical and clarifying amendments.

Montgomery County respectfully requests that the Education, Energy, and Environment Committee give Senate Bill 526 a favorable report with amendments that address the issues below.

### **Comments regarding Senate Bill 526**

**Developed by the Montgomery County Department of Environmental Protection (DEP)  
3/2/2023**

1. Section 5-101(e)(1) of the Natural Resources Article, changing the definition of "forest". DEP understands that this change is to parts of the Natural Resources Article that do not impact the definition of "forest" under the Forest Conservation Act (FCA) or

local programs authorized under the FCA. However, there needs to be some assurance that this definition will not be used to determine forest or canopy coverage for the baseline or subsequent analysis to determine compliance with FCA.

2. Sections 5-1606.1(b) and 5-101(e)(1) of the Natural Resources Article, approving local programs. The methods that will be used to determine baseline forest cover and changes in forest cover must be clarified and include only what is required to be reported in each jurisdiction's annual report. The annual report only includes those properties subjected to the FCA. If all forest cover is included in the baseline and subsequent analysis, then it will most likely decline due to forest lost to activities not regulated by the FCA.

Additionally, flexibility for local programs to adopt provisions specific to their jurisdiction's conditions that would allow them to meet State requirements is essential and should be maintained. For example, pending local legislation in Montgomery County proposes a tiered approach with four levels of ratios paired with increases in the thresholds that should provide incentives to retain forests, as well as increases in forest cover on lands subject to the local program.

3. Sections 5-1607(b)(3)(iii) and 5-101(e)(1) of the Natural Resources Article, enhancement of existing forest and supplemental planting. This option for mitigation is great. It has always been in the law and should be used more to increase the health and vigor of forests under stress from the over-abundance of deer, non-native invasive species, climate change, and use by people. The local programs should continue to have flexibility on establishing parameters based on local conditions.
4. Sections 5-1607(c)(2) and 5-101(e)(1) of the Natural Resources Article, variance review of certain trees and conditions. Broadening the trees, forests, buffers, and other conditions subject to variances before disturbance can occur without improving the variance review procedures and strengthening mechanisms to implement protections will result in more application requirements and slower reviews without much to show for the effort. Another option for discouraging disturbance to these priority trees and forests would be to increase mitigation ratios for these specific conditions. For example, disturbance to any parcel with historic significance or rare, threatened, and endangered species could be subject to a 2:1 or 3:1 ratio. This is less subjective and onerous than current variance procedures.
5. Section 5-1602(b)(5) of the Natural Resources Article, removing exemption for clearing or cutting forests on land outside of rights-of-way for electric generating stations. These bills would remove the exemption from certain parts of the FCA, requiring development activity for electric generating stations to fully comply with the FCA. This aims to enhance incentives to find alternative sources of electricity and is consistent with Montgomery County's Climate Action Plan.
6. Section 8-211 of the Tax Property Article, tax incentive for retaining forested land. Given fragmentation and parcelization (i.e., subdivision of lots), this change is helpful.