



**SB 651  
Natural Resources - Forest Mitigation Banks and the Forest Conservation Fund -  
Alterations**

**Position: SUPPORT WITH AMENDMENT**

**Date: March 1, 2022**

**Contact: Robin Jessica Clark, Chesapeake Bay Foundation**

Our organizations request a FAVORABLE report WITH AMENDMENT on SB 651 from the Education, Health and Environmental Affairs committee. As originally drafted, SB 651 would allow a practice that results in greater forest loss during development without providing an effective conservation benefit. However, this practice could be permitted with enhanced mitigation.

**We must plant new forests to replace the functions of those that are lost.**

Maryland's forested landscape is shrinking. Forest loss leads to poor water quality, fragmentation and reduction of wildlife habitat, less carbon sequestration, dirty air, increased temperatures, localized flooding, and lower property values. Development is the single largest driver of forest loss in the state.

Maryland's Forest Conservation Act (FCA) was passed in 1991 to reduce forest loss from development. The FCA requires replanting of trees to offset a small fraction of losses on development sites. This planting requirement leads to a smaller loss of forest than if the law did not exist, but still adds up to significant net loss across the state.

If adopted as drafted, SB 651 would authorize forest mitigation banks to offer planting credit for placing a preservation easement on trees elsewhere that already exist, rather than planting new trees to offset forest clearing. This would allow development projects to remove up to 100% of the forest on a site with no replanting required at all.

**Full mitigation of forest lost during development can adequately balance planting and preservation strategies.**

Preservation of existing forest can be a valued part of forest conservation during development, but only where balanced with newly planted areas to help offset those that are lost. Full mitigation generates both the need and ability to deploy a diversified mitigation strategy where new plantings and conservation of high-value forest each play a role. To facilitate this, we recommend that SB 651 be amended to permit the use of preservation banking credits in projects that achieve equal or greater acreage of mitigation for each acre of forest removed.

**Forest preservation banking credits should not be allowed in other cases until the Forest Conservation study directed by the General Assembly is complete.**

This Committee has identified a number of key questions that need answers before expanding any authorization for forest mitigation banking within the FCA. In 2019, SB 729 was passed by the General Assembly to direct a technical study scoped with extensive stakeholder feedback. That analysis, which is not yet complete, is to report on:

*a review of forest mitigation banking in the State, including:*

- 1. capacity and location of active banks;*
- 2. regulation of citing siting and creation of new banks;*
- 3. geographic limitations on the use of mitigation banks;*
- 4. the relationship between fee-in-lieu rates under the Forest Conservation Act and the market for forest mitigation banks; and*
- 5. whether expanding the use of forest mitigation banks could provide water quality improvements and other beneficial results.*

The General Assembly affirmed the importance of this analysis in HB 991 of 2021, stating:

*It is the intent of the General Assembly to review the findings in the technical study... and, based on the findings, to consider any legislative or other changes necessary to improve the implementation and effectiveness of the Forest Conservation Act, including any changes to the forest mitigation banking program in the State.*

This information is critical to identifying the appropriate role of mitigation banks in maintaining forest cover across the state. Many of the stakeholders who engaged on forest conservation policy through SB 729 and HB 991 have based our expectations on this expressed intent, and we look forward to the study's completion. Maryland's forests would not be well served by SB 651's piecemeal approach to a comprehensive statewide update.

As drafted, SB 651 would codify a major mitigation policy without information this Committee identified as critical to updating mitigation standards within the FCA. And it would make these changes without setting any parameters or priorities for the development risk, location, or ecological value of existing forest offered for credit.

We respectfully request a **FAVORABLE** report **WITH AMENDMENT** from this Committee on SB 651.

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