

# SENATE BILL 610

M1

8lr1826  
CF HB 766

By: Senators Young, Benson, Conway, Currie, Feldman, Ferguson, Guzzone,  
Kagan, Kelley, King, Lee, Madaleno, Nathan-Pulliam, Pinsky, Ramirez,  
Robinson, and Zucker

Introduced and read first time: January 31, 2018

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 23, 2018

## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 ~~Natural Resources Forest Conservation Act Standards and Requirements~~  
3 Task Force on the Forest Conservation Act Offset Policy

4 FOR the purpose of ~~altering the reforestation ratio required for the certain clearing of trees~~  
5 ~~in a priority retention area; requiring for a development project that priority~~  
6 ~~retention areas be retained, protected, and left in an undisturbed condition unless~~  
7 ~~the permit applicant has provided certain written justification that is affirmatively~~  
8 ~~approved with written findings by the State or local approval authority; requiring a~~  
9 ~~written justification for failing to retain or protect a priority retention area to include~~  
10 ~~certain statements; prohibiting a State or local approval authority from approving a~~  
11 ~~written justification based on certain factors; prohibiting the clearing of priority~~  
12 ~~retention areas for certain purposes; altering the process for the concurrent review~~  
13 ~~of certain development plans and a forest conservation plan by a State or local~~  
14 ~~approval authority; authorizing certain local authorities to enter into certain~~  
15 ~~agreements with certain entities to facilitate replanting or reforestation projects~~  
16 ~~under certain circumstances; requiring the Department of Natural Resources to~~  
17 ~~publish a Forest Conservation Act technical manual for certain purposes and to~~  
18 ~~review and update the technical manual over a certain interval of time; requiring~~  
19 ~~the Department, in consultation with the Sustainable Forestry Council, to update~~  
20 ~~the technical manual for certain purposes on or before a certain date; stating the~~  
21 ~~purpose of the Forest Conservation Act; defining the term "priority retention area";~~  
22 ~~making certain conforming changes; making certain stylistic changes; and generally~~  
23 ~~relating to standards and requirements under the Forest Conservation Act~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



establishing the Task Force on the Forest Conservation Act Offset Policy; providing for the composition, chair, and staffing of the Task Force; prohibiting a member of the Task Force from receiving certain compensation, but authorizing the reimbursement of certain expenses; requiring the Task Force to review, study, and develop findings and recommendations regarding forest conservation in Maryland; authorizing the Task Force to consult with certain entities in carrying out its duties; requiring the Task Force to report its findings and recommendations to the Governor and General Assembly on or before a certain date; providing for the termination of this Act; and generally relating to the Task Force on the Forest Conservation Act Offset Policy.

~~BY repealing and reenacting, without amendments,  
Article — Natural Resources  
Section 5-1601(a), 5-1608(b), and 5-1610(c), (h), (j), and (k)  
Annotated Code of Maryland  
(2012 Replacement Volume and 2017 Supplement)~~

~~BY adding to  
Article — Natural Resources  
Section 5-1601(ff 1), 5-1601.1, and 5-1614  
Annotated Code of Maryland  
(2012 Replacement Volume and 2017 Supplement)~~

~~BY repealing and reenacting, with amendments,  
Article — Natural Resources  
Section 5-1606, 5-1608(a), and 5-1610(i)  
Annotated Code of Maryland  
(2012 Replacement Volume and 2017 Supplement)~~

~~BY repealing and reenacting, with amendments,  
Article — Natural Resources  
Section 5-1607(e)  
Annotated Code of Maryland  
(2012 Replacement Volume and 2017 Supplement)  
(As enacted by Chapter 298 of the Acts of the General Assembly of 2009)~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
That ~~the Laws of Maryland read as follows:~~

(a) There is a Task Force on the Forest Conservation Act Offset Policy.

(b) The Task Force consists of the following members:

(1) two members of the Senate of Maryland, appointed by the President of the Senate;

(2) two members of the House of Delegates, appointed by the Speaker of the House;

(3) the Secretary of Natural Resources, or the Secretary's designee;

(4) two municipal government representatives, designated by the Maryland Municipal League;

(5) ~~two~~ six county government representatives, designated by the Maryland Association of Counties; and

(6) the following ~~14~~ 18 representatives, appointed jointly by the President of the Senate and the Speaker of the House:

(i) four representatives from conservation organizations;

(ii) one representative from a land preservation organization;

(iii) one representative from a wildlife conservation organization;

(iv) one representative from the Sustainable Forestry Council;

(v) two representatives from the Maryland Forestry Association;

(vi) one representative from the nursery industry in the State;

~~(vi)~~ (vii) one representative from the public health sector;

~~(vii)~~ (viii) two representatives from the utility industry;

~~(viii)~~ (ix) ~~two~~ four representatives from the commercial and residential development industry; and

~~(ix)~~ (x) one faculty member from a State college or university urban forestry or planning program.

(c) The President of the Senate and the Speaker of the House shall designate jointly the chair or cochairs of the Task Force.

(d) The Department of Legislative Services shall provide staff for the Task Force.

(e) A member of the Task Force:

(1) may not receive compensation as a member of the Task Force; but

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(f) The Task Force shall:

(1) review and study the following issues:

(i) the amount and nature of historical and projected future changes in forested land due to development under the Forest Conservation Act, including changes due to activities exempt from the Act;

(ii) the amount and nature of forest clearing based on the type and location of development, such as differentiating low-density development from development that is associated with proximity to core public infrastructure and population centers;

(iii) the capacity of Priority Funding Areas to accommodate reforestation efforts, and alternatives for offsetting losses;

(iv) the status and effectiveness of fee-in-lieu programs in offsetting forest loss, considering the actual costs to local jurisdictions to undertake tree plantings; and

(v) mechanisms for ensuring timely reporting and maintenance of public records required annually under the Forest Conservation Act; and

(2) develop findings and recommendations for legislation to implement the findings and recommendations of the Task Force to Study a No Net Loss of Forest Policy's Final Report of 2009 and the Sustainable Forestry Council's Report on Policies to Achieve a No Net Loss of Forests in Maryland of 2011 related to the Forest Conservation Act, which may include:

(i) altering Forest Conservation Act mitigation ratios and allowable exemptions to fully offset all forest loss;

(ii) encouraging forest mitigation banking and other options to more efficiently replace forest lost to development;

(iii) enhancing protection for contiguous forest patches greater than 200 acres; and

(iv) adjusting fee-in-lieu programs as necessary to ensure all forest loss is offset or otherwise benefiting Maryland's forest goals.

(g) The Task Force may consult with the Chesapeake Bay Program, the U.S. Forest Service, and other government agencies or academic institutions to obtain information about data, models, and policies useful in carrying out the duties of the Task Force.

(h) On or before December 1, 2018, the Task Force shall report its findings and recommendations to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly.

~~Article Natural Resources~~

~~5-1601.~~

~~(a) In this subtitle the following words have the meanings indicated.~~

~~(FF-1) (1) "PRIORITY RETENTION AREA" MEANS AN AREA THAT CONTAINS HIGH QUALITY FORESTS AND TREES.~~

~~(2) "PRIORITY RETENTION AREA" INCLUDES:~~

~~(i) TREES, SHRUBS, AND PLANTS LOCATED IN SENSITIVE AREAS INCLUDING 100-YEAR FLOODPLAINS, INTERMITTENT AND PERENNIAL STREAMS AND THEIR 100-FOOT BUFFERS, COASTAL BAYS AND THEIR BUFFERS, STEEP SLOPES, AND CRITICAL HABITATS;~~

~~(ii) 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 10% FORESTED; OR~~

~~3. 20 ACRES;~~

~~(iii) AN AREA IDENTIFIED IN THE 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;~~

~~(iv) FORESTS IN A DRINKING WATER RESERVOIR WATERSHED OR A WELLHEAD PROTECTION AREA;~~

~~(v) TREES, SHRUBS, OR PLANTS IDENTIFIED ON THE LIST OF RARE, THREATENED, OR ENDANGERED SPECIES OF THE U.S. FISH AND WILDLIFE SERVICE OR THE DEPARTMENT;~~

~~(VI) TREES THAT ARE PART OF A HISTORIC SITE OR ASSOCIATED WITH A HISTORIC STRUCTURE OR DESIGNATED BY THE DEPARTMENT OR LOCAL AUTHORITY AS A NATIONAL, STATE, OR LOCAL CHAMPION TREE; AND~~

~~(VII) TREES HAVING A DIAMETER MEASURED AT 4.5 FEET ABOVE THE GROUND OF:~~

~~1. 30 INCHES; OR~~

~~2. 75% OF THE DIAMETER OF THE CURRENT STATE CHAMPION TREE OF THAT SPECIES AS DESIGNATED BY THE DEPARTMENT.~~

~~5-1601.1.~~

~~FOR THE BENEFIT OF THE CITIZENS OF MARYLAND AND IN RECOGNITION OF THE FINDINGS OF THE GENERAL ASSEMBLY UNDER § 5-102 OF THIS TITLE, IT IS THE PURPOSE OF THIS SUBTITLE TO MINIMIZE FOREST CLEARING DURING THE DEVELOPMENT PROCESS, ENSURE THE PROTECTION AND RETENTION OF THE MOST DESIRABLE FOREST STANDS, AND ESTABLISH AREAS WHERE NEW FORESTS MAY BE PLANTED TO OFFSET LOSSES FROM UNAVOIDABLE FOREST CLEARING.~~

~~5-1606.~~

~~(a) (1) For the following land use categories, tracts having less than 20% of the net tract area in forest cover shall be afforested up to 20% of the net tract area:~~

~~(i) Agriculture and resource areas; and~~

~~(ii) Medium density residential areas.~~

~~(2) For the following land use categories, tracts having less than 15% of the net tract area in forest cover shall be afforested up to 15% of the net tract area:~~

~~(i) Institutional development areas;~~

~~(ii) High density residential areas;~~

~~(iii) Mixed use and planned unit development areas; and~~

~~(iv) Commercial and industrial use areas.~~

~~(3) Afforestation requirements must conform to the conditions in §§ 5-1607 and 5-1610 of this subtitle, including payment into the Forest Conservation Fund, if afforestation on-site or off-site cannot be reasonably accomplished.~~

~~(4) (i) The afforestation requirements under this subsection shall be accomplished within 1 year or 2 growing seasons after the completion of the development project.~~

~~(ii) If afforestation cannot be reasonably accomplished on site or off site, the requirement to contribute money to a Forest Conservation Fund under § 5-1610 of this subtitle shall be met within 90 days after the completion of the development project.~~

~~(5) Linear projects that involve no change in land use may not be subject to afforestation requirements.~~

~~(b) (1) There is a forest conservation threshold established for all land use categories as provided in subsection (c) of this section.~~

~~(2) The forest conservation threshold means the percentage of the net tract area at which the reforestation requirement changes from a ratio of 1/4 acre planted for every 1 acre removed OR 1 ACRE PLANTED FOR EVERY 1 ACRE OF PRIORITY RETENTION AREA REMOVED to a ratio of 2 acres planted for every 1 acre removed.~~

~~(c) After every reasonable effort to minimize the cutting or clearing of trees and other woody plants is exhausted in the development of a subdivision plan and grading and sediment control activities and implementation of the forest conservation plan, the forest conservation plan shall provide for reforestation, or payment into the Forest Conservation Fund, according to the formula set forth in subsection (b) of this section and consistent with the following forest conservation thresholds for the applicable land use category:~~

~~(1) Agricultural and resource areas: 50% of net tract area;~~

~~(2) Medium density residential areas: 25% of net tract area;~~

~~(3) Institutional development areas: 20% of net tract area;~~

~~(4) High density residential areas: 20% of net tract area;~~

~~(5) Mixed use and planned unit development areas: 15% of net tract area;~~

~~and~~

~~(6) Commercial and industrial use areas: 15% of net tract area.~~

~~(d) (1) (I) Subject to [the provisions of] paragraph (2) of this subsection, for all existing forest cover NOT LOCATED IN A PRIORITY RETENTION AREA measured to the nearest 1/10 acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of 1/4 acre planted for every 1 acre removed.~~

~~(H) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, FOR ALL EXISTING PRIORITY RETENTION AREA MEASURED TO THE NEAREST 1/10 ACRE CLEARED ON THE NET TRACT AREA ABOVE THE APPLICABLE FOREST CONSERVATION THRESHOLD, THE AREA OF FOREST REMOVED SHALL BE REFORESTED AT A RATIO OF 1 ACRE PLANTED FOR EVERY 1 ACRE REMOVED.~~

~~(2) Each acre of forest retained on the net tract area above the applicable forest conservation threshold shall be credited against the total number of acres required to be reforested under paragraph (1) of this subsection.~~

~~(e) For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of 2 acres planted for every 1 acre removed.~~

~~(f) (1) The reforestation requirements under this section shall be accomplished within 1 year or 2 growing seasons after completion of the development project.~~

~~(2) If reforestation cannot be reasonably accomplished on-site or off-site, the requirement to contribute money to a Forest Conservation Fund under § 5-1610 of this subtitle shall be met within 90 days after completion of the development project.~~

~~(g) 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 the forest conservation thresholds and afforestation and reforestation requirements in this section.~~

~~§ 1607.~~

~~(e) (1) (i) [The following trees, shrubs, plants, and specific areas shall be considered priority for retention and protection, and they shall be left in an undisturbed condition 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:~~

~~(i) 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~~

~~(ii) Contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site.~~

~~(2) The following trees, shrubs, plants, and specific areas shall be considered priority for retention and protection, and they shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the State or local authority, that the applicant qualifies for a variance under § 5-1611 of this subtitle:~~



~~(i) Trees, shrubs, or plants identified on the list of rare, threatened, and endangered species of the U.S. Fish and Wildlife Service or the Department;~~

~~(ii) Trees that are part of a historic site or associated with a historic structure or designated by the Department or local authority as a national, State, or local Champion Tree; and~~

~~(iii) 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 the Department.] SUBJECT TO SUBPARAGRAPH (H) OF THIS PARAGRAPH, PRIORITY RETENTION AREAS SHALL 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.~~

~~(H) PRIORITY RETENTION AREAS MAY NOT BE CLEARED TO ACCOMMODATE THE CONSTRUCTION OF TEMPORARY:~~

~~1. SEDIMENT AND EROSION CONTROL DEVICES; OR~~

~~2. STORMWATER MANAGEMENT DEVICES.~~

~~(2) THE WRITTEN JUSTIFICATION FOR THE FAILURE TO RETAIN OR PROTECT A PRIORITY RETENTION AREA SHALL INCLUDE STATEMENTS:~~

~~(I) EXPLAINING THE REASONS THAT THE DEVELOPMENT CANNOT BE ALTERED TO PRESERVE THE PRIORITY RETENTION AREA;~~

~~(II) 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~~

~~(III) OF THE FOREST CONSERVATION BEST PRACTICES OR TECHNIQUES THAT WERE CONSIDERED AND REJECTED AND THE REASONS FOR ANY REJECTIONS.~~

~~(3) A STATE OR LOCAL AUTHORITY MAY NOT APPROVE A WRITTEN JUSTIFICATION UNDER THIS SUBSECTION BASED:~~

~~(I) SOLELY ON COST;~~

~~(II) ON A PREFERENCE TO MAINTAIN A PREFERRED SITE DESIGN;~~

~~(III) ON A DESIRE TO OBTAIN MAXIMUM ZONING DENSITY OR INTENSITY; OR~~

~~(IV) ON A DESIRE TO CONDUCT MASS GRADING OR CLEARING OF THE DEVELOPMENT SITE.~~

~~5-1608.~~

~~(a) The review of the forest conservation plan shall be concurrent with the review process of the State or local authority for the SKETCH OR CONCEPT PLANS, SITE DEVELOPMENT PLANS, OR PRELIMINARY REVIEW PLANS, subdivision [plan] PLANS, or the grading or sediment control [permit] PERMITS, whichever may be submitted first.~~

~~(b) Before the approval of the final subdivision plan, or the issuance of the grading or sediment control permit by the State or local authority, the applicant shall have an approved forest conservation plan that shall include the requirements in §§ 5-1605, 5-1606, and 5-1607 of this subtitle.~~

~~5-1610.~~

~~(c) Except as provided in subsection (h) of this section, if any person subject to this subtitle demonstrates to the satisfaction of the appropriate State or local authority that the requirements for reforestation or afforestation on site or off site cannot be reasonably accomplished, the person shall contribute money to the Fund:~~

~~(1) On or before September 30, 2014:~~

~~(i) For a project inside a priority funding area, at a rate of 30 cents per square foot of the area of required planting; and~~

~~(ii) For a project outside a priority funding area, at a rate of 36 cents per square foot of the area of required planting; and~~

~~(2) After September 30, 2014:~~

~~(i) For a project inside a priority funding area, at a rate adjusted for inflation as determined by the Department annually by regulation; and~~

~~(ii) For a project outside a priority funding area, at a rate that is 20% higher than the rate set under item (2)(i) of this subsection.~~

~~(h) (1) In lieu of a State Forest Conservation Fund, any local authority with an approved forest conservation program may establish a forest conservation fund, to be administered by the local authority, to allow a payment by any person who has demonstrated to the satisfaction of the local authority that the requirements for reforestation and afforestation on-site and off-site cannot be reasonably accomplished.~~

~~(2) (i) Subject to subparagraph (ii) of this paragraph, the rates shall be:~~

~~1. For a project inside a priority funding area, at least the same as the rates established for the State Forest Conservation Fund under subsection (e) of this section; and~~

~~2. For a project outside a priority funding area, 20% higher than the rates established under item 1 of this subparagraph.~~

~~(ii) Subject to subparagraph (iii) of this paragraph, if a local jurisdiction establishes rates for projects that are higher than the minimum rates established under subsection (e) of this section, the local authority may use a rate for a project:~~

~~1. Inside a priority funding area that is 20% lower than the rate calculated under subparagraph (i)2 of this paragraph; or~~

~~2. Outside a priority funding area that is 20% higher than the rate calculated under subparagraph (i)1 of this paragraph.~~

~~(iii) The rate established under subparagraph (ii)1 of this paragraph for a project inside a priority funding area may not be lower than the rate established for the State Forest Conservation Fund under subsection (e) of this section.~~

~~(i) (1) (H) Money deposited in the local forest conservation fund under subsection (h) of this section may [only] be spent ONLY 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.~~

~~(H) A LOCAL AUTHORITY MAY 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.~~

~~(2) (i) Except as provided in subparagraph (ii) or (iii) of this paragraph, the reforestation or afforestation requirement under this subsection shall occur in the county and watershed in which the project is located.~~

~~(ii) If the reforestation or afforestation cannot be reasonably accomplished in the county and watershed in which the project is located, then the reforestation or afforestation shall occur in the county or watershed in the State in which the project is located.~~

~~(iii) If the reforestation or afforestation cannot be reasonably accomplished in the county or watershed in which the project is located, then the reforestation or afforestation shall be accomplished through purchase of credits in, establishment, or maintenance of a forest mitigation bank in accordance with regulations of the local forest conservation program. The Reforestation Fund may not be used to finance administrative activities associated with a mitigation bank and any credits created by the Reforestation Fund may not be sold to compensate for additional forest impacts.~~

~~(j) Money collected by the local authority under § 5-1608(c) of this subtitle for noncompliance with this subtitle or regulations or ordinances adopted under this subtitle for noncompliance with a forest conservation plan or the associated 2-year management agreement shall be deposited in the local fund. The rate shall be 30 cents per square foot of the area found to be in noncompliance with the required forest conservation.~~

~~(k) Money deposited in a local forest conservation fund under subsection (j) of this section may be used by the local authority for purposes related to implementing this subtitle.~~

~~5-1614.~~

~~THE DEPARTMENT SHALL:~~

~~(1) PUBLISH A FOREST CONSERVATION ACT TECHNICAL MANUAL TO ASSIST INTERESTED PARTIES IN IMPLEMENTING AND COMPLYING WITH THIS SUBTITLE; AND~~

~~(2) REVIEW AND UPDATE THE TECHNICAL MANUAL AT LEAST EVERY 10 YEARS.~~

~~SECTION 2. AND BE IT FURTHER ENACTED, That on or before December 1, 2018, the Department of Natural Resources, in consultation with the Sustainable Forestry Council, shall update the Forest Conservation Act 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.~~

1       SECTION ~~3~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2 ~~October~~ June 1, 2018. It shall remain effective for a period of 1 year and 1 month and, at  
3 the end of June 30, 2019, this Act, with no further action required by the General Assembly,  
4 shall be abrogated and of no further force and effect.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.