

(PRE-FILED)

M1
SB 64/96 - EEA

7lr0941

By: Senator Colburn

Requested: November 15, 1996

Introduced and read first time: January 8, 1997

Assigned to: Economic and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Forest Conservation**

3 FOR the purpose of enacting certain changes to the Forest Conservation Act of 1991;
 4 providing for the extension of certain protection measures to certain sites; altering
 5 certain requirements and procedures for forest stand delineations; altering the
 6 preferred sequence and standards for afforestation and reforestation for certain
 7 purposes; repealing a certain deadline on a municipality's assignment of a certain
 8 obligation; authorizing the banking of forest resources as a mitigation technique in
 9 certain circumstances; altering certain procedures and authorizing certain
 10 alternative mitigation measures for certain classes of development; repealing certain
 11 exclusions of certain areas from forest conservation calculations and requirements;
 12 authorizing the Department of Natural Resources to recover certain costs in certain
 13 circumstances; requiring the Department to adopt certain regulations; altering
 14 certain periods for repayment of certain funds; authorizing certain local
 15 jurisdictions to develop certain additional provisions for forest mitigation banking;
 16 defining certain terms; reinstating and extending the term of service of the Advisory
 17 Group on Forest Conservation; and generally relating to forest conservation.

18 BY renumbering

19 Article - Natural Resources
 20 Section 5-103(a)(5) and 5-1601(o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z),
 21 (aa), (bb), (cc), (dd), (ee), (ff), (gg), (hh), (ii), (jj), (kk), and (ll), respectively
 22 to be Section 5-103(a)(6) and 5-1601(p), (q), (r), (s), (u), (v), (w), (x), (y), (z), (aa),
 23 (bb), (cc), (dd), (ee), (ff), (gg), (hh), (ii), (jj), (kk), (ll), (mm), and (nn),
 24 respectively
 25 Annotated Code of Maryland
 26 (1989 Replacement Volume and 1996 Supplement)

27 BY repealing and reenacting, with amendments,

28 Article - Natural Resources
 29 Section 5-103(c)(2) and (4), (d)(1), and (e)(2)(i), 5-1602(b)(7), 5-1603(a)(4) and
 30 (g), 5-1604, 5-1607, 5-1610(d), (e), (h), and (i), and 5-1613
 31 Annotated Code of Maryland
 32 (1989 Replacement Volume and 1996 Supplement)

1 BY repealing and reenacting, with amendments,
 2 Article - Natural Resources
 3 Section 5-1601(z) and (ff)
 4 Annotated Code of Maryland
 5 (1989 Replacement Volume and 1996 Supplement)
 6 (As enacted by Section 1 of this Act)

7 BY adding to
 8 Article - Natural Resources
 9 Section 5-103(a)(5) and (i), 5-1601(o) and (t), 5-1602(c), 5-1606(a)(5), and
 10 5-1610.1
 11 Annotated Code of Maryland
 12 (1989 Replacement Volume and 1996 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 14 MARYLAND, That Section(s) 5-103(a)(5) and 5-1601(o), (p), (q), (r), (s), (t), (u), (v),
 15 (w), (x), (y), (z), (aa), (bb), (cc), (dd), (ee), (ff), (gg), (hh), (ii), (jj), (kk), and (ll),
 16 respectively, of Article - Natural Resources of the Annotated Code of Maryland be
 17 renumbered to be Section(s) 5-103(a)(6) and 5-1601(p), (q), (r), (s), (u), (v), (w), (x), (y),
 18 (z), (aa), (bb), (cc), (dd), (ee), (ff), (gg), (hh), (ii), (jj), (kk), (ll), (mm), and (nn),
 19 respectively.

20 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
 21 read as follows:

22 **Article - Natural Resources**

23 5-103.

24 (a) (5) "FOREST MITIGATION BANKING" MEANS THE INTENTIONAL
 25 RESTORATION OR CREATION OF FORESTS UNDERTAKEN EXPRESSLY FOR THE
 26 PURPOSE OF PROVIDING CREDITS FOR REFORESTATION REQUIREMENTS WITH
 27 ENHANCED ENVIRONMENTAL BENEFITS FROM FUTURE ACTIVITIES.

28 (c) (2) (i) Except as provided in subparagraph (ii) OR (III) of this paragraph,
 29 the reforestation projects shall be established on any public land within the county and
 30 watershed in which construction activity by a unit of State or local government has caused
 31 a loss of trees where the public entity that owns the land agrees to that use of the land.

32 (ii) If the reforestation project cannot be reasonably accomplished in
 33 the county and watershed in which the construction activity is located, then the
 34 reforestation shall occur in the county or watershed in the State in which the construction
 35 activity is located, OR SHALL BE ACCOMPLISHED BY USE OF CREDITS IN A FOREST
 36 MITIGATION BANK IN THE COUNTY AND WATERSHED IN WHICH THE
 37 CONSTRUCTION ACTIVITY IS LOCATED.

38 (III) IF THE REFORESTATION PROJECT CANNOT BE REASONABLY
 39 ACCOMPLISHED IN THE COUNTY OR WATERSHED IN WHICH THE CONSTRUCTION
 40 ACTIVITY IS LOCATED, OR BY USE OF CREDITS IN THE COUNTY AND WATERSHED IN
 41 WHICH THE CONSTRUCTION ACTIVITY IS LOCATED, THEN REFORESTATION MAY

3
1 OCCUR BY THE USE OF CREDITS IN A FOREST MITIGATION BANK IN THE COUNTY OR
2 WATERSHED IN WHICH THE CONSTRUCTION ACTIVITY IS LOCATED.

3 (4) Any land for a reforestation project shall be:

4 (i) If possible, on the site or in the project right-of-way being used for
5 the construction activity;

6 (ii) If sufficient area is not available at the site or within the project
7 right-of-way, on State-owned or other publicly owned land in the county and watershed
8 in which the construction activity is located; [or]

9 (iii) If the reforestation project cannot be reasonably accomplished in
10 the county and watershed in which the construction activity is located, on State-owned or
11 other publicly owned land in the county or watershed in the State in which the
12 construction activity is located; OR

13 (IV) IF THE REFORESTATION PROJECT CANNOT BE REASONABLY
14 ACCOMPLISHED ON STATE-OWNED OR OTHER PUBLICLY OWNED LAND IN THE
15 COUNTY OR WATERSHED IN THE STATE IN WHICH THE CONSTRUCTION ACTIVITY IS
16 LOCATED, ACCOMPLISHED THROUGH USE OF FOREST MITIGATION BANK CREDITS
17 IN THE WATERSHED IN WHICH THE CONSTRUCTION ACTIVITY IS LOCATED.

18 (d) (1) If the constructing agency is unable to locate a sufficient amount of State
19 or other publicly owned land OR AVAILABLE FOREST MITIGATION BANK CREDITS to
20 comply with the requirements of subsection (c) of this section, the constructing agency
21 shall contribute money, at the rate of 10 cents per square foot of the area of required
22 planting, to a special fund to be maintained in the Department and to be known as the
23 Reforestation Fund.

24 (e) (2) (i) 1. Except as provided in item 2 of this subparagraph, the
25 Department shall use the Reforestation Fund solely to plant trees on State or other
26 publicly owned lands located in the county and watershed in which construction projects
27 giving rise to Fund contributions are located.

28 2. If reforestation cannot be reasonably accomplished in the
29 county and watershed in which the construction activity is located, then the Department
30 may use the Reforestation Fund to plant trees on State or other publicly owned lands
31 located in the county or in the watershed in the State in which the construction activity is
32 located, OR TO PURCHASE CREDITS IN, ESTABLISH, OR MAINTAIN A FOREST
33 MITIGATION BANK IN THE COUNTY OR WATERSHED IN WHICH THE CONSTRUCTION
34 ACTIVITY IS LOCATED IN ACCORDANCE WITH REGULATIONS OF THE DEPARTMENT.
35 THE REFORESTATION FUND MAY NOT BE USED TO FINANCE ADMINISTRATIVE
36 ACTIVITIES ASSOCIATED WITH A MITIGATION BANK AND ANY CREDITS CREATED BY
37 THE REFORESTATION FUND MAY NOT BE SOLD TO COMPENSATE FOR ADDITIONAL
38 FOREST IMPACTS.

39 (I) FOREST MITIGATION BANKING UNDER THIS SECTION SHALL BE
40 CONDUCTED IN ACCORDANCE WITH STANDARDS ADOPTED UNDER SUBTITLE 16 OF
41 THIS TITLE.

4

1 5-1601.

2 (O) "FOREST MITIGATION BANKING" MEANS THE INTENTIONAL
3 RESTORATION OR CREATION OF FORESTS UNDERTAKEN EXPRESSLY FOR THE
4 PURPOSE OF PROVIDING CREDITS FOR AFFORESTATION OR REFORESTATION
5 REQUIREMENTS WITH ENHANCED ENVIRONMENTAL BENEFITS FROM FUTURE
6 ACTIVITIES.

7 (T) "LINEAR PROJECT" MEANS A PROJECT WHOSE CONFIGURATION IS
8 ELONGATED WITH NEARLY PARALLEL SIDES AND USED TO TRANSPORT A UTILITY
9 PRODUCT OR PUBLIC SERVICE NOT OTHERWISE CONTAINED IN AN APPLICATION
10 FOR SUBDIVISION, SUCH AS ELECTRICITY, GAS, WATER, SEWER, COMMUNICATIONS,
11 TRAINS, AND VEHICLES. LINEAR PROJECTS MAY TRAVERSE FEE SIMPLE PROPERTIES
12 THROUGH DEFINED BOUNDARIES OR THROUGH EASEMENT RIGHTS.

13 (z) "Net tract area" means:

14 (1) Except in agriculture and resource areas OR LINEAR PROJECT AREAS,
15 the total area of a site, including both forested and nonforested areas, to the nearest
16 one-tenth acre[, reduced by the area found to be within the boundaries of the 100-year
17 floodplain] REDUCED BY THAT AREA WHERE FOREST CLEARING IS RESTRICTED BY
18 ANOTHER LOCAL ORDINANCE OR PROGRAM; [and]

19 (2) In agriculture and resource areas, the portion of the total tract for which
20 land use will be changed or will no longer be used for primarily agricultural activities[,
21 reduced by the area found to be within the boundaries of the 100-year floodplain]
22 REDUCED BY THAT AREA WHERE FOREST CLEARING IS RESTRICTED BY ANOTHER
23 LOCAL ORDINANCE OR PROGRAM; AND

24 (3) FOR A LINEAR PROJECT:

25 (I) THE AREA OF A RIGHT-OF-WAY WIDTH, NEW ACCESS ROADS
26 AND STORAGE; OR

27 (II) THE LIMITS OF DISTURBANCE AS SHOWN ON AN APPLICATION
28 FOR SEDIMENT AND EROSION CONTROL APPROVAL OR IN A CAPITAL
29 IMPROVEMENTS PROGRAM PROJECT DESCRIPTION.

30 (ff) (1) "Reforestation" or "reforested" means the creation of a biological
31 community dominated by trees and other woody plants containing at least 100 trees per
32 acre with at least 50% of those trees having the potential of attaining a 2 inch or greater
33 diameter measured at 4.5 feet above the ground, within 7 years.

34 (2) "Reforestation" includes landscaping of areas under an approved
35 landscaping plan that establishes a forest that is at least 35 feet wide and covering 2,500
36 square feet of area.

37 (3) "REFORESTATION" FOR A LINEAR PROJECT WHICH INVOLVES
38 OVERHEAD TRANSMISSION LINES MAY CONSIST OF A BIOLOGICAL COMMUNITY
39 DOMINATED BY TREES AND WOODY SHRUBS WITH NO MINIMUM HEIGHT OR
40 DIAMETER CRITERIA.

5

1 5-1602.

2 (b) The provisions of this subtitle do not apply to:

3 (7) Any activity conducted on a single lot of any size OR A LINEAR
4 PROJECT provided that:

5 (i) The activity does not result in the cutting, clearing, or grading of
6 more than 40,000 square feet of forest; and

7 (ii) The activity on the lot OR LINEAR PROJECT will not result in the
8 cutting, clearing, or grading of any forest that is subject to the requirements of a previous
9 forest conservation plan prepared under this subtitle;

10 (C) FOR AN APPLICATION FOR SUBDIVISION OR SEDIMENT AND EROSION
11 CONTROL OR GRADING FOR A SITE WITH MORE THAN 50% OF THE NET TRACT AREA
12 GOVERNED BY TITLE 8, SUBTITLE 18 OF THIS ARTICLE, THE DEPARTMENT OR LOCAL
13 AUTHORITY MAY ALLOW AN APPLICANT TO EXTEND CRITICAL AREA FOREST
14 PROTECTION MEASURES IN LIEU OF MEETING THE REQUIREMENTS OF THIS
15 SUBTITLE.

16 5-1603.

17 (a) (4) A municipality which has planning and zoning authority may, with the
18 concurrence of the county and the Department, assign its obligations under this subtitle
19 to the county [by December 31, 1991].

20 (g) A local authority OR THE DEPARTMENT IN ITS ADMINISTRATION OF A
21 STATE FOREST CONSERVATION PROGRAM IN JURISDICTIONS WHICH DO NOT HAVE
22 AN APPROVED LOCAL PROGRAM IN EFFECT may establish reasonable and appropriate
23 procedures for the recovery of all costs incurred in the development, implementation,
24 administration, and enforcement of the local FOREST CONSERVATION PROGRAM OR
25 THE STATE forest conservation program FOR JURISDICTIONS WITHOUT AN APPROVED
26 FOREST CONSERVATION PROGRAM.

27 5-1604.

28 (a) [After] EXCEPT AS PROVIDED IN SUBSECTION (B)(2) AND (3) OF THIS
29 SECTION, AFTER December 31, 1992, or after the date on which a local program has been
30 adopted under § 5-1603 of this subtitle, whichever occurs first, a person making
31 application for subdivision or grading or sediment control permits on areas greater than
32 40,000 square feet shall submit a forest stand delineation for the entire site prepared by
33 a licensed forester, licensed landscape architect, or other qualified professionals that may
34 be approved by the State or a local authority in the manner required by the approved
35 program.

36 (b) (1) The forest stand delineation shall be used during the preliminary review
37 process to determine the most suitable and practical areas for forest [conservation and,]
38 CONSERVATION. SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, AND
39 except when waived by the Department during approval or review of a local program,
40 THE FOREST STAND DELINEATION shall contain the following components:

6

1 [(1)] (I) A topographic map delineating intermittent and perennial streams,
2 and steep slopes over 25%;

3 [(2)] (II) A soils map delineating soils with structural limitations, hydric
4 soils, or soils with a soil K value greater than 0.35 on slopes of 15% or more;

5 [(3)] (III) Forest stand maps indicating species, location, and size of trees
6 and showing dominant and codominant forest types; and

7 [(4)] (IV) Any other requirements necessary to carry out the purposes of this
8 subtitle established in regulations adopted by the Department or imposed by a local
9 authority.

10 (2) A CONCEPT PLAT OR PLAN, PRELIMINARY PLAT OR PLAN, SEDIMENT
11 AND EROSION CONTROL PLAN, SITE PLAN, OR OTHER APPROPRIATE DOCUMENT,
12 VERIFIED BY A SITE VISIT IF APPROPRIATE, MAY SUBSTITUTE FOR THE FOREST
13 STAND DELINEATION REQUIRED BY PARAGRAPH (1) OF THIS SUBSECTION IF:

14 (I) THERE IS NO FOREST ON THE SITE; OR

15 (II) NO FOREST ON THE SITE IS TO BE CUT, CLEARED, OR GRADED
16 FOR THE PROPOSED USE, AND ALL FOREST ON THE SITE IS TO BE SUBJECT TO A
17 LONG-TERM PROTECTIVE AGREEMENT.

18 (3) THE DEPARTMENT SHALL PROVIDE FOR, AND A LOCAL AUTHORITY
19 MAY ADOPT, A SIMPLIFIED PROCESS OR PROCESSES FOR FOREST STAND
20 DELINEATION UNDER THIS SECTION, INCLUDING:

21 (I) LIMITING REQUIRED FOREST SAMPLING TO AREAS NOT
22 PROPOSED FOR PROTECTION UNDER LONG-TERM PROTECTIVE AGREEMENTS AS
23 LONG AS ALL PRIORITY AREAS ON THE SITE ARE IDENTIFIED AND PROTECTED; AND

24 (II) MINIMIZING OVERLAPPING MAPPING AND SAMPLING
25 REQUIREMENTS FOR SITES WHERE NO DISTURBANCE OF PRIORITY FOREST
26 RETENTION AREAS IS CONTEMPLATED.

27 (c) Within 30 days from receipt of the forest stand delineation, the Department or
28 local authority shall notify the applicant whether the forest stand delineation is complete
29 and correct. If the Department or local authority fails to notify the applicant about the
30 delineation within 30 days, the delineation shall be treated as complete and correct. The
31 Department or local authority may require further information or provide for an
32 extension of this deadline for an additional 15 days for extenuating circumstances.

33 5-1606.

34 (a) (5) LINEAR PROJECTS THAT INVOLVE NO CHANGE IN LAND USE MAY
35 NOT BE SUBJECT TO AFFORESTATION REQUIREMENTS.

36 5-1607.

37 [(a) The preferred sequence for afforestation and reforestation as determined by
38 the State or local authority, after techniques for retaining existing forest on the site have
39 been exhausted, is as follows:

7

- 1 (1) Selective clearing and supplemental planting on-site;
- 2 (2) On-site afforestation or reforestation, if economically feasible, using
3 transplanted or nursery stock that is greater than 1.5 inches diameter measured at 4.5 feet
4 above the ground;
- 5 (3) On-site afforestation or reforestation using whip and seedling stock;
- 6 (4) Landscaping of areas under an approved landscaping plan that
7 establishes a forest at least 35 feet wide and covering 2,500 square feet of area;
- 8 (5) Off-site afforestation or reforestation using transplanted or nursery
9 stock that is greater than 1.5 inches diameter measured at 4.5 feet above the ground;
- 10 (6) Off-site afforestation or reforestation using whip and seedling stock;
- 11 (7) Natural regeneration on-site; and
- 12 (8) Natural regeneration off-site.

13 (b) (1) A sequence other than the one described in subsection (a) of this section
14 may be used for a specific project if necessary to achieve the objectives of a local
15 jurisdiction's land use plans or policies or to take advantage of opportunities to
16 consolidate forest conservation efforts.

17 (2) In a municipal corporation with a tree management plan, in an existing
18 population center designated in a county master plan that has been adopted to conform
19 with the Economic Growth, Resource Protection, and Planning Act of 1992, as enacted by
20 Chapter 437 of the Acts of the General Assembly of 1992, or in any other designated area
21 approved by the Department as part of a local program, a local program may, subject to
22 the approval of the Department, establish criteria for the use of:

23 (i) Street trees as a permissible step in the priority sequence for
24 afforestation or reforestation and, based on a mature canopy coverage, may grant full
25 credit as a mitigation technique; and

26 (ii) The acquisition of an off-site protective easement for existing
27 forested areas not currently protected as a mitigation technique, but the afforestation or
28 reforestation credit granted may not exceed 50% of the area of the forest cover
29 protected.]

30 (A) THE PREFERRED SEQUENCE FOR AFFORESTATION AND REFORESTATION
31 SHALL BE ESTABLISHED BY THE STATE OR LOCAL AUTHORITY IN ACCORDANCE
32 WITH THE FOLLOWING AFTER ALL TECHNIQUES FOR RETAINING EXISTING FOREST
33 COVER ON-SITE HAVE BEEN EXHAUSTED:

34 (1) THOSE TECHNIQUES THAT ENHANCE EXISTING FOREST AND
35 INVOLVE SELECTIVE CLEARING OR SUPPLEMENTAL PLANTING ON-SITE;

36 (2) ON-SITE AFFORESTATION OR REFORESTATION MAY BE UTILIZED
37 WHERE THE RETENTION OPTIONS HAVE BEEN EXHAUSTED. IN THOSE CASES, THE
38 METHOD SHALL BE SELECTED IN ACCORDANCE WITH SUBSECTION (B) OF THIS

8

1 SECTION, AND THE LOCATION SHALL BE SELECTED IN ACCORDANCE WITH
2 SUBSECTION (D) OF THIS SECTION;

3 (3) (I) OFF-SITE AFFORESTATION OR REFORESTATION IN THE SAME
4 WATERSHED OR IN ACCORDANCE WITH AN APPROVED MASTER PLAN MAY BE
5 UTILIZED WHERE THE APPLICANT HAS DEMONSTRATED THAT NO REASONABLE
6 ON-SITE ALTERNATIVE EXISTS, OR WHERE:

7 1. ANY ON-SITE PRIORITY AREAS FOR AFFORESTATION OR
8 REFORESTATION HAVE BEEN PLANTED IN ACCORDANCE WITH SUBSECTION (D) OF
9 THIS SECTION; AND

10 2. THE APPLICANT HAS JUSTIFIED TO THE SATISFACTION OF
11 THE STATE OR LOCAL JURISDICTION THAT ENVIRONMENTAL BENEFITS
12 ASSOCIATED WITH OFF-SITE AFFORESTATION OR REFORESTATION WOULD EXCEED
13 THOSE DERIVED FROM ON-SITE PLANTING;

14 (II) IN THESE CASES, THE METHOD SHALL BE SELECTED IN
15 ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION, AND THE LOCATION SHALL
16 BE SELECTED IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION; AND

17 (III) OFF-SITE AFFORESTATION OR REFORESTATION MAY INCLUDE
18 THE USE OF FOREST MITIGATION BANKS WHICH HAVE BEEN SO DESIGNATED IN
19 ADVANCE BY THE STATE OR LOCAL FOREST CONSERVATION PROGRAM WHICH IS
20 APPROVED BY THE DEPARTMENT; AND

21 (4) THE STATE OR LOCAL JURISDICTION MAY ALLOW AN ALTERNATIVE
22 SEQUENCE FOR A SPECIFIC PROJECT IF NECESSARY TO ACHIEVE THE OBJECTIVES
23 OF A LOCAL JURISDICTION'S LAND USE PLANS OR POLICIES OR TO TAKE
24 ADVANTAGE OF OPPORTUNITIES TO CONSOLIDATE FOREST CONSERVATION
25 EFFORTS.

26 (B) STANDARDS FOR MEETING AFFORESTATION OR REFORESTATION
27 REQUIREMENTS SHALL BE ESTABLISHED BY THE STATE OR LOCAL PROGRAM USING
28 ONE OR MORE OF THE FOLLOWING METHODS:

29 (1) FOREST CREATION IN ACCORDANCE WITH A FOREST
30 CONSERVATION PLAN USING ONE OR MORE OF THE FOLLOWING:

31 (I) TRANSPLANTED OR NURSERY STOCK;

32 (II) WHIP AND SEEDLING STOCK; OR

33 (III) NATURAL REGENERATION WHERE IT CAN BE SHOWN TO
34 ADEQUATELY MEET THE OBJECTIVE OF THE FOREST CONSERVATION PLAN.

35 (2) THE USE OF STREET TREES IN A MUNICIPAL CORPORATION WITH A
36 TREE MANAGEMENT PLAN, IN AN EXISTING POPULATION CENTER DESIGNATED IN A
37 COUNTY MASTER PLAN THAT HAS BEEN ADOPTED TO CONFORM WITH THE
38 ECONOMIC GROWTH, RESOURCE PROTECTION, AND PLANNING ACT OF 1992, OR IN
39 ANY OTHER DESIGNATED AREA APPROVED BY THE DEPARTMENT AS PART OF A
40 LOCAL PROGRAM, UNDER CRITERIA ESTABLISHED BY THE LOCAL PROGRAM,
41 SUBJECT TO THE APPROVAL OF THE DEPARTMENT, USING:

1 (I) STREET TREES AS A PERMISSIBLE STEP IN THE PRIORITY
 2 SEQUENCE FOR AFFORESTATION OR REFORESTATION AND, BASED ON A MATURE
 3 CANOPY COVERAGE, MAY GRANT FULL CREDIT AS A MITIGATION TECHNIQUE; AND

4 (II) ACQUISITION AS A MITIGATION TECHNIQUE OF AN OFF-SITE
 5 PROTECTIVE EASEMENT FOR EXISTING FORESTED AREAS NOT CURRENTLY
 6 PROTECTED, IN WHICH CASE THE AFFORESTATION OR REFORESTATION CREDIT
 7 GRANTED MAY NOT EXCEED 50% OF THE AREA OF FOREST COVER PROTECTED.

8 (3) WHEN ALL OTHER OPTIONS, BOTH ON-SITE AND OFF-SITE, HAVE
 9 BEEN EXHAUSTED, LANDSCAPING AS A MITIGATION TECHNIQUE, CONDUCTED
 10 UNDER AN APPROVED LANDSCAPING PLAN THAT ESTABLISHES A FOREST AT LEAST
 11 35 FEET WIDE AND COVERING AT LEAST 2,500 SQUARE FEET OF AREA.

12 (c) The following trees, shrubs, plants, and specific areas shall be considered
 13 priority for retention and protection, and they shall be left in an undisturbed condition
 14 unless the applicant has demonstrated, to the satisfaction of the State or local authority
 15 that reasonable efforts have been made to protect them and the plan cannot [be]
 16 reasonably BE altered:

17 (1) Trees, shrubs, and plants located in sensitive areas including 100-year
 18 floodplains, intermittent and perennial streams and their buffers, COASTAL BAYS AND
 19 THEIR BUFFERS, steep slopes, and critical habitats;

20 (2) Contiguous forest that connects the largest undeveloped or most
 21 vegetated tracts of land within and adjacent to the site;

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

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

27 (5) Trees having a diameter measured at 4.5 feet above the ground of:

28 (i) 30 inches; or

29 (ii) 75% of the diameter, measured at 4.5 feet above the ground, of the
 30 current State Champion Tree of that species as designated by the Department.

31 (d) The following shall be considered priority for afforestation or reforestation:

32 (1) Establish or enhance forest buffers adjacent to intermittent and
 33 perennial streams AND COASTAL BAYS to widths of at least 50 feet;

34 (2) Establish or increase existing forested corridors to connect existing
 35 forests within or adjacent to the site and, where practical, forested corridors should be a
 36 minimum of 300 feet in width to facilitate wildlife movement;

37 (3) Establish or enhance forest buffers adjacent to critical habitats where
 38 appropriate;

10

1 (4) ESTABLISH OR ENHANCE FORESTED AREAS IN 100-YEAR
2 FLOODPLAINS;

3 (5) Establish plantings to stabilize slopes of 25% or greater and slopes of
4 15% or greater with a soil K value greater than 0.35 including the slopes of ravines or
5 other natural depressions;

6 [(5)] (6) Establish buffers adjacent to areas of differing land use where
7 appropriate, or adjacent to highways or utility right-of-ways;

8 [(6)] (7) Establish forest areas adjacent to existing forests so as to increase
9 the overall area of contiguous forest cover, when appropriate; and

10 [(7)] (8) Use native plant materials for afforestation or reforestation, when
11 appropriate.

12 (e) (1) As part of the development of a forest conservation program, a local
13 government shall develop provisions for:

14 (i) Preservation of areas described in subsections (c) and (d)(1) and
15 (3) of this section;

16 (ii) Retention as forest of all land forested, afforested, or reforested
17 under this subtitle; and

18 (iii) Limitation of uses of forest to those that are not inconsistent with
19 forest conservation, such as recreational activities and forest management under
20 subsection (f) of this section.

21 (2) The provisions required in paragraph (1) of this subsection may include
22 protective agreements for areas of forest conservation, including conservation easements,
23 deed restrictions, and covenants.

24 (f) Except for land that is preserved under subsection (e) of this section, an
25 owner may place land that is forested, afforested, or reforested under this subtitle in the
26 forest conservation and management program under § 8-211 et seq. of the Tax - Property
27 Article or in a forest management plan prepared by a licensed forester and approved by
28 the local authority or the State. Reforestation shall be required when the final
29 regeneration harvest is complete or if determined to be necessary due to the lack of
30 adequate natural regeneration.

31 5-1610.

32 (d) (1) The Department shall accomplish the reforestation or afforestation for
33 which the money is deposited within [1 year or 2 growing seasons] 2 YEARS OR 3
34 GROWING SEASONS, as appropriate, after receipt of the money.

35 (2) Money deposited in the Forest Conservation Fund under subsection (b)
36 of this section shall remain in the Fund for a period of [1 year or 2 growing seasons] 2
37 YEARS OR 3 GROWING SEASONS, and at the end of that time period, any portion that
38 has not been used to meet the afforestation or reforestation requirements shall be
39 returned to the person who provided the money TO BE USED FOR DOCUMENTED

11

1 ON-SITE TREE PLANTING BEYOND THAT REQUIRED BY THIS SUBTITLE OR OTHER
2 APPLICABLE STATUTES.

3 (e) (1) Money deposited in the Fund under subsection (b) of this section may
4 only be spent on reforestation and afforestation, including site identification, acquisition,
5 and preparation, and may not revert to the General Fund of the State.

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

9 (ii) If the reforestation or afforestation cannot be reasonably
10 accomplished in the county and watershed in which the project is located, then the
11 reforestation or afforestation shall occur in the county or watershed in the state in which
12 the project is located.

13 (III) IF THE REFORESTATION OR AFFORESTATION CANNOT BE
14 REASONABLY ACCOMPLISHED IN THE COUNTY OR WATERSHED IN WHICH THE
15 PROJECT IS LOCATED, THEN THE REFORESTATION OR AFFORESTATION SHALL BE
16 ACCOMPLISHED THROUGH PURCHASE OF CREDITS IN, ESTABLISHMENT, OR
17 MAINTENANCE OF A FOREST MITIGATION BANK IN ACCORDANCE WITH
18 REGULATIONS OF THE DEPARTMENT. THE REFORESTATION FUND MAY NOT BE
19 USED TO FINANCE ADMINISTRATIVE ACTIVITIES ASSOCIATED WITH A MITIGATION
20 BANK AND ANY CREDITS CREATED BY THE REFORESTATION FUND MAY NOT BE
21 SOLD TO COMPENSATE FOR ADDITIONAL FOREST IMPACTS.

22 (h) Money deposited in the local forest conservation fund under subsection (g) of
23 this section shall remain in the fund for a period of [1 year or 2 growing seasons] 2
24 YEARS OR 3 GROWING SEASONS. At the end of that time period, any portion that has
25 not been used to meet the afforestation or reforestation requirements shall be returned to
26 the person who provided the money TO BE USED FOR DOCUMENTED ON-SITE TREE
27 PLANTING BEYOND THAT REQUIRED BY THIS SUBTITLE OR OTHER APPLICABLE
28 STATUTES.

29 (i) (1) Money deposited in the local forest conservation fund under subsection
30 (g) of this section may only be spent on reforestation and afforestation, including the
31 costs directly related to site identification, acquisition, prepurchase, and preparation, and
32 may not revert to any other local general fund.

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

36 (ii) If the reforestation or afforestation cannot be reasonably
37 accomplished in the county and watershed in which the project is located, then the
38 reforestation or afforestation shall occur in the county or watershed in the state in which
39 the project is located.

40 (III) IF THE REFORESTATION OR AFFORESTATION CANNOT BE
41 REASONABLY ACCOMPLISHED IN THE COUNTY OR WATERSHED IN WHICH THE
42 PROJECT IS LOCATED, THEN THE REFORESTATION OR AFFORESTATION SHALL BE
43 ACCOMPLISHED THROUGH PURCHASE OF CREDITS IN, ESTABLISHMENT, OR

12

1 MAINTENANCE OF A FOREST MITIGATION BANK IN ACCORDANCE WITH
2 REGULATIONS OF THE LOCAL FOREST CONSERVATION PROGRAM. THE
3 REFORESTATION FUND MAY NOT BE USED TO FINANCE ADMINISTRATIVE
4 ACTIVITIES ASSOCIATED WITH A MITIGATION BANK AND ANY CREDITS CREATED BY
5 THE REFORESTATION FUND MAY NOT BE SOLD TO COMPENSATE FOR ADDITIONAL
6 FOREST IMPACTS.

7 5-1610.1.

8 (A) THE DEPARTMENT SHALL DEVELOP STANDARDS AND ADOPT
9 REGULATIONS FOR THE CREATION AND USE OF FOREST MITIGATION BANKS,
10 INCLUDING CRITERIA FOR TRACKING, CREDITING, MAINTAINING, BONDING, AND
11 REPORTING MITIGATION BANK ACTIVITIES.

12 (B) A LOCAL JURISDICTION MAY DEVELOP PROCEDURES FOR ESTABLISHING
13 FOREST MITIGATION BANKS AS PART OF ITS FOREST CONSERVATION PROGRAM.

14 (C) MITIGATION BANKS MAY BE PERMITTED ONLY IN PRIORITY AREAS AS
15 IDENTIFIED IN § 5-1607(D) OF THIS SUBTITLE OR AS IDENTIFIED IN A
16 COMPREHENSIVE PLAN ADOPTED BY A LOCAL JURISDICTION.

17 (D) THE ESTABLISHMENT OF MITIGATION BANKS AND THEIR USE MAY NOT
18 ALTER THE SEQUENCE FOR RETENTION, REFORESTATION, OR AFFORESTATION ON
19 A DEVELOPMENT SITE AS OUTLINED IN § 5-1607 OF THIS SUBTITLE.

20 (E) CRITERIA ESTABLISHED BY LOCAL OR STATE PROGRAMS FOR THE USE
21 AND ESTABLISHMENT OF FOREST MITIGATION BANKS SHALL INCLUDE PROTECTION
22 AND CONSERVATION IN PERPETUITY OF FOREST MITIGATION BANKS CONSISTENT
23 WITH REASONABLE MANAGEMENT PLANS, THROUGH METHODS THAT INCLUDE
24 EASEMENTS, COVENANTS, OR SIMILAR MECHANISMS THAT SHALL BE IN PLACE AT
25 THE TIME CREDITS ARE WITHDRAWN.

26 (F) THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE THE DEPARTMENT
27 OR A LOCAL JURISDICTION TO:

28 (1) ESTABLISH OR FUND STATE OR LOCAL MITIGATION BANKS;

29 (2) FUND THE ESTABLISHMENT OF FOREST MITIGATION BANKING BY
30 THE PRIVATE SECTOR; OR

31 (3) USE STATE OR LOCAL GOVERNMENT LAND FOR FOREST
32 MITIGATION BANKING.

33 (G) (1) CREDITS IN A MITIGATION BANK MAY NOT BE APPROVED FOR
34 DEBITING UNTIL CONSTRUCTION OF THE MITIGATION BANK IS COMPLETE.

35 (2) A MITIGATION BANK SHALL MAINTAIN SUFFICIENT CREDITS IN
36 RESERVE TO COVER ANTICIPATED EXPENSES OF COMPLETION OF THE MITIGATION
37 BANK.

38 5-1613.

39 On or before July 1 of each year, the Department shall submit, subject to § 2-1312
40 of the State Government Article, to the Senate Economic and Environmental Affairs

13

1 Committee and the House Environmental Matters Committee a statewide report,
2 compiled from local authorities' reports to the Department, on:

3 (1) The number, location, and type of projects subject to the provisions of
4 this subtitle;

5 (2) The amount and location of acres cleared, conserved, and planted,
6 INCLUDING ANY AREAS WHICH UTILIZE FOREST MITIGATION BANK CREDITS, in
7 connection with a development project;

8 (3) The amount of reforestation and afforestation fees and noncompliance
9 penalties collected and expended; [and]

10 (4) The costs of implementing the forest conservation program; AND

11 (5) THE SIZE, LOCATION, AND PROTECTION OF ANY LOCAL FOREST
12 MITIGATION BANKS WHICH ARE CREATED UNDER A LOCAL OR STATE PROGRAM.

13 SECTION 3. AND BE IT FURTHER ENACTED, That, notwithstanding the
14 provisions of Section 2(2) of Chapter 489 of the Acts of the General Assembly of 1993,
15 the Advisory Group on Forest Conservation established under that Act shall be reinstated
16 and shall serve through May 31, 1999.

17 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 1997.