

# SENATE BILL 573

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71r2660  
CF HB 588

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By: **Senator Peters**

Introduced and read first time: February 2, 2007

Assigned to: Education, Health, and Environmental Affairs

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 22, 2007

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

1 AN ACT concerning

2 **Natural Resources – Forest Conservation – Net Tract Area**

3 FOR the purpose of altering the definition of “net tract area” for forest conservation  
4 requirements and forest mitigation bank credits to include certain forested  
5 areas of certain tracts of land partially within 100-year floodplains or wetlands  
6 under certain circumstances; ~~including in the definition of “net tract area” a~~  
7 ~~nontidal wetland, stream buffer, and the forested area of a 100-year floodplain~~  
8 ~~or wetland under certain circumstances~~; providing for the application of this  
9 Act; providing for the termination of this Act; and generally relating to the  
10 forest conservation program.

11 ~~BY repealing and reenacting, with amendments,~~  
12 ~~Article – Natural Resources~~  
13 ~~Section 5-1601(z) and (aa)~~  
14 ~~Annotated Code of Maryland~~  
15 ~~(2005 Replacement Volume and 2006 Supplement)~~

16 ~~BY repealing and reenacting, without amendments,~~  
17 ~~Article – Natural Resources~~  
18 ~~Section 5-1601(bb), (ff), and (jj) and 5-1607(c)(1) through (3) and (d)(1) through~~  
19 ~~(4)~~

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### 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.



1 ~~Annotated Code of Maryland~~  
 2 ~~(2005 Replacement Volume and 2006 Supplement)~~

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 4 MARYLAND, That ~~the Laws of Maryland read as follows:~~ for purposes of the  
 5 application of Title 5, Subtitle 16 of the Natural Resources Article to a tract of land of  
 6 at least 350 acres of which at least 15% is within the boundaries of a 100-year  
 7 floodplain or wetland, the term “net tract area” includes the forested areas within the  
 8 floodplain or wetland if a perpetual conservation easement is placed on the forested  
 9 areas at the time the plat of the tract is recorded.

10 ~~Article – Natural Resources~~

11 ~~5-1601.~~

12 ~~(z) (1) “Net tract area” means:~~

13 ~~[(1)] (I) Except in agriculture and resource areas or linear project~~  
 14 ~~areas, the total area of a site, including both forested and nonforested areas, to the~~  
 15 ~~nearest one-tenth acre reduced by that area where forest clearing is restricted by~~  
 16 ~~another local ordinance or program, INCLUDING THE FORESTED AREA WITHIN THE~~  
 17 ~~BOUNDARIES OF A 100-YEAR FLOODPLAIN OR WETLAND;~~

18 ~~[(2)] (II) In agriculture and resource areas, the portion of the total~~  
 19 ~~tract for which land use will be changed or will no longer be used for primarily~~  
 20 ~~agricultural activities reduced by that area where forest clearing is restricted by~~  
 21 ~~another local ordinance or program, INCLUDING THE FORESTED AREA WITHIN THE~~  
 22 ~~BOUNDARIES OF A 100-YEAR FLOODPLAIN OR WETLAND; and~~

23 ~~[(3)] (III) For a linear project:~~

24 ~~[(i)] 1. The area of a right-of-way width, new access roads~~  
 25 ~~and storage; or~~

26 ~~[(ii)] 2. The limits of disturbance as shown on an application~~  
 27 ~~for sediment and erosion control approval or in a capital improvements program~~  
 28 ~~project description;~~

29 ~~(2) “NET TRACT AREA” INCLUDES A NONTIDAL WETLAND,~~  
 30 ~~STREAM BUFFER, AND THE FORESTED AREA OF A 100-YEAR FLOODPLAIN IF THE~~

1 ~~WETLAND, BUFFER, AND FORESTED 100-YEAR FLOODPLAIN AREA IS PLACED IN~~  
2 ~~A PERPETUAL CONSERVATION EASEMENT AT THE TIME OF RECORD PLAT.~~

3 ~~(aa) (1) "Nontidal wetland" means an area that is inundated or saturated~~  
4 ~~by surface or groundwater at a frequency and duration sufficient to support, and~~  
5 ~~under normal conditions does support, a prevalence of vegetation typically adapted for~~  
6 ~~life in saturated soil conditions, commonly known as hydrophytic vegetation.~~

7 ~~(2) (I) The determination of whether an area is considered a~~  
8 ~~nontidal wetland shall be made in accordance with the publication known as the~~  
9 ~~"Federal Manual for Identifying and Delineating Jurisdictional Wetlands", published~~  
10 ~~in 1989 and as may be amended and interpreted by the U.S. Environmental Protection~~  
11 ~~Agency.~~

12 ~~(II) THE REQUIREMENTS OF SUBPARAGRAPH (I) OF THIS~~  
13 ~~PARAGRAPH SHALL APPLY, IN THE SAME MANNER, TO ALL JURISDICTIONS OF~~  
14 ~~THE STATE.~~

15 ~~(3) "Nontidal wetlands" do not include tidal wetlands regulated under~~  
16 ~~Title 16 of the Environment Article.~~

17 ~~(bb) (1) "One hundred year floodplain" means an area along or adjacent to~~  
18 ~~a stream or body of water, except tidal waters, that is capable of storing or conveying~~  
19 ~~floodwaters during a 100-year frequency storm event.~~

20 ~~(2) A 100-year flood is a flood which has a 1% chance of being equaled~~  
21 ~~or exceeded in any given year. Except for Class III waters (natural trout streams), a~~  
22 ~~body of water with a watershed less than 400 acres is excluded.~~

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

27 ~~(2) "Reforestation" includes landscaping of areas under an approved~~  
28 ~~landscaping plan that establishes a forest that is at least 35 feet wide and covering~~  
29 ~~2,500 square feet of area.~~

30 ~~(3) "Reforestation" for a linear project which involves overhead~~  
31 ~~transmission lines may consist of a biological community dominated by trees and~~  
32 ~~woody shrubs with no minimum height or diameter criteria.~~

1           (jj) ~~“Stream buffer” means all lands lying within 50 feet, measured from the~~  
2 ~~top of each normal bank of any perennial or intermittent stream.~~

3 ~~5-1607.~~

4           (e) ~~The following trees, shrubs, plants, and specific areas shall be considered~~  
5 ~~priority for retention and protection, and they shall be left in an undisturbed condition~~  
6 ~~unless the applicant has demonstrated, to the satisfaction of the State or local~~  
7 ~~authority that reasonable efforts have been made to protect them and the plan cannot~~  
8 ~~reasonably be altered:~~

9           (1) ~~Trees, shrubs, and plants located in sensitive areas including~~  
10 ~~100-year floodplains, intermittent and perennial streams and their buffers, coastal~~  
11 ~~bays and their buffers, steep slopes, and critical habitats;~~

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

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

16           (d) ~~The following shall be considered priority for afforestation or~~  
17 ~~reforestation:~~

18           (1) ~~Establish or enhance forest buffers adjacent to intermittent and~~  
19 ~~perennial streams and coastal bays to widths of at least 50 feet;~~

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

23           (3) ~~Establish or enhance forest buffers adjacent to critical habitats~~  
24 ~~where appropriate;~~

25           (4) ~~Establish or enhance forested areas in 100-year floodplains;~~

26           SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be  
27 construed to prevent any person that ~~submitted~~ submits a forest conservation plan  
28 before ~~October~~ July 1, 2007, to the State or local authority in accordance with § 5-1605  
29 of the Natural Resources Article, and has not been issued a building permit, from  
30 revising the net tract area, for a tract of land of at least 350 acres of which at least  
31 15% is within the boundaries of a 100-year floodplain or wetland, to include the  
32 forested area within the boundaries of ~~a~~ the 100-year floodplain or wetland.

1           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2 ~~October~~ July 1, 2007. It shall remain effective for a period of 8 months and, at the end  
3 of February 29, 2008, with no further action required by the General Assembly, this  
4 Act 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.