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**By: Senator Colburn**

Introduced and read first time: February 13, 1996

Assigned to: Rules

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A BILL ENTITLED

1 AN ACT concerning

2 **Forest Conservation - Alterations**

3 FOR the purpose of altering certain provisions of the Forest Conservation Act of 1991;  
4 authorizing a local authority to establish a program for the banking of forest  
5 resources as a mitigation technique under certain circumstances; authorizing a  
6 licensed land surveyor or property line surveyor to prepare a foreststand  
7 delineation; prohibiting the Department of Natural Resources or a local authority  
8 from requiring the planting of a minimum number of species; reducing certain  
9 conservation thresholds; eliminating a conservation threshold for a certain type of  
10 site and providing for its regulation under certain circumstances; authorizing an  
11 off-site forest retention to be credited against certain requirements under certain  
12 circumstances; repealing the preferred sequence for afforestation and reforestation  
13 and authorizing the landowner to develop a preferred sequence; and generally  
14 relating to changes in the Forest Conservation Act.

15 BY repealing and reenacting, without amendments,  
16 Article - Natural Resources  
17 Section 5-1603(a)(1)  
18 Annotated Code of Maryland  
19 (1989 Replacement Volume and 1995 Supplement)

20 BY adding to  
21 Article - Natural Resources  
22 Section 5-1603(h) and 5-1605(e)  
23 Annotated Code of Maryland  
24 (1989 Replacement Volume and 1995 Supplement)

25 BY repealing and reenacting, with amendments,  
26 Article - Natural Resources  
27 Section 5-1604(a), 5-1606(c) and (d), and 5-1607  
28 Annotated Code of Maryland  
29 (1989 Replacement Volume and 1995 Supplement)

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

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1           **Article - Natural Resources**

2 5-1603.

3           (a) (1) A unit of local government having planning and zoning authority shall  
4 develop a local forest conservation program, consistent with the intent, requirements, and  
5 standards of this subtitle.

6           (H) A UNIT OF LOCAL GOVERNMENT WITH A LOCAL FOREST CONSERVATION  
7 PROGRAM DEVELOPED UNDER THIS TITLE MAY ESTABLISH A FOREST MITIGATION  
8 BANKING PROGRAM TO AUTHORIZE THE INTENTIONAL RESTORATION OR  
9 CREATION OF FORESTS UNDERTAKEN EXPRESSLY FOR THE PURPOSE OF  
10 PROVIDING CREDITS FOR AFFORESTATION OR REFORESTATION REQUIREMENTS  
11 WITH ENHANCED ENVIRONMENTAL BENEFITS FROM FUTURE ACTIVITIES.

12 5-1604.

13           (a) After December 31, 1992, or after the date on which a local program has been  
14 adopted under § 5-1603 of this subtitle, whichever occurs first, a person making  
15 application for subdivision or grading or sediment control permits on areas greater than  
16 40,000 square feet shall submit a forest stand delineation for the entire site prepared by  
17 a licensed forester, licensed landscape architect, A LICENSED LAND SURVEYOR, A  
18 LICENSED PROPERTY LINE SURVEYOR, or other qualified professionals that may be  
19 approved by the State or a local authority in the manner required by the approved  
20 program.

21 5-1605.

22           (E) THE STATE OR LOCAL GOVERNMENT APPROVING A FOREST  
23 CONSERVATION PLAN MAY NOT REQUIRE THE APPLICANT TO INCLUDE A MINIMUM  
24 NUMBER OF SPECIES TO BE UTILIZED.

25 5-1606.

26           (c) (1) After every reasonable effort to minimize the cutting or clearing of trees  
27 and other woody plants is exhausted in the development of a subdivision plan and grading  
28 and sediment control activities and implementation of the forest conservation plan, the  
29 forest conservation plan shall provide for reforestation, or payment into the Forest  
30 Conservation Fund, according to the formula set forth in subsection (b) of this section  
31 and consistent with the following forest conservation thresholds for the applicable land  
32 use category:

- 33           [(1)] (I) Agricultural and resource areas: [50%] 35% of net tract area;
- 34           [(2)] (II) Medium density residential areas: [25%] 20% of net tract area;
- 35           [(3)] (III) Institutional development areas: [20%] 15% of net tract area;
- 36           [(4)] (IV) High density residential areas: [20%] 15% of net tract area; AND
- 37           [(5)] (V) Mixed use and planned unit development areas: 15% of net tract  
38 area; and
- 39           (6) Commercial and industrial use areas: 15% of net tract area].

1 (2) COMMERCIAL AND INDUSTRIAL USE AREAS MAY BE REGULATED  
2 ONLY IF THEY ARE IN ENVIRONMENTALLY SENSITIVE AREAS INCLUDING STREAM  
3 BUFFERS, FLOODPLAINS, WETLANDS, AREAS WITH ERODIBLE SOIL, AREAS WITH  
4 ENDANGERED SPECIES, AND STEEP SLOPES.

5 (d) (1) Subject to the provisions of paragraph (2) of this subsection, for all  
6 existing forest cover measured to the nearest 1/10 acre cleared on the net tract area above  
7 the applicable forest conservation threshold, the area of forest removed shall be  
8 reforested at a ratio of 1/4 acre planted for every 1 acre removed.

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

12 (3) EACH ACRE OF FOREST RETAINED BY THE PERSON OFF-SITE SHALL  
13 BE CREDITED AGAINST THE TOTAL NUMBER OF ACRES REQUIRED TO BE  
14 REFORESTED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

15 5-1607.

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

19 (1) Selective clearing and supplemental planting on-site;

20 (2) On-site afforestation or reforestation, if economically feasible, using  
21 transplanted or nursery stock that is greater than 1.5 inches diameter measured at 4.5 feet  
22 above the ground;

23 (3) On-site afforestation or reforestation using whip and seedling stock;

24 (4) Landscaping of areas under an approved landscaping plan that  
25 establishes a forest at least 35 feet wide and covering 2,500 square feet of area;

26 (5) Off-site afforestation or reforestation using transplanted or nursery  
27 stock that is greater than 1.5 inches diameter measured at 4.5 feet above the ground;

28 (6) Off-site afforestation or reforestation using whip and seedling stock;

29 (7) Natural regeneration on-site; and

30 (8) Natural regeneration off-site.

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

35 (2) In a municipal corporation with a tree management plan, in an existing  
36 population center designated in a county master plan that has been adopted to conform  
37 with the Economic Growth, Resource Protection, and Planning Act of 1992, as enacted by  
38 Chapter 437 of the Acts of the General Assembly of 1992, or in any other designated area

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1 approved by the Department as part of a local program, a local program may, subject to  
2 the approval of the Department, establish criteria for the use of:

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

6 (ii) The acquisition of an off-site protective easement for existing  
7 forested areas not currently protected as a mitigation technique, but the afforestation or  
8 reforestation credit granted may not exceed 50% of the area of the forest cover  
9 protected.] THE PREFERRED SEQUENCE FOR AFFORESTATION AND  
10 REFORESTATION MAY BE DETERMINED BY THE PERSON REQUIRED TO PERFORM  
11 THE AFFORESTATION AND REFORESTATION.

12 [(c)] (B) 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 altered:

17 (1) Trees, shrubs, and plants located in sensitive areas including 100-year  
18 floodplains, intermittent and perennial streams and their buffers, steep slopes, and  
19 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)] (C) The following shall be considered priority for afforestation or  
32 reforestation:

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

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

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

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1                   (4) Establish plantings to stabilize slopes of 25% or greater and slopes of  
2 15% or greater with a soil K value greater than 0.35 including the slopes of ravines or  
3 other natural depressions;

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

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

8                   (7) Use native plant materials for afforestation or reforestation, when  
9 appropriate.

10            [(e) (1)] (D) (1) As part of the development of a forest conservation program,  
11 a local government shall develop provisions for:

12                   (i) Preservation of areas described in subsections [(c) and (d)(1) and  
13 (3)] (B) AND (C)(1) AND (3) of this section;

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

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

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

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

29            SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
30 October 1, 1996.