
By: **Delegates Hecht and Stull**

Introduced and read first time: February 8, 2002

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 23, 2002

CHAPTER _____

1 AN ACT concerning

2 **Natural Resources - Forest ~~Mitigation~~ Retention Banks - Pilot Program**

3 FOR the purpose of requiring the Department of Natural Resources to establish a
4 certain forest ~~mitigation~~ retention bank pilot program in certain counties for a
5 certain period; requiring certain counties to administer the pilot program;
6 specifying the purpose certain goals of the pilot program; providing for a
7 committee to establish certain guidelines for the pilot program; providing for a
8 chairman of the committee; requiring a certain report by authorizing a
9 landowner to create a certain forest retention bank under certain circumstances;
10 requiring that certain terms or conditions apply under a certain circumstance;
11 requiring a certain rate of mitigation credit; requiring the Department to
12 conduct a certain inspection, to evaluate the pilot program, and to report to
13 certain persons on or before a certain date; and generally relating to a certain
14 pilot program regarding certain forest ~~mitigation~~ retention banks.

15 BY ~~repealing and reenacting, with amendments, adding to~~
16 Article - Natural Resources
17 Section ~~5-1610.1~~ 5-1610.2
18 Annotated Code of Maryland
19 (2000 Replacement Volume and 2001 Supplement)

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

1 **Article - Natural Resources**2 ~~5-1610.1.~~

3 (a) ~~The Department shall develop standards and adopt regulations for the~~
4 ~~creation and use of forest mitigation banks, including criteria for tracking, crediting,~~
5 ~~maintaining, bonding, and reporting mitigation bank activities.~~

6 (b) ~~A local jurisdiction may develop procedures for establishing forest~~
7 ~~mitigation banks as part of its forest conservation program.~~

8 (c) ~~Mitigation banks may be permitted only in priority areas as identified in §~~
9 ~~5-1607(d) of this subtitle or as identified in a comprehensive plan adopted by a local~~
10 ~~jurisdiction.~~

11 (d) ~~The establishment of mitigation banks and their use may not alter the~~
12 ~~sequence for retention, reforestation, or afforestation on a development site as~~
13 ~~outlined in § 5-1607 of this subtitle.~~

14 (e) ~~Criteria established by local or State programs for the use and~~
15 ~~establishment of forest mitigation banks shall include protection and conservation in~~
16 ~~perpetuity of forest mitigation banks consistent with reasonable management plans,~~
17 ~~through methods that include easements, covenants, or similar mechanisms that~~
18 ~~shall be in place at the time credits are withdrawn.~~

19 (f) (1) ~~THE DEPARTMENT SHALL ESTABLISH A 2-YEAR PILOT PROGRAM IN~~
20 ~~CARROLL AND FREDERICK COUNTIES THAT ALLOWS A PERSON TO USE FUNDS FROM~~
21 ~~THE FEDERAL CONSERVATION RESERVE ENHANCEMENT PROGRAM TO CREATE A~~
22 ~~FOREST MITIGATION BANK.~~

23 (2) ~~THE PILOT PROGRAM SHALL ENCOURAGE THE PERMANENT~~
24 ~~PROTECTION OF HIGHLY SENSITIVE BUFFERS ON WORKING FARMLANDS AT A 1:1~~
25 ~~MITIGATION RATIO.~~

26 (3) ~~ON OR BEFORE OCTOBER 31, 2002, GUIDELINES FOR THE PILOT~~
27 ~~PROGRAM SHALL BE DEVELOPED BY A COMMITTEE THAT INCLUDES:~~

28 (I) ~~TWO MEMBERS FROM THE DEPARTMENT OF NATURAL~~
29 ~~RESOURCES;~~

30 (II) ~~ONE MEMBER FROM THE DEPARTMENT OF AGRICULTURE;~~

31 (III) ~~ONE MEMBER FROM THE UNITED STATES DEPARTMENT OF~~
32 ~~AGRICULTURE FARM SERVICE AGENCY;~~

33 (IV) ~~ONE MEMBER FROM THE UNITED STATES DEPARTMENT OF~~
34 ~~AGRICULTURE NATURAL RESOURCE CONSERVATION SERVICE;~~

35 (V) ~~ONE MEMBER FROM EACH OF THE CARROLL AND FREDERICK~~
36 ~~CATOCTIN SOIL CONSERVATION DISTRICTS; AND~~

1 ~~(VI) ONE MEMBER FROM THE CHESAPEAKE BAY FOUNDATION.~~

2 ~~(4) A MEMBER FROM THE DEPARTMENT OF NATURAL RESOURCES~~
3 ~~SHALL BE CHAIRMAN OF THE COMMITTEE.~~

4 ~~(5) ON OR BEFORE DECEMBER 31, 2004, SUBJECT TO § 2-1246 OF THE~~
5 ~~STATE GOVERNMENT ARTICLE, THE COMMITTEE SHALL REPORT TO THE GENERAL~~
6 ~~ASSEMBLY ON THE EFFECTIVENESS OF THE PILOT PROGRAM.~~

7 ~~(G) This section may not be construed to require the Department or a local~~
8 ~~jurisdiction to:~~

9 ~~(1) Establish or fund State or local mitigation banks;~~

10 ~~(2) Fund the establishment of forest mitigation banking by the private~~
11 ~~sector; or~~

12 ~~(3) Use State or local government land for forest mitigation banking.~~

13 ~~[(g)] (H) (1) Credits in a mitigation bank may not be approved for debiting~~
14 ~~until construction of the mitigation bank is complete.~~

15 ~~(2) A mitigation bank shall maintain sufficient credits in reserve to cover~~
16 ~~anticipated expenses of completion of the mitigation bank.~~

17 5-1610.2.

18 ~~(A) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, THE~~
19 ~~DEPARTMENT SHALL ESTABLISH A 2-YEAR PILOT PROGRAM THAT AUTHORIZES A~~
20 ~~LANDOWNER TO USE A FORESTED STREAM BUFFER ESTABLISHED UNDER A~~
21 ~~CONTRACT WITH THE FEDERAL CONSERVATION RESERVE ENHANCEMENT PROGRAM~~
22 ~~IN ORDER TO CREATE A FOREST RETENTION BANK.~~

23 ~~(2) CARROLL COUNTY AND FREDERICK COUNTY SHALL ADMINISTER~~
24 ~~THE PILOT PROGRAM.~~

25 ~~(B) THE GOALS OF THE PILOT PROGRAM ARE TO INCREASE THE NUMBER OF~~
26 ~~FORESTED STREAM BUFFERS IN THE STATE, TO ENHANCE THEIR QUALITY, AND TO~~
27 ~~ENSURE THEIR PERMANENT PROTECTION.~~

28 ~~(C) A LANDOWNER MAY CREATE A FOREST RETENTION BANK IF:~~

29 ~~(1) THE LAND IS NOT PROTECTED BY AN EXISTING CONSERVATION~~
30 ~~EASEMENT; AND~~

31 ~~(2) THE LANDOWNER GRANTS A FOREST CONSERVATION EASEMENT TO~~
32 ~~THE DEPARTMENT THAT PROTECTS THE FOREST RETENTION BANK IN PERPETUITY.~~

33 ~~(D) IF A TERM OR CONDITION OF THE LANDOWNER'S FEDERAL~~
34 ~~CONSERVATION RESERVE ENHANCEMENT PROGRAM CONTRACT IS IN CONFLICT~~
35 ~~WITH A TERM OR CONDITION OF THE FOREST CONSERVATION EASEMENT, THE TERM~~

1 OR CONDITION OF THE FEDERAL CONSERVATION RESERVE ENHANCEMENT
2 PROGRAM CONTRACT SHALL PREVAIL DURING THE TERM OF THE CONTRACT.

3 (E) MITIGATION THROUGH CREATION OF A FOREST RETENTION BANK SHALL
4 BE CREDITED AT A RATE OF 2.5 ACRES PER EACH ACRE OF MITIGATION REQUIRED.

5 (F) THE DEPARTMENT:

6 (1) SHALL CONDUCT A FIELD INSPECTION OF EACH FOREST RETENTION
7 BANK IN ORDER TO ENSURE THAT EXISTING FORESTED AREAS ARE MAINTAINED
8 AND PROPERLY CREDITED IN THE BANK;

9 (2) SHALL EVALUATE THE 2-YEAR PILOT PROGRAM TO DETERMINE ITS
10 EFFECTIVENESS IN MEETING THE GOALS UNDER SUBSECTION (B) OF THIS SECTION;
11 AND

12 (3) ON OR BEFORE DECEMBER 31, 2004, SHALL REPORT, IN ACCORDANCE
13 WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE HOUSE
14 ENVIRONMENTAL MATTERS COMMITTEE AND THE SENATE EDUCATION, HEALTH,
15 AND ENVIRONMENTAL AFFAIRS COMMITTEE ON THE EFFECTIVENESS OF THE PILOT
16 PROGRAM.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 July 1, 2002. It shall remain effective for a period of 3 years and, at the end of June
19 30, 2005, with no further action required by the General Assembly, this Act shall be
20 abrogated and of no further force and effect.