

HOUSE BILL 991

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By: **Delegate Gilchrist**

Introduced and read first time: February 5, 2021

Assigned to: Environment and Transportation

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 7, 2021

CHAPTER _____

1 AN ACT concerning

2 **Natural Resources – Forest Mitigation Banks – Qualified ~~Preservation~~**
3 **Conservation**

4 FOR the purpose of establishing the use of qualified ~~preservation~~ conservation in a forest
5 mitigation bank of all or a part of certain existing forests as a standard for meeting
6 afforestation or reforestation requirements under the Forest Conservation Act;
7 defining the term “qualified ~~preservation~~ conservation” as it applies to the Forest
8 Conservation Act; altering the defined term “forest mitigation banking” as it applies
9 to the Forest Conservation Act to include the qualified ~~preservation~~ conservation of
10 forests for certain purposes; requiring the Harry R. Hughes Center for Agro–Ecology,
11 in consultation with the Department of Natural Resources, the Department of the
12 Environment, the Department of Planning, the Department of Agriculture, and the
13 Chesapeake Bay Program, to conduct a technical study to review changes in forest
14 cover and tree canopy in the State; providing for the scope of the technical study;
15 requiring the Harry R. Hughes Center for Agro–Ecology to submit a report of its
16 findings to the Governor and the General Assembly on or before a certain date;
17 providing for the termination of certain provisions of this Act; providing for the
18 application of this Act; stating a certain intent of the General Assembly; making
19 conforming changes and a stylistic change; and generally relating to the use of
20 qualified ~~preservation~~ conservation in a forest mitigation bank.

21 BY renumbering

22 Article – Natural Resources

23 Section 5–1601(gg) through (pp), respectively

24 to be Section 5–1601(hh) through (qq), respectively

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 (2018 Replacement Volume and 2020 Supplement)

3 BY repealing and reenacting, without amendments,
4 Article – Natural Resources
5 Section 5–1601(a) and (b) and 5–1607(a)
6 Annotated Code of Maryland
7 (2018 Replacement Volume and 2020 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article – Natural Resources
10 Section 5–1601(o), 5–1607(b), and 5–1610.1
11 Annotated Code of Maryland
12 (2018 Replacement Volume and 2020 Supplement)

13 BY adding to
14 Article – Natural Resources
15 Section 5–1601(gg)
16 Annotated Code of Maryland
17 (2018 Replacement Volume and 2020 Supplement)

18 BY repealing and reenacting, without amendments,
19 Article – Natural Resources
20 Section 5–1601(hh)
21 Annotated Code of Maryland
22 (2018 Replacement Volume and 2020 Supplement)
23 (As enacted by Section 1 of this Act)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
25 That Section(s) 5–1601(gg) through (pp), respectively, of Article – Natural Resources of the
26 Annotated Code of Maryland be renumbered to be Section(s) 5–1601(hh) through (qq),
27 respectively.

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

30 **Article – Natural Resources**

31 5–1601.

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

33 (b) “Afforestation” means the establishment of a tree cover on an area from which
34 it has always or very long been absent, or the planting of open areas which are not presently
35 in forest cover.

1 (o) "Forest mitigation banking" means the intentional restoration [or creation],
2 **CREATION, OR QUALIFIED ~~PRESERVATION~~ CONSERVATION** of forests undertaken
3 expressly for the purpose of providing credits for afforestation or reforestation
4 requirements with enhanced environmental benefits from future activities.

5 (GG) "**QUALIFIED ~~PRESERVATION~~ CONSERVATION**" MEANS THE
6 **~~PRESERVATION~~ CONSERVATION OF ALL OR A PART OF AN EXISTING FOREST THAT**
7 **IS:**

8 (1) **APPROVED BY THE APPROPRIATE STATE OR LOCAL FOREST**
9 **CONSERVATION PROGRAM FOR THE PURPOSE OF ESTABLISHING A FOREST**
10 **MITIGATION BANK; AND**

11 (2) **ENCUMBERED IN PERPETUITY BY A RESTRICTIVE EASEMENT,**
12 **COVENANT, OR ANOTHER SIMILAR MECHANISM RECORDED IN THE COUNTY LAND**
13 **RECORDS TO ~~PRESERVE~~ CONSERVE ITS CHARACTER AS A FOREST.**

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

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

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

24 5-1607.

25 (a) The preferred sequence for afforestation and reforestation shall be established
26 by the State or local authority in accordance with the following after all techniques for
27 retaining existing forest cover on-site have been exhausted:

28 (1) Those techniques that enhance existing forest and involve selective
29 clearing or supplemental planting on-site;

30 (2) On-site afforestation or reforestation may be utilized where the
31 retention options have been exhausted. In those cases, the method shall be selected in
32 accordance with subsection (b) of this section, and the location shall be selected in
33 accordance with subsection (d) of this section;

1 (3) (i) Off-site afforestation or reforestation in the same watershed or
2 in accordance with an approved master plan may be utilized where the applicant has
3 demonstrated that no reasonable on-site alternative exists, or where:

4 1. Any on-site priority areas for afforestation or
5 reforestation have been planted in accordance with subsection (d) of this section; and

6 2. The applicant has justified to the satisfaction of the State
7 or local jurisdiction that environmental benefits associated with off-site afforestation or
8 reforestation would exceed those derived from on-site planting;

9 (ii) In these cases, the method shall be selected in accordance with
10 subsection (b) of this section, and the location shall be selected in accordance with
11 subsection (d) of this section; and

12 (iii) Off-site afforestation or reforestation may include the use of
13 forest mitigation banks which have been so designated in advance by the State or local
14 forest conservation program which is approved by the Department; and

15 (4) The State or local jurisdiction may allow an alternative sequence for a
16 specific project if necessary to achieve the objectives of a local jurisdiction's land use plans
17 or policies or to take advantage of opportunities to consolidate forest conservation efforts.

18 (b) Standards for meeting afforestation or reforestation requirements shall be
19 established by the State or local program using one or more of the following methods:

20 (1) Forest creation in accordance with a forest conservation plan using one
21 or more of the following:

22 (i) Transplanted or nursery stock;

23 (ii) Whip and seedling stock; or

24 (iii) Natural regeneration where it can be shown to adequately meet
25 the objective of the forest conservation plan.

26 (2) **THE USE OF QUALIFIED ~~PRESERVATION~~ CONSERVATION**
27 **COMPLETED IN A FOREST MITIGATION BANK, IN WHICH CASE, THE AFFORESTATION**
28 **OR REFORESTATION CREDIT GRANTED MAY NOT EXCEED 50% OF THE FOREST AREA**
29 **ENCUMBERED IN PERPETUITY.**

30 (3) The use of street trees in a municipal corporation with a tree
31 management plan, in an existing population center designated in a county master plan that
32 has been adopted to conform with the Economic Growth, Resource Protection, and Planning
33 Act of 1992, or in any other designated area approved by the Department as part of a local
34 program, under criteria established by the local program, subject to the approval of the
35 Department, using:

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

4 (ii) Acquisition as a mitigation technique of an off-site protective
5 easement for existing forested areas not currently protected in perpetuity, in which case
6 the afforestation or reforestation credit granted may not exceed 50% of the area of forest
7 cover protected.

8 [(3)] (4) When all other options, both on-site and off-site, have been
9 exhausted, landscaping as a mitigation technique, conducted under an approved
10 landscaping plan that establishes a forest at least 35 feet wide and covering at least 2,500
11 square feet of area.

12 5-1610.1.

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

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

18 (c) Mitigation banks may be [permitted] **ALLOWED** only in priority areas as
19 identified in § 5-1607(d) of this subtitle or as identified in a comprehensive plan adopted
20 by a local jurisdiction.

21 (d) The establishment of mitigation banks and their use may not alter the
22 sequence for retention, reforestation, or afforestation on a development site as outlined in
23 § 5-1607 of this subtitle.

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

29 (f) This section may not be construed to require the Department or a local
30 jurisdiction to:

31 (1) Establish or fund State or local mitigation banks;

32 (2) Fund the establishment of forest mitigation banking by the private
33 sector; or

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

1 (g) (1) Credits in a mitigation bank may not be approved for debiting until
2 construction ~~OR QUALIFIED PRESERVATION~~ CONSERVATION of the mitigation bank is
3 complete.

4 (2) A mitigation bank **THAT REQUIRES CONSTRUCTION** shall maintain
5 sufficient credits in reserve to cover anticipated expenses of completion of the mitigation
6 bank.

7 SECTION 3. AND BE IT FURTHER ENACTED, That:

8 (a) (1) The Harry R. Hughes Center for Agro–Ecology, in consultation with the
9 Department of Natural Resources, the Department of the Environment, the Department of
10 Planning, the Department of Agriculture, and the Chesapeake Bay Program, as
11 appropriate, shall conduct a technical study to review changes in forest cover and tree
12 canopy in the State.

13 (2) The technical study required under paragraph (1) of this subsection
14 shall, to the extent practicable, include:

15 (i) a survey and mapping of:

16 1. existing forest cover and tree canopy in the State; and

17 2. potential afforestation and reforestation locations in the
18 State;

19 (ii) an analysis of the health and quality of forests in the State;

20 (iii) an analysis of the progress toward the State’s commitments to
21 expand urban tree canopy acres and plant riparian forest buffers under the 2014
22 Chesapeake Bay Agreement;

23 (iv) an analysis of observed and projected changes in land cover and
24 the amount of forest cover in the State due to development or other causes, using the
25 Chesapeake Bay Phase 6 Model, Chesapeake Assessment Scenario Tool (CAST), and county
26 and municipal forest conservation annual reports and land use plans, including the extent
27 and nature of:

28 1. mitigation activities involving existing forest conserved,
29 tree planting, reforestation, or afforestation under the Forest Conservation Act;

30 2. forest clearing, planting, and mitigation activity inside
31 and outside priority funding areas and locally designated growth areas; and

32 3. the clearing and mitigation of forest considered to be a
33 priority for retention and protection under § 5–1607(c) of the Natural Resources Article and

1 in State-identified targeted ecological areas and greenways, hubs, and corridors and the
2 zoned density and sewer status of those areas;

3 (v) an analysis of observed and projected changes in the amount of
4 forest cover in the State based on:

5 1. relevant State or local programs involving tree planting,
6 reforestation, or afforestation; and

7 2. the amount of forest preserved through federal, State, and
8 local programs, including agricultural preservation, open space, conservation easement,
9 and other land preservation programs;

10 (vi) a review of forest mitigation banking in the State, including:

11 1. capacity and location of active banks;

12 2. regulation of siting and creation of new banks;

13 3. geographic limitations on the use of mitigation banks;

14 4. the relationship between fee-in-lieu rates under the
15 Forest Conservation Act and the market for forest mitigation banks; and

16 5. whether expanding the use of forest mitigation banks
17 could provide water quality improvements and other beneficial results; and

18 (vii) a programmatic and funding review of federal, State, and local
19 tree and forest planting programs such as:

20 1. Marylanders Plant Trees;

21 2. Lawn to Woodland;

22 3. Backyard Buffers;

23 4. Conservation Reserve Enhance Program; and

24 5. other programs used to further TMDL Watershed
25 Implementation Plans and MS4 permit compliance.

26 (b) On or before December 1, 2023, the Harry R. Hughes Center for Agro-Ecology
27 shall submit a report of the findings of the technical study required under subsection (a) of
28 this section to the Governor and, in accordance with § 2-1257 of the State Government
29 Article, the General Assembly.

30 SECTION 4. AND BE IT FURTHER ENACTED, That:

1 (a) Subject to subsection (b) of this section, this Act shall be construed to apply
2 retroactively and shall be applied to and interpreted to affect any qualified conservation
3 completed, and any resulting afforestation or reforestation credits given, to the extent they
4 were approved in good faith under a State or local program as a forest mitigation bank
5 before the effective date of this Act.

6 (b) Nothing in this section requires a State or local program to reevaluate or alter
7 any of its final determinations related to the granting or denial of afforestation or
8 reforestation credits for qualified conservation made before the effective date of this Act.

9 SECTION 5. AND BE IT FURTHER ENACTED, That it is the intent of the General
10 Assembly to review the findings in the technical study on changes in forest cover and tree
11 canopy in Maryland required under Section 3 of this Act and, based on the findings, to
12 consider any legislative or other changes necessary to improve the implementation and
13 effectiveness of the Forest Conservation Act, including any changes to the forest mitigation
14 banking program in the State.

15 SECTION ~~5~~ 6. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 ~~October~~ June 1, 2021. Section 3 of this Act shall remain effective for a period of 3 years and,
17 at the end of May 31, 2024, Section 3 of this Act, with no further action required by the
18 General Assembly, shall be abrogated and of no further force and effect.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.