

SB0526/793828/1

BY: Education, Energy, and the Environment Committee

AMENDMENTS TO SENATE BILL 526
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 4, strike “establishing and authorizing” and substitute “altering exemptions from certain afforestation, reforestation, and preservation requirements; altering”; in line 5, strike “alternative”; strike beginning with “altering” in line 6 down through “conserved;” in line 8 and substitute “authorizing local jurisdictions to adopt certain alternative afforestation, reforestation, and preservation requirements; altering rules for the use of qualified conservation to meet afforestation or reforestation requirements;”; strike beginning with “lowering” in line 11 down through “program;” in line 13 and substitute “providing for judicial review of certain plans and determinations; extending the time period for the Department of Natural Resources to spend certain money deposited in the Forest Conservation Fund; requiring the Department to update the State Forest Conservation Technical Manual; requiring the Department to establish a workgroup to evaluate and recommend incentives for private landowners to conserve forests;”; in line 27, strike “and”; and in the same line, after “5-1602(a)” insert “, and 5-1610(b)”.

On page 1 in line 21, and on page 2 in line 30, in each instance, strike “5-1601(hh) through (qq)” and substitute “5-102(b)(2) through (8)”; and on page 1 in line 22, and on page 2 in line 31, in each instance, strike “5-1601(ii) through (rr)” and substitute “5-102(b)(3) through (9)”.

On page 2, in line 5, strike “5-1602(b)(5),” and substitute “5-1602(b)(4), (5), (12), and (13), 5-1603(a)(1) and (c)(3)(ii), 5-1605(d),”; in the same line, strike “and”; in the same line, after “5-1607” insert “, 5-1610(e), and 5-1610.1(c)”; in line 10, after “5-102(b)(1)” insert “and (2)”; in the same line, strike “5-1601(hh),” and substitute “5-1602(b)(14) through (17),”; and strike in their entirety lines 13 through 22, inclusive.

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AMENDMENT NO. 2

On page 3, in line 6, strike “240” and substitute “120”; in line 18, strike “INCREASING THE ACREAGE OF” and substitute “INCREASING, AS MEASURED EVERY 4 YEARS, THE ACREAGE OF FOREST”; strike beginning with “AS” in line 18 down through “COVERED” in line 21 and substitute “;

(2) INCREASING, AS MEASURED EVERY 4 YEARS, THE ACREAGE OF LAND IN THE STATE COVERED”;

in line 22, strike “OR” and substitute “AND”; and in line 29, strike the brackets.

AMENDMENT NO. 3

On page 4, strike beginning with “IS” in line 1 down through “(3)” in line 12; strike in their entirety lines 15 through 21, inclusive; and after line 27, insert:

“(4) Any agricultural activity that does not result in a change in land use category, including THE OPERATION OF ORCHARDS AND TREE FARMS AND THE CONSTRUCTION AND USE OF agricultural support buildings and other related structures built using accepted best management practices;”.

On page 5, after line 2, insert:

“(12) Any stream restoration project for which the applicant for a grading or sediment control permit has executed a binding maintenance agreement of at least 5 years with the affected property owner; [and]

(13) Maintenance or retrofitting of a stormwater management structure that may include clearing of vegetation or removal and trimming of trees, so long as the maintenance or retrofitting is within the original limits of disturbance for construction of the existing structure, or within any maintenance easement for access to the structure;

(14) FOREST MANAGEMENT;

(15) TRANSIT-ORIENTED DEVELOPMENT, AS DEFINED UNDER § 7-101 OF THE TRANSPORTATION ARTICLE, PROVIDED THAT THE AREA OF FOREST REMOVED SHALL BE:

(I) REFORESTED AT A RATIO OF AT LEAST 1/4 ACRE REPLANTED FOR EACH ACRE REMOVED; OR

(II) MITIGATED IN A MANNER IN WHICH 1/2 ACRE OF FOREST IS PERMANENTLY PROTECTED FOR EACH ACRE REMOVED;

(16) THE CONSTRUCTION OF A NEW FEDERAL GOVERNMENT FACILITY PROJECTED TO HOUSE THE EMPLOYMENT OF AT LEAST 2,500 PERSONS; AND

(17) THE CONSTRUCTION OF MULTIFAMILY HOUSING, CONSISTING OF A SINGLE STRUCTURE CONTAINING AT LEAST 25 DWELLING UNITS, PROVIDED THAT THE AREA OF FOREST REMOVED SHALL BE:

(I) REFORESTED AT A RATIO OF AT LEAST 1/4 ACRE REPLANTED FOR EACH ACRE REMOVED; OR

(II) MITIGATED IN A MANNER IN WHICH 1/2 ACRE OF FOREST IS PERMANENTLY PROTECTED FOR EACH ACRE REMOVED.

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(a) (1) A unit of local government having planning and zoning authority shall develop a local forest conservation program[, consistent]:

(I) CONSISTENT with the intent, requirements, and standards of this subtitle; AND

(II) AFFORDING DUE CONSIDERATION TO THE POLICY GOALS ESTABLISHED UNDER:

1. TITLE 5, SUBTITLE 7A OF THE STATE FINANCE AND PROCUREMENT ARTICLE; AND

2. THE PLANS ADOPTED UNDER TITLE 1, SUBTITLE 4 AND TITLE 3 OF THE LAND USE ARTICLE.

(c) (3) (ii) A local forest conservation program, when approved by the Department, may:

1. Allow clustering and other innovative land use techniques that protect and establish forests where open space is preserved, sensitive areas are protected, and development is physically concentrated; and

2. [Waive] PROVIDE FOR THE WAIVER OR MODIFICATION OF the requirements of this subtitle for previously developed areas covered by impervious surface and located in priority funding areas at the time of the application for subdivision plan, grading, or sediment control permit approval.

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(d) (1) AT LEAST 20 DAYS BEFORE APPROVAL OF THE FOREST CONSERVATION PLAN, THE DEPARTMENT OR LOCAL AUTHORITY SHALL:

(I) PROVIDE NOTICE THAT IS CONSISTENT WITH LOCAL AUTHORITY NOTICE REQUIREMENTS TO ALL PROPERTY OWNERS ABUTTING AND ADJACENT TO THE BOUNDARY OF THE SUBJECT PROPERTY OF ANY PROPOSED CLEARING OF A PRIORITY RETENTION AREA AS DESCRIBED IN § 5-1607(C) OF THIS SUBTITLE; AND

(II) 1. ON A NET TRACT AREA OF AT LEAST 5 ACRES AND IF AT LEAST 75% OF THE PRIORITY RETENTION AREA IS PROPOSED TO BE CLEARED, PROVIDE AN OPPORTUNITY FOR WRITTEN AND VERBAL COMMENT BEFORE PLAN APPROVAL; OR

2. FOR ANY OTHER PROJECT WHERE PRIORITY RETENTION AREA IS PROPOSED FOR CLEARING, PROVIDE AN OPPORTUNITY FOR PUBLIC WRITTEN COMMENT BEFORE PLAN APPROVAL.

(2) PROPERTY SEPARATED FROM THE SUBJECT PROPERTY BY A PUBLIC RIGHT-OF-WAY SHALL BE CONSIDERED ABUTTING AND ADJACENT.

(3) (I) Within 45 days from receipt of the forest conservation plan, the Department or local authority shall notify the applicant whether the forest conservation plan is complete.

(II) If the Department or local authority fails to notify the applicant about the forest conservation plan within 45 days, the plan shall be treated as complete and approved.

(III) The Department or local authority may require further information or provide for an extension of this deadline for an additional 15 days for extenuating circumstances.

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(IV) In addition, at the request of the applicant, the State or local authority may extend this deadline for extenuating circumstances.

(4) (I) A PERSON PETITIONING FOR JUDICIAL REVIEW OF AN APPROVED FOREST CONSERVATION PLAN SHALL FILE THE PETITION IN ACCORDANCE WITH THE MARYLAND RULES NOT LATER THAN 30 DAYS AFTER APPROVAL OF THE FOREST CONSERVATION PLAN.

(II) ANY JUDICIAL REVIEW OF A FOREST CONSERVATION PLAN SHALL BE:

1. CONDUCTED IN ACCORDANCE WITH THE MARYLAND RULES; AND

2. LIMITED TO THE RECORD COMPILED BY THE DEPARTMENT OR THE LOCAL AUTHORITY.”;

and after line 25, insert:

“(6) SOLAR PHOTOVOLTAIC FACILITIES MAY NOT BE SUBJECT TO AFFORESTATION REQUIREMENTS UNDER THIS SUBTITLE.”.

AMENDMENT NO. 4

On pages 5 and 6, strike beginning with “There” in line 26 on page 5 down through “(d)” in line 14 on page 6.

On page 6, in line 14, strike “the provisions of paragraph (2) of this subsection” and substitute “§ 5-1606.1 OF THIS SUBTITLE:”

(I) EXCEPT AS PROVIDED IN ITEM (II) OF THIS PARAGRAPH”;

in lines 15 and 16, strike “above the applicable forest conservation threshold”; in line 17, strike “1/4” and substitute “1”; in the same line, strike “removed.” and substitute “REMOVED; AND

(II) FOR ALL EXISTING FOREST COVER LOCATED IN A PRIORITY FUNDING AREA DESIGNATED UNDER § 5-7B-03 OF THE STATE FINANCE AND PROCUREMENT ARTICLE, AND NOT IDENTIFIED AS A PRIORITY FOR RETENTION AS DESCRIBED IN § 5-1607(C) OF THIS SUBTITLE, MEASURED TO THE NEAREST 1/10 ACRE CLEARED ON THE NET TRACT AREA, THE AREA OF FOREST REMOVED SHALL BE REFORESTED AT A RATIO OF 1/2 ACRE PLANTED FOR EVERY 1 ACRE REMOVED.

(2) UPON MEETING THE REFORESTATION AND AFFORESTATION REQUIREMENTS IN THIS SECTION, ALL UNFORESTED RIPARIAN BUFFERS ON SITE SHALL BE AFFORESTED AND REFORESTED, UNLESS THE APPLICANT DEMONSTRATES TO THE DEPARTMENT OR THE LOCAL AUTHORITY THAT AFFORESTATION IN THE RIPARIAN BUFFER:

(I) WOULD BE IN CONFLICT WITH ALLOWABLE USES AS ESTABLISHED FOR THE RIPARIAN BUFFER;

(II) IS LOCATED ON PARK PROPERTY AND CONFLICTS WITH THE MISSION AND ESTABLISHED STEWARDSHIP PRACTICES OF THE PARK; OR

(III) IS NOT SUITABLE FOR THE ESTABLISHMENT AND RETENTION OF THE REQUIRED PLANTING MATERIALS, IN WHICH CASE SUBSTITUTE ENVIRONMENTAL PROTECTION MEASURES MUST BE IMPLEMENTED.”;

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strike in their entirety lines 18 through 23, inclusive; in lines 24 and 30, strike “(f)” and “(g)”, respectively, and substitute “(C)” and “(D)”, respectively; and in line 30, strike “A” and substitute “EXCEPT AS PROVIDED IN SUBSECTION (A)(6) OF THIS SECTION, A”.

AMENDMENT NO. 5

On page 7, strike in their entirety lines 1 through 5, inclusive; strike in their entirety lines 7 through 14, inclusive; in line 15, strike “(B)” and substitute “(A)”; in line 19, strike “2-YEAR” and substitute “4-YEAR”; in line 30, strike “BASELINE” and substitute “EXISTING”; in line 31, strike “CONSIDER” and substitute “:

(I) CONSIDER;

in line 32, after “ACREAGE” insert “:

(II) BASE ITS DETERMINATION ON THE LOCAL ANNUAL REPORTS REQUIRED UNDER § 5-1613 OF THIS SUBTITLE; AND

(III) EXCLUDE THE EFFECT OF A PROJECT:

1. APPROVED BEFORE JULY 1, 2024; OR

2. DESCRIBED IN § 5-1602(B) OF THIS SUBTITLE;

in line 33, strike “THE” and substitute “ON OR BEFORE DECEMBER 31, 2028, THE”; and in the same line, strike “RESCIND APPROVAL” and substitute “PROVIDE WRITTEN NOTICE REQUIRING MODIFICATION”.

On page 8, in line 1, strike “MAINTAIN” and substitute “:

(I) MAINTAIN OR EXPAND;

in the same line, strike “BASELINE” and substitute “EXISTING”; and in line 2, after “PERIODS” insert “;OR”

(II) SUBMIT THE LOCAL ANNUAL REPORTS REQUIRED UNDER § 5-1613 OF THIS SUBTITLE.

(5) ON OR AFTER JANUARY 1, 2029, THE DEPARTMENT MAY RESCIND APPROVAL OF ALTERNATIVE AFFORESTATION, REFORESTATION, AND PRESERVATION REQUIREMENTS IF THE LOCAL PROGRAM DOES NOT MEET A CONDITION SPECIFIED UNDER PARAGRAPH (4)(I) OR (II) OF THIS SUBSECTION”.

On page 9, in line 4, strike the brackets; in the same line, strike “FOR A QUALIFIED PROJECT, THE”; in line 5, after “bank” insert “TO MEET”:

(I) UP TO 50% OF THE AFFORESTATION OR REFORESTATION REQUIREMENT”; after line 6, insert “OR”

(II) IF, A LOCAL JURISDICTION PROPOSES, AND AFTER PUBLIC COMMENT, THE DEPARTMENT APPROVES A WRITTEN JUSTIFICATION FOR THE INCREASE, UP TO 60% OF THE AFFORESTATION OR REFORESTATION REQUIREMENT, IN WHICH CASE THE AFFORESTATION OR REFORESTATION CREDIT GRANTED MAY NOT EXCEED 50% OF THE FOREST AREA ENCUMBERED IN PERPETUITY;”;

in line 20, after “OF” insert “ON- OR OFF-SITE”; in line 21, strike “AMENDMENT AND STABILIZATION” and substitute “ENHANCEMENT WITHOUT GRADING”; in line 22, strike “ESTABLISHMENT” and substitute “IMPROVEMENT”; and in line 27, after “OR” insert “PLANTED”.

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AMENDMENT NO. 6

On page 10, in line 9, strike “AND”; in line 10, strike “TREES, SHRUBS, AND PLANTS” and substitute “FOREST SUITABLE FOR FOREST INTERIOR–DWELLING SPECIES;

(IV) FOREST LOCATED IN A TIER II OR TIER III HIGH QUALITY WATERSHED AS IDENTIFIED BY THE DEPARTMENT OF THE ENVIRONMENT;

(V) FOREST LOCATED IN A WATER RESOURCE PROTECTION ZONE, A RESERVOIR WATERSHED, OR A WELLHEAD PROTECTION AREA AS IDENTIFIED BY A LOCAL JURISDICTION; AND

(VI) FORESTS”;

in lines 10 and 11, strike “THAT ARE ESSENTIAL” and substitute “:

1. AS DELINEATED IN THE PRIORITY URBAN FOREST MAPPING INCLUDED IN THE STATE FOREST CONSERVATION TECHNICAL MANUAL REQUIREMENTS; OR

2. THAT ARE MOST IMPORTANT”;

strike in their entirety lines 17 through 25, inclusive; in lines 26, 29, and 32, in each instance, strike the brackets; and in the same lines, strike “(V)”, “(VI)”, and “(VII)”, respectively.

On page 11, after line 4, insert:

“(3) (I) THE DEPARTMENT OR A LOCAL AUTHORITY SHALL ISSUE WRITTEN FINDINGS AND JUSTIFICATION FOR ANY CLEARING OF A PRIORITY RETENTION AREA DESCRIBED IN PARAGRAPH (1) OR (2) OF THIS SUBSECTION.

(II) ANY JUDICIAL REVIEW OF A FINAL DETERMINATION MADE UNDER THIS PARAGRAPH SHALL BE:

1. CONDUCTED IN ACCORDANCE WITH THE MARYLAND RULES; AND

2. LIMITED TO THE RECORD COMPILED BY THE DEPARTMENT OR THE LOCAL AUTHORITY.”.

On page 12, after line 9, insert:

“5-1610.1.

(c) [Mitigation] AFTER DECEMBER 31, 2020, MITIGATION banks may be allowed only [in priority]:

(1) IF THE APPLICATION WAS SUBMITTED BEFORE DECEMBER 31, 2020; OR

(2) WHEN USING:

(I) QUALIFIED CONSERVATION LOCATED IN PRIORITY RETENTION AREAS AS IDENTIFIED IN § 5-1607(C) OF THIS SUBTITLE; OR

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(II) NEWLY PLANTED FOREST LOCATED IN PRIORITY AFFORESTATION OR REFORESTATION areas as identified in § 5-1607(d) of this subtitle or as identified in a comprehensive plan adopted by a local jurisdiction.”;

and strike in their entirety lines 10 through 30, inclusive.

AMENDMENT NO. 7

On page 13, after line 11, insert:

“SECTION 4. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

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(b) There is a Forest Conservation Fund in the Department.

(e) (1) The Department shall accomplish the reforestation or afforestation for which the money is deposited within [2] 5 years or [3] 6 growing seasons, as appropriate, after receipt of the money.

(2) Money deposited in the Fund under subsection (c) of this section shall remain in the Fund for a period of [2] 5 years or [3] 6 growing seasons, and at the end of that time period, any portion that has not been used OR ENCUMBERED to meet the afforestation or reforestation requirements shall be returned to the person who provided the money to be used for documented tree planting in the same county or watershed beyond that required by this subtitle or other applicable statutes.

SECTION 5. AND BE IT FURTHER ENACTED, That:

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(a) The Department of Natural Resources shall update the State Forest Conservation Technical Manual on or before December 31, 2024, for consistency with this Act.

(b) The updates shall include:

(1) guidance on:

(i) when the clearing of a priority area for retention described in § 5–1607(c) of the Natural Resources Article, as enacted by this Act, may be justified, including for purposes related to forest health or composition; and

(ii) the use of site design practices to minimize clearing; and

(2) standards by which credit may be granted for the restoration of degraded forest.

SECTION 6. AND BE IT FURTHER ENACTED, That the Department of Natural Resources shall establish a workgroup to evaluate and recommend incentives for private landowners to conserve forest, including adjusting the minimal acreage of contiguous forested land required to qualify for the forest conservation and management program established under § 8–211 of the Tax – Property Article.

SECTION 7. AND BE IT FURTHER ENACTED, That, on or before December 31, 2023, the Department of Natural Resources shall issue a description of the procedures the Department will use to determine whether a local program is expected to maintain or expand the existing level of forest cover in the jurisdiction.

SECTION 8. AND BE IT FURTHER ENACTED, That, on or before December 31, 2023, the Department of Natural Resources shall approve or reject alternative afforestation, reforestation, and preservation requirements adopted by a local jurisdiction before September 1, 2023.

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SECTION 9. AND BE IT FURTHER ENACTED, That this Act may not apply to:

(1) a solarvoltaic facility granted a certificate of public convenience and necessity by the Public Service Commission under § 7–207 of the Public Utilities Article before July 1, 2023;

(2) a forest conservation plan approved before July 1, 2024, that is associated with a subdivision plan, site plan, building permit, or grading or sediment control application; or

(3) a revision to a plan or permit described in item (2) of this section that does not materially alter the proposed or actual limits of disturbance.

SECTION 10. AND BE IT FURTHER ENACTED, That Sections 1, 2, and 3 of this Act shall take effect July 1, 2024.”;

in line 12, strike “4” and substitute “11”; in the same line, after “That” insert “, except as provided in Section 10 of this Act,”; and in line 13, strike “October” and substitute “July”.