

# HOUSE BILL 723

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CF SB 526

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By: Delegates Love, Healey, Bridges, and Stein ~~Stein~~, Addison, Allen, Barve, Boyce, Ciliberti, Foley, Guyton, Holmes, Kerr, J. Long, T. Morgan, and Stewart

Introduced and read first time: February 7, 2023  
Assigned to: Environment and Transportation

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Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: March 21, 2023

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

1 AN ACT concerning

2 **Natural Resources – Forest Preservation and Retention**

3 FOR the purpose of altering the definition of “qualified conservation” for purposes of  
4 provisions of law related to forest mitigation banks; ~~establishing and authorizing~~  
5 altering exemptions from certain afforestation, reforestation, and preservation  
6 requirements; altering certain ~~alternative~~ methods of calculating forest  
7 afforestation, reforestation, and preservation requirements; ~~altering the~~  
8 development projects for which afforestation or reforestation credits granted may not  
9 exceed a certain percentage of forest conserved; authorizing local jurisdictions to  
10 adopt certain alternative afforestation, reforestation, and preservation  
11 requirements; altering rules for the use of qualified conservation to meet  
12 afforestation or reforestation requirements; adding certain tree plantings and  
13 practices as methods that certain municipal corporations may use to meet  
14 afforestation or reforestation requirements; adding certain areas and vegetation  
15 considered to be a priority for forest retention and protection under certain  
16 circumstances; ~~lowering the acreage threshold in certain counties for participation~~  
17 in the forest conservation and management program; providing for judicial review of  
18 certain plans and determinations; extending the time period for the Department of  
19 Natural Resources to spend certain money deposited in the Forest Conservation  
20 Fund; requiring the Department to update the State Forest Conservation Technical  
21 Manual; requiring the Department to establish a workgroup to evaluate and  
22 recommend incentives for private landowners to conserve forests; and generally  
23 relating to forest preservation and retention.

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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 BY repealing  
 2 Article – Natural Resources  
 3 Section 5–101(i) and 5–102(b)(1)  
 4 Annotated Code of Maryland  
 5 (2018 Replacement Volume and 2022 Supplement)
- 6 BY renumbering  
 7 Article – Natural Resources  
 8 Section 5–101(j) through (m) and ~~5–1601(hh) through (qq)~~ 5–102(b)(2) through (8)  
 9 to be Section 5–101(i) through (l) and ~~5–1601(ii) through (rr)~~ 5–102(b)(3) through (9),  
 10 respectively  
 11 Annotated Code of Maryland  
 12 (2018 Replacement Volume and 2022 Supplement)
- 13 BY repealing and reenacting, without amendments,  
 14 Article – Natural Resources  
 15 Section 5–101(a), 5–1601(a), ~~and 5–1602(a), and 5–1610(b)~~  
 16 Annotated Code of Maryland  
 17 (2018 Replacement Volume and 2022 Supplement)
- 18 BY repealing and reenacting, with amendments,  
 19 Article – Natural Resources  
 20 Section 5–101(e), 5–1601(gg), ~~5–1602(b)(5)~~, 5–1602(b)(4), (5), (12), and (13),  
 21 5–1603(a)(1) and (c)(3)(ii), 5–1605(d), 5–1606, and 5–1607, 5–1610(e), and  
 22 5–1610.1(c)  
 23 Annotated Code of Maryland  
 24 (2018 Replacement Volume and 2022 Supplement)
- 25 BY adding to  
 26 Article – Natural Resources  
 27 Section 5–101(m), 5–102(b)(1) and (2), 5–1601(hh), 5–1602(b)(14) through (17), and  
 28 5–1606.1  
 29 Annotated Code of Maryland  
 30 (2018 Replacement Volume and 2022 Supplement)
- 31 ~~BY repealing and reenacting, without amendments,~~  
 32 ~~Article – Tax – Property~~  
 33 ~~Section 8–211(a) and (b)~~  
 34 ~~Annotated Code of Maryland~~  
 35 ~~(2019 Replacement Volume and 2022 Supplement)~~
- 36 ~~BY repealing and reenacting, with amendments,~~  
 37 ~~Article – Tax – Property~~  
 38 ~~Section 8–211(e)~~  
 39 ~~Annotated Code of Maryland~~  
 40 ~~(2019 Replacement Volume and 2022 Supplement)~~

1 BY repealing and reenacting, with amendments,  
 2 Chapter 645 of the Acts of the General Assembly of 2021  
 3 Section 11

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
 5 That Section(s) 5–101(i) of Article – Natural Resources of the Annotated Code of Maryland  
 6 be repealed.

7 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 5–101(j) through  
 8 (m) and ~~5–1601(hh) through (qq)~~ 5–102(b)(2) through (8) of Article – Natural Resources of  
 9 the Annotated Code of Maryland be renumbered to be Section(s) 5–101(i) through (l) and  
 10 ~~5–1601(ii) through (rr)~~ 5–102(b)(3) through (9), respectively.

11 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read  
 12 as follows:

### 13 Article – Natural Resources

14 5–101.

15 (a) In this title the following words have the meanings indicated.

16 (e) (1) “Forest land” means [a biological community dominated by trees and  
 17 other woody plants that are capable of producing timber or other wood products with a  
 18 stocking of at least 100 trees per acre with at least 50% of those trees having a 2–inch or  
 19 greater diameter at 4.5 feet above the ground] **A CONTIGUOUS PATCH OF TREES THAT**  
 20 **IS AT LEAST 1 ACRE IN SIZE EXHIBITING AT LEAST ONE TRANSECT OF AT LEAST ~~240~~**  
 21 **120 FEET IN WIDTH.**

22 (2) “Forest land” includes forested areas that have been cut but not  
 23 converted to other land uses.

24 **(M) “TREE CANOPY” MEANS THE CROWNS OF DECIDUOUS AND EVERGREEN**  
 25 **WOODY VEGETATION THAT IS:**

26 **(1) THE PRODUCT OF NATURAL GROWTH OR HUMAN PLANTING; AND**

27 **(2) GREATER THAN 3 METERS IN HEIGHT.**

28 5–102.

29 (b) It is the policy of the State to encourage the retention and sustainable  
 30 management of forest lands by:

31 [(1) Achieving no net loss of forest;]

1           (1) ~~INCREASING THE ACREAGE OF~~ INCREASING, AS MEASURED  
 2 EVERY 4 YEARS, THE ACREAGE OF FOREST LAND IN THE STATE AS MEASURED EVERY  
 3 ~~4 YEARS THAT IS:~~

4                   ~~(I) FOREST LAND; OR~~

5                   ~~(II) COVERED;~~

6           (2) INCREASING, AS MEASURED EVERY 4 YEARS, THE ACREAGE OF  
 7 LAND IN THE STATE COVERED BY TREE CANOPY, FOR LAND LOCATED INSIDE AN  
 8 URBAN AREA ~~OR~~ AND OUTSIDE AN URBAN AREA;

9 5-1601.

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

11           (gg) “Qualified conservation” means the conservation of all or a part of an existing  
 12 forest that:

13           (1) [Was] **HAS BEEN** approved [on or before December 31, 2020,] by the  
 14 appropriate State or local forest conservation program for the purpose of establishing a  
 15 forest mitigation bank; ~~and~~

16           (2) ~~IS NOT LOCATED ON LAND FOR WHICH:~~

17                   ~~(I) DEVELOPMENT OR SUBDIVISION RIGHTS HAVE BEEN~~  
 18 ~~MATERIALLY EXTINGUISHED;~~

19                   ~~(II) STATE OR LOCAL LAW PROHIBITS SUBDIVISION OF THE~~  
 20 ~~LAND WITHOUT THE APPROVAL OF A WAIVER, MODIFICATION, OR VARIANCE, NOT~~  
 21 ~~INCLUDING A VARIANCE ISSUED UNDER THIS SUBTITLE;~~

22                   ~~(III) THE SOIL IS REASONABLY EXPECTED TO BE UNSUITABLE~~  
 23 ~~FOR SUPPORTING A CONVENTIONAL SEPTIC SYSTEM AND PUBLIC SEWER SERVICE IS~~  
 24 ~~NOT PLANNED; OR~~

25                   ~~(IV) MAJOR SUBDIVISIONS ARE PROHIBITED BY LOCAL ZONING~~  
 26 ~~OR § 9-206 OF THE ENVIRONMENT ARTICLE; AND~~

27           ~~(3)~~ Is encumbered in perpetuity by a restrictive easement, covenant, or  
 28 another similar mechanism recorded in the county land records to conserve its character  
 29 as a forest.

30           ~~(HH) “QUALIFIED PROJECT” MEANS A PROJECT:~~

1 ~~(1) THAT USES QUALIFIED CONSERVATION FOR WHICH AN~~  
2 ~~APPLICATION WAS SUBMITTED OR APPROVED ON OR BEFORE DECEMBER 31, 2020;~~  
3 ~~OR~~

4 ~~(2) THAT IS GOVERNED BY A LOCAL PROGRAM THAT HAS~~  
5 ~~ALTERNATIVE AFFORESTATION, REFORESTATION, AND PRESERVATION~~  
6 ~~REQUIREMENTS ADOPTED UNDER § 5-1606.1 OF THIS SUBTITLE.~~

7 5-1602.

8 (a) Except as provided in subsection (b) of this section, this subtitle shall apply to  
9 any public or private subdivision plan or application for a grading or sediment control  
10 permit by any person, including a unit of State or local government on areas 40,000 square  
11 feet or greater.

12 (b) The provisions of this subtitle do not apply to:

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

17 (5) The cutting or clearing of public utility rights-of-way [or land] for  
18 electric generating stations licensed pursuant to § 7-204, § 7-205, § 7-207, or § 7-208 of  
19 the Public Utilities Article, provided that:

20 (i) Any required certificates of public convenience and necessity  
21 have been issued in accordance with § 5-1603(f) of this subtitle; and

22 (ii) The cutting or clearing of the forest is conducted so as to  
23 minimize the loss of forest;

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

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

31 (14) FOREST MANAGEMENT;

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

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

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

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

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

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

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

17 5-1603.

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

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

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

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

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

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

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

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

8 5-1605.

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

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

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

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

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

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

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

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

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

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

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

9                    1. CONDUCTED IN ACCORDANCE WITH THE MARYLAND  
 10 RULES; AND

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

13 5–1606.

14            (a) (1) For the following land use categories, tracts having less than 20% of the  
 15 net tract area in forest cover shall be afforested up to 20% of the net tract area:

16                    (i) Agriculture and resource areas; and

17                    (ii) Medium density residential areas.

18            (2) For the following land use categories, tracts having less than 15% of the  
 19 net tract area in forest cover shall be afforested up to 15% of the net tract area:

20                    (i) Institutional development areas;

21                    (ii) High density residential areas;

22                    (iii) Mixed use and planned unit development areas; and

23                    (iv) Commercial and industrial use areas.

24            (3) Afforestation requirements must conform to the conditions in §§ 5–1607  
 25 and 5–1610 of this subtitle, including payment into the Forest Conservation Fund, if  
 26 afforestation on–site or off–site cannot be reasonably accomplished.

27            (4) (i) The afforestation requirements under this subsection shall be  
 28 accomplished within 1 year or 2 growing seasons after the completion of the development  
 29 project.



1 (ii) If afforestation cannot be reasonably accomplished on-site or  
 2 off-site, the requirement to contribute money to a Forest Conservation Fund under §  
 3 5-1610 of this subtitle shall be met within 90 days after the completion of the development  
 4 project.

5 (5) Linear projects that involve no change in land use may not be subject  
 6 to afforestation requirements.

7 **(6) SOLAR PHOTOVOLTAIC FACILITIES MAY NOT BE SUBJECT TO**  
 8 **AFFORESTATION REQUIREMENTS UNDER THIS SUBTITLE.**

9 ~~(b) There is a forest conservation threshold established for all land use categories~~  
 10 ~~as provided in subsection (c) of this section. The forest conservation threshold means the~~  
 11 ~~percentage of the net tract area at which the reforestation requirement changes from a~~  
 12 ~~ratio of 1/4 acre planted for every 1 acre removed to a ratio of 2 acres planted for every 1~~  
 13 ~~acre removed.~~

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

20 ~~(1) Agricultural and resource areas: 50% of net tract area;~~

21 ~~(2) Medium density residential areas: 25% of net tract area;~~

22 ~~(3) Institutional development areas: 20% of net tract area;~~

23 ~~(4) High density residential areas: 20% of net tract area;~~

24 ~~(5) Mixed use and planned unit development areas: 15% of net tract area;~~

25 and

26 ~~(6) Commercial and industrial use areas: 15% of net tract area.~~

27 ~~(d) (1) Subject to the provisions of paragraph (2) of this subsection~~ **§ 5-1606.1**  
 28 **OF THIS SUBTITLE:**

29 **(I) EXCEPT AS PROVIDED IN ITEM (II) OF THIS PARAGRAPH,** for  
 30 all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area  
 31 ~~above the applicable forest conservation threshold,~~ the area of forest removed shall be  
 32 reforested at a ratio of ~~1/4~~ **1** acre planted for every 1 acre ~~removed.~~ **REMOVED; AND**

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

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

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

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

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

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

22                   ~~(e) For all existing forest cover measured to the nearest 1/10 acre cleared on the~~  
 23 ~~net tract area below the applicable forest conservation threshold, the area of forest removed~~  
 24 ~~shall be reforested at a ratio of 2 acres planted for every 1 acre removed.~~

25                   ~~(C)~~ (1) The reforestation requirements under this section shall be  
 26 accomplished within 1 year or 2 growing seasons after completion of the development  
 27 project.

28                   (2) If reforestation cannot be reasonably accomplished on-site or off-site,  
 29 the requirement to contribute money to a Forest Conservation Fund under § 5-1610 of this  
 30 subtitle shall be met within 90 days after completion of the development project.

31                   ~~(D)~~ **(D) A EXCEPT AS PROVIDED IN SUBSECTION (A)(6) OF THIS SECTION,**  
 32 **A** unit of local government with planning and zoning authority may adopt forest  
 33 conservation thresholds and afforestation and reforestation requirements as part of its local  
 34 forest conservation program that are more stringent than the forest conservation  
 35 thresholds and afforestation and reforestation requirements in this section.

1 ~~(H) ANY REFORESTATION REQUIREMENTS UNDER THIS SUBTITLE SHALL BE~~  
2 ~~CALCULATED UNDER § 5-1606.1 OF THIS SUBTITLE INSTEAD OF THIS SECTION IF~~  
3 ~~THE ACREAGE OF REQUIRED REFORESTATION IS GREATER AS CALCULATED UNDER~~  
4 ~~§ 5-1606.1 OF THIS SUBTITLE THAN IS THE CASE AS CALCULATED UNDER THIS~~  
5 ~~SECTION.~~

6 5-1606.1.

7 ~~(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,~~  
8 ~~FOR ALL EXISTING FOREST COVER MEASURED TO THE NEAREST 1/10 ACRE CLEARED~~  
9 ~~ON A SITE, THE AREA OF FOREST CLEARED SHALL BE REFORESTED AT A RATIO OF 1~~  
10 ~~ACRE PLANTED FOR EVERY 1 ACRE CLEARED.~~

11 ~~(2) FOR ALL EXISTING PRIORITY FOREST COVER, AS DESCRIBED~~  
12 ~~UNDER § 5-1607(C) OF THIS SUBTITLE, MEASURED TO THE NEAREST 1/10 ACRE~~  
13 ~~CLEARED ON A SITE, THE AREA OF FOREST CLEARED SHALL BE REFORESTED AT A~~  
14 ~~RATIO OF 2 ACRES PLANTED FOR EVERY 1 ACRE CLEARED.~~

15 ~~(B) (1) A LOCAL JURISDICTION MAY PROPOSE, AND THE DEPARTMENT~~  
16 ~~MAY APPROVE, ALTERNATIVE AFFORESTATION, REFORESTATION, AND~~  
17 ~~PRESERVATION REQUIREMENTS THAT ARE EXPECTED TO RESULT IN THE LOCAL~~  
18 ~~PROGRAM AT A MINIMUM MAINTAINING ITS EXISTING LEVEL OF FOREST COVER~~  
19 ~~OVER A 2-YEAR 4-YEAR PERIOD.~~

20 (2) IF THE DEPARTMENT FINDS THAT THE PROPOSED ALTERNATIVE  
21 AFFORESTATION, REFORESTATION, AND PRESERVATION REQUIREMENTS ARE NOT  
22 EXPECTED TO MAINTAIN THE LOCAL JURISDICTION'S BASELINE LEVEL OF FOREST  
23 COVER, THE DEPARTMENT SHALL:

24 (I) REJECT THE PROPOSED ALTERNATIVE AFFORESTATION,  
25 REFORESTATION, AND PRESERVATION REQUIREMENTS; AND

26 (II) PROVIDE THE LOCAL JURISDICTION WITH WRITTEN NOTICE  
27 OF THE ELEMENTS OF THE PROPOSAL THAT NEED TO BE REVISED.

28 (3) IN DETERMINING WHETHER PROPOSED ALTERNATIVE  
29 AFFORESTATION, REFORESTATION, AND PRESERVATION REQUIREMENTS ARE  
30 EXPECTED TO MAINTAIN THE LOCAL JURISDICTION'S ~~BASELINE~~ EXISTING LEVEL OF  
31 FOREST COVER, THE DEPARTMENT SHALL ~~CONSIDER~~:

32 (I) CONSIDER CREDITS GENERATED UNDER § 5-1607(B)(3) OF  
33 THIS SUBTITLE TO BE FOREST ACREAGE;

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

3                   **(III) EXCLUDE THE EFFECT OF A PROJECT:**

4                   **1. APPROVED BEFORE JULY 1, 2024; OR**

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

6                   **(4) ~~THE~~ ON OR BEFORE DECEMBER 31, 2028, THE DEPARTMENT**  
 7 **SHALL ~~RESCIND APPROVAL~~ PROVIDE WRITTEN NOTICE REQUIRING MODIFICATION**  
 8 **OF ALTERNATIVE AFFORESTATION, REFORESTATION, AND PRESERVATION**  
 9 **REQUIREMENTS IF THE LOCAL PROGRAM DOES NOT ~~MAINTAIN~~:**

10                   **(I) MAINTAIN OR EXPAND THE LOCAL JURISDICTION'S**  
 11 **~~BASELINE~~ EXISTING LEVEL OF FOREST COVER OVER TWO CONSECUTIVE 2-YEAR**  
 12 **PERIODS; OR**

13                   **(II) SUBMIT THE LOCAL ANNUAL REPORTS REQUIRED UNDER §**  
 14 **5-1613 OF THIS SUBTITLE.**

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

19 5-1607.

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

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

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

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

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

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

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

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

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

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

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

19                   (i) Transplanted or nursery stock;

20                   (ii) Whip and seedling stock; or

21                   (iii) Natural regeneration where it can be shown to adequately meet  
22 the objective of the forest conservation plan[.];

23                   (2) ~~[(The) FOR A QUALIFIED PROJECT, THE~~ use of qualified conservation  
24 completed in a forest mitigation bank **TO MEET:**

25                   **(I) UP TO 50% OF THE AFFORESTATION OR REFORESTATION**  
26 **REQUIREMENT**, in which case, the afforestation or reforestation credit granted may not  
27 exceed 50% of the forest area encumbered in perpetuity[.]; **OR**

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

1 (3) [The use of street trees in] **IN** a municipal corporation with a tree  
 2 management plan, in an existing population center designated in a county master plan that  
 3 has been adopted to conform with the Economic Growth, Resource Protection, and Planning  
 4 Act of 1992, or in any other designated area approved by the Department as part of a local  
 5 program, under criteria established by the local program, subject to the approval of the  
 6 Department, using:

7 (i) [Street] **THE PLANTING OF STREET** trees as a permissible step  
 8 in the priority sequence for afforestation or reforestation and, based on a mature canopy  
 9 coverage, may grant full credit as a mitigation technique; [and]

10 (ii) Acquisition as a mitigation technique of an off-site protective  
 11 easement for existing forested areas not currently protected in perpetuity, in which case  
 12 the afforestation or reforestation credit granted may not exceed 50% of the area of forest  
 13 cover protected[.];

14 **(III) THE RESTORATION OF ON- OR OFF-SITE DEGRADED**  
 15 **FOREST, INCLUDING SOIL ~~AMENDMENT AND STABILIZATION~~ ENHANCEMENT**  
 16 **WITHOUT GRADING, THE REMOVAL OF INVASIVE SPECIES, WILDLIFE CONTROL, THE**  
 17 **ESTABLISHMENT IMPROVEMENT OF UNDERSTORY, AND NEW TREE PLANTINGS, AS**  
 18 **APPROPRIATE, IN WHICH CASE THE AFFORESTATION OR REFORESTATION CREDIT**  
 19 **GRANTED MAY NOT EXCEED 50% OF THE AREA OF FOREST RESTORED; AND**

20 **(IV) THE ESTABLISHMENT OF PLANTED GREEN**  
 21 **INFRASTRUCTURE OR PLANTED ENVIRONMENTAL SITE DESIGN PRACTICES BEYOND**  
 22 **THE AMOUNT REQUIRED UNDER § 4-203 OF THE ENVIRONMENT ARTICLE MAY**  
 23 **GRANT FULL CREDIT AS A MITIGATION TECHNIQUE; AND**

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

27 (c) (1) The following trees, shrubs, plants, and specific areas shall be  
 28 considered priority for retention and protection, and they shall be left in an undisturbed  
 29 condition unless the applicant has demonstrated, to the satisfaction of the State or local  
 30 authority, that reasonable efforts have been made to protect them and the plan cannot  
 31 reasonably be altered:

32 (i) Trees, shrubs, and plants located in sensitive areas including  
 33 100-year floodplains, intermittent [and] **STREAMS AND THEIR BUFFERS OF AT LEAST**  
 34 **50 FEET FROM THE STREAM CHANNEL**, perennial streams and their buffers **OF AT**  
 35 **LEAST 100 FEET FROM THE STREAM CHANNEL**, coastal bays and their buffers, steep  
 36 slopes, and critical habitats; [and]

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

3 (III) ~~TREES, SHRUBS, AND PLANTS~~ FOREST SUITABLE FOR  
4 FOREST INTERIOR-DWELLING SPECIES;

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

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

10 (VI) FORESTS IN URBAN AREAS THAT ARE ESSENTIAL;

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

14 2. THAT ARE MOST IMPORTANT FOR PROVIDING  
15 WILDLIFE HABITAT OR MITIGATING FLOODING, HIGH TEMPERATURES, OR AIR  
16 POLLUTION.

17 (2) The following trees, shrubs, plants, and specific areas shall be  
18 considered priority for retention and protection, and they shall be left in an undisturbed  
19 condition unless the applicant has demonstrated, to the satisfaction of the State or local  
20 authority, that the applicant qualifies for a variance under § 5-1611 of this subtitle:

21 ~~(I) FOREST LAND SUITABLE FOR FOREST INTERIOR-DWELLING~~  
22 ~~SPECIES AND FOREST CORRIDORS CONNECTING THESE FOREST PATCHES;~~

23 ~~(II) FOREST LAND LOCATED IN A TARGETED ECOLOGICAL AREA~~  
24 ~~AS IDENTIFIED BY THE DEPARTMENT;~~

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

27 ~~(IV) FOREST LOCATED IN A WATER RESOURCE PROTECTION~~  
28 ~~ZONE, A RESERVOIR WATERSHED, OR A WELLHEAD PROTECTION AREA AS~~  
29 ~~IDENTIFIED BY A LOCAL JURISDICTION;~~

30 ~~{(i)}~~ (v) Trees, shrubs, or plants identified on the list of rare,  
31 threatened, and endangered species of the U.S. Fish and Wildlife Service or the  
32 Department;

1                    ~~[(ii)] (VI)~~ Trees that are part of a historic site or associated with a  
 2 historic structure or designated by the Department or local authority as a national, State,  
 3 or local Champion Tree; and

4                    ~~[(iii)] (VII)~~ Trees having a diameter measured at 4.5 feet above the  
 5 ground of:

6                    1.     30 inches; or

7                    2.     75% of the diameter, measured at 4.5 feet above the  
 8 ground, of the current State Champion Tree of that species as designated by the  
 9 Department.

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

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

15                    **1. CONDUCTED IN ACCORDANCE WITH THE MARYLAND**  
 16 **RULES; AND**

17                    **2. LIMITED TO THE RECORD COMPILED BY THE**  
 18 **DEPARTMENT OR THE LOCAL AUTHORITY.**

19                    (d) The following shall be considered priority for afforestation or reforestation:

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

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

25                    (3) Establish or enhance forest buffers adjacent to critical habitats where  
 26 appropriate;

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

28                    (5) Establish plantings to stabilize slopes of 25% or greater and slopes of  
 29 15% or greater with a soil K value greater than 0.35 including the slopes of ravines or other  
 30 natural depressions;

31                    (6) Establish buffers adjacent to areas of differing land use where  
 32 appropriate, or adjacent to highways or utility rights-of-way;



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

3 (8) Use native plant materials for afforestation or reforestation, when  
4 appropriate.

5 (e) (1) As part of the development of a forest conservation program, the State  
6 or local government shall develop provisions for:

7 (i) Preservation of areas described in subsections (c) and (d)(1) and  
8 (3) of this section;

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

11 (iii) Limitation of uses of forest to those that are not inconsistent with  
12 forest conservation, such as recreational activities and forest management under  
13 subsection (f) of this section.

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

17 (f) An owner may place land that is forested, afforested, or reforested under this  
18 subtitle in the forest conservation and management program under § 8–211 et seq. of the  
19 Tax – Property Article or in a forest management plan prepared by a licensed forester and  
20 approved by the local authority or the State. Reforestation shall be required when the final  
21 regeneration harvest is complete or if determined to be necessary due to the lack of  
22 adequate natural regeneration.

23 5–1610.1.

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

26 (1) IF THE APPLICATION WAS SUBMITTED BEFORE DECEMBER 31,  
27 2020; OR

28 (2) WHEN USING:

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

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

4 ~~Article Tax Property~~

5 ~~§ 211.~~

6 (a) (1) ~~In this section the following words have the meaning indicated:~~

7 (2) ~~“Agreement” means an agreement made under subsection (c) of this~~  
 8 ~~section.~~

9 (3) ~~“Program” means the forest conservation and management program.~~

10 (b) ~~The Department of Natural Resources shall establish the program to:~~

11 (1) ~~encourage the preservation or development of land for productive~~  
 12 ~~woodland purposes;~~

13 (2) ~~increase the income of persons in the State from the sale of timber;~~

14 (3) ~~prevent flooding of land and the loss of the State’s soil;~~

15 (4) ~~provide wooded areas for the use and enjoyment of all individuals in the~~  
 16 ~~State; and~~

17 (5) ~~promote the welfare and assets of the State.~~

18 (c) (1) ~~[The] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS~~  
 19 ~~SUBSECTION, THE owner of at least 5 contiguous acres of land may make an agreement~~  
 20 ~~with the Department of Natural Resources to place the land in the program.~~

21 (2) ~~IN BALTIMORE CITY AND ANNE ARUNDEL, BALTIMORE,~~  
 22 ~~HOWARD, MONTGOMERY, AND PRINCE GEORGE’S COUNTIES, THE OWNER OF AT~~  
 23 ~~LEAST 2 CONTIGUOUS ACRES OF LAND MAY MAKE AN AGREEMENT WITH THE~~  
 24 ~~DEPARTMENT OF NATURAL RESOURCES TO PLACE THE LAND IN THE PROGRAM.~~

25 Chapter 645 of the Acts of 2021

26 SECTION 11. AND BE IT FURTHER ENACTED, That, except as provided in  
 27 Section 10 of this Act, this Act shall take effect June 1, 2021. [Sections 1, 2, and] SECTION  
 28 7 of this Act shall remain effective for a period of 3 years and 1 month and, at the end of  
 29 June 30, 2024, [Sections 1, 2, and] SECTION 7 of this Act, with no further action required  
 30 by the General Assembly, shall be abrogated and of no further force and effect. Subject to  
 31 Section 10 of this Act, Sections 3, 4, and 5 of this Act shall remain effective for a period of

1 10 years and 1 month and, at the end of June 30, 2031, Sections 3, 4, and 5 of this Act, with  
2 no further action required by the General Assembly, shall be abrogated and of no further  
3 force and effect. Section 6 of this Act shall remain effective for a period of 2 years and 1  
4 month and, at the end of June 30, 2023, Section 6 of this Act, with no further action required  
5 by the General Assembly, shall be abrogated and of no further force and effect.

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

8 **Article – Natural Resources**

9 5–1610.

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

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

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

20 SECTION 5. AND BE IT FURTHER ENACTED, That:

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

24 (b) The updates shall include:

25 (1) guidance on:

26 (i) when the clearing of a priority area for retention described in §  
27 5–1607(c) of the Natural Resources Article, as enacted by this Act, may be justified,  
28 including for purposes related to forest health or composition; and

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

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

32 SECTION 6. AND BE IT FURTHER ENACTED, That the Department of Natural  
33 Resources shall establish a workgroup to evaluate and recommend incentives for private

1 landowners to conserve forest, including adjusting the minimal acreage of contiguous  
 2 forested land required to qualify for the forest conservation and management program  
 3 established under § 8–211 of the Tax – Property Article.

4 SECTION 7. AND BE IT FURTHER ENACTED, That, on or before December 31,  
 5 2023, the Department of Natural Resources shall issue a description of the procedures the  
 6 Department will use to determine whether a local program is expected to maintain or  
 7 expand the existing level of forest cover in the jurisdiction.

8 SECTION 8. AND BE IT FURTHER ENACTED, That, on or before December 31,  
 9 2023, the Department of Natural Resources shall approve or reject alternative  
 10 afforestation, reforestation, and preservation requirements adopted by a local jurisdiction  
 11 before September 1, 2023.

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

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

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

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

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

23 SECTION ~~4~~ 11. AND BE IT FURTHER ENACTED, That, except as provided in  
 24 Section 10 of this Act, this Act shall take effect ~~October~~ July 1, 2023.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.