

## Chapter 457

## (House Bill 1511)

AN ACT concerning

**Forest Conservation Act – Modifications**

FOR the purpose of ~~establishing a~~ *altering the* definition of “qualified conservation” for purposes of provisions of law related to forest mitigation banks; altering rules for the use of qualified conservation to meet afforestation or reforestation requirements; adding certain areas and vegetation considered to be a priority for forest retention and protection under certain circumstances; *providing that certain solar voltaic facilities may not be subject to certain afforestation requirements*; requiring the Department of Natural Resources to update a certain model local government ordinance and adopt certain regulations relating to forest conservation on or before certain dates; delaying the dates on which certain provisions of the Forest Conservation Act will apply to certain ~~solar voltaic facilities~~ and forest conservation plans; delaying the effective date of certain provisions of the Forest Conservation Act; and generally relating to the Forest Conservation Act.

BY renumbering

~~Article – Natural Resources  
Section 5–1601(gg) through (pp)  
to be Section 5–1601(hh) through (qq), respectively  
Annotated Code of Maryland  
(2023 Replacement Volume and 2023 Supplement)~~

BY repealing and reenacting, without amendments,

~~Article – Natural Resources  
Section 5–1601(a)  
Annotated Code of Maryland  
(2023 Replacement Volume and 2023 Supplement)~~

BY adding to

~~Article – Natural Resources  
Section 5–1601(gg) and 5–1607(e)(3)  
Annotated Code of Maryland  
(2023 Replacement Volume and 2023 Supplement)~~

BY repealing and reenacting, with amendments,

~~Article – Natural Resources  
Section 5–1601(gg), 5–1606(a), 5–1607(b)(2) and (c)(1), and 5–1610.1(c)  
Annotated Code of Maryland  
(2023 Replacement Volume and 2023 Supplement)~~

BY adding to

*Article – Natural Resources*  
*Section 5–1607(c)(3)*  
*Annotated Code of Maryland*  
*(2023 Replacement Volume and 2023 Supplement)*

BY repealing and reenacting, with amendments,  
 Chapter 541 of the Acts of the General Assembly of 2023  
 Section ~~5–9~~, and 10

BY repealing and reenacting, with amendments,  
 Chapter 542 of the Acts of the General Assembly of 2023  
 Section ~~5–9~~, and 10

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

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

~~SECTION 1. 2. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND AND BE IT FURTHER ENACTED,~~ That the Laws of Maryland read as follows:

**Article – Natural Resources**

5–1601.

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

~~**(GG) “QUALIFIED CONSERVATION” MEANS THE CONSERVATION OF ALL OR A PART OF AN EXISTING FOREST THAT:**~~

~~**(1) HAS BEEN APPROVED BY THE APPROPRIATE STATE OR LOCAL FOREST CONSERVATION PROGRAM FOR THE PURPOSE OF ESTABLISHING A FOREST MITIGATION BANK; AND**~~

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

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

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

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

5-1606.

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

(i) Agriculture and resource areas; and

(ii) Medium density residential areas.

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

(i) Institutional development areas;

(ii) High density residential areas;

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

(iv) Commercial and industrial use areas.

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

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

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

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

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

5-1607.

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

(2) The use of qualified conservation completed in a forest mitigation bank  
**TO MEET:**

**(I) UP TO 50% 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; 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.**

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

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

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

**(III) 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 URBAN AREAS:**

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

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

(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.

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

(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.

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

**Chapter 541 of the Acts of 2023**

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

(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.

**(C) ON OR BEFORE JULY 1, 2025, THE DEPARTMENT OF NATURAL RESOURCES SHALL UPDATE THE MODEL LOCAL GOVERNMENT ORDINANCE REQUIRED UNDER § 5–1609 OF THE NATURAL RESOURCES ARTICLE FOR CONSISTENCY WITH THIS ACT.**

**(D) ON OR BEFORE JULY 1, 2026, THE DEPARTMENT OF NATURAL RESOURCES SHALL ADOPT REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS ACT.**

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

~~(1) a solar voltaic 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] 2025;~~

~~(2) a forest conservation plan approved before July 1, [2024] 2026, 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] 2026.

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

(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.

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**(D) ON OR BEFORE JULY 1, 2026, THE DEPARTMENT OF NATURAL RESOURCES SHALL ADOPT REGULATIONS TO CARRY OUT THIS ACT.**

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

~~(1) a solar voltaic 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] 2025;~~

~~(2) a forest conservation plan approved before July 1, [2024] 2026, 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] 2026.

***Chapter 645 of the Acts of 2021***

SECTION 11. AND BE IT FURTHER ENACTED, That, except as provided in Section 10 of this Act, this Act shall take effect June 1, 2021. [Sections 1, 2, and] SECTION 7 of this Act shall remain effective for a period of 3 years and 1 month and, at the end of June 30, 2024, [Sections 1, 2, and] SECTION 7 of this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect. Subject to Section 10 of this Act, Sections 3, 4, and 5 of this Act shall remain effective for a period of 10 years and 1 month, and, at the end of June 30, 2031, Sections 3, 4, and 5 of this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect. Section 6 of this Act shall remain effective for a period of 2 years and 1 month and, at the end of June 30, 2023, Section 6 of this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of 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 4. AND BE IT FURTHER ENACTED, That Sections 1 and 3 of this Act shall take effect July 1, 2024.

SECTION ~~2~~ ~~3~~ ~~2~~ 5. AND BE IT FURTHER ENACTED, That, except as provided in Section 4 of this Act, this Act shall take effect ~~June~~ ~~July~~ June 1, 2024.

**Approved by the Governor, May 9, 2024.**