

HOUSE BILL 723

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3lr1714
CF SB 526

By: **Delegates Love, Bridges, and Stein**

Introduced and read first time: February 7, 2023

Assigned to: Environment and Transportation

A BILL ENTITLED

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 certain alternative methods of calculating forest afforestation, reforestation, and
6 preservation requirements; altering the development projects for which afforestation
7 or reforestation credits granted may not exceed a certain percentage of forest
8 conserved; adding certain tree plantings and practices as methods that certain
9 municipal corporations may use to meet afforestation or reforestation requirements;
10 adding certain areas and vegetation considered to be a priority for forest retention
11 and protection under certain circumstances; lowering the acreage threshold in
12 certain counties for participation in the forest conservation and management
13 program; and generally relating to forest preservation and retention.

14 BY repealing

15 Article – Natural Resources
16 Section 5–101(i) and 5–102(b)(1)
17 Annotated Code of Maryland
18 (2018 Replacement Volume and 2022 Supplement)

19 BY renumbering

20 Article – Natural Resources
21 Section 5–101(j) through (m) and 5–1601(hh) through (qq)
22 to be Section 5–101(i) through (l) and 5–1601(ii) through (rr), respectively
23 Annotated Code of Maryland
24 (2018 Replacement Volume and 2022 Supplement)

25 BY repealing and reenacting, without amendments,

26 Article – Natural Resources
27 Section 5–101(a), 5–1601(a), and 5–1602(a)
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2018 Replacement Volume and 2022 Supplement)

BY repealing and reenacting, with amendments,
Article – Natural Resources
Section 5–101(e), 5–1601(gg), 5–1602(b)(5), 5–1606, and 5–1607
Annotated Code of Maryland
(2018 Replacement Volume and 2022 Supplement)

BY adding to
Article – Natural Resources
Section 5–101(m), 5–102(b)(1), 5–1601(hh), and 5–1606.1
Annotated Code of Maryland
(2018 Replacement Volume and 2022 Supplement)

BY repealing and reenacting, without amendments,
Article – Tax – Property
Section 8–211(a) and (b)
Annotated Code of Maryland
(2019 Replacement Volume and 2022 Supplement)

BY repealing and reenacting, with amendments,
Article – Tax – Property
Section 8–211(c)
Annotated Code of Maryland
(2019 Replacement Volume and 2022 Supplement)

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

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

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

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

Article – Natural Resources

5–101.

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

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

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

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

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

(2) GREATER THAN 3 METERS IN HEIGHT.

5–102.

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

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

(1) INCREASING THE ACREAGE OF LAND IN THE STATE AS MEASURED EVERY 4 YEARS THAT IS:

(I) FOREST LAND; OR

(II) COVERED BY TREE CANOPY, FOR LAND LOCATED INSIDE AN URBAN AREA OR OUTSIDE AN URBAN AREA;

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) [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 NOT LOCATED ON LAND FOR WHICH:

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

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

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

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

(3) 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.

(HH) “QUALIFIED PROJECT” MEANS A PROJECT:

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

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

5–1602.

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

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

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

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

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

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

(c) After every reasonable effort to minimize the cutting or clearing of trees and other woody plants is exhausted in the development of a subdivision plan and grading and

sediment control activities and implementation of the forest conservation plan, the forest conservation plan shall provide for reforestation, or payment into the Forest Conservation Fund, according to the formula set forth in subsection (b) of this section and consistent with the following forest conservation thresholds for the applicable land use category:

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

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

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

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

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

and

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

(d) (1) Subject to the provisions of paragraph (2) of this subsection, for all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of 1/4 acre planted for every 1 acre removed.

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

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

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

(2) If reforestation 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 completion of the development project.

(g) A unit of local government with planning and zoning authority may adopt forest conservation thresholds and afforestation and reforestation requirements as part of its local forest conservation program that are more stringent than the forest conservation thresholds and afforestation and reforestation requirements in this section.

(H) ANY REFORESTATION REQUIREMENTS UNDER THIS SUBTITLE SHALL BE CALCULATED UNDER § 5-1606.1 OF THIS SUBTITLE INSTEAD OF THIS SECTION IF THE ACREAGE OF REQUIRED REFORESTATION IS GREATER AS CALCULATED UNDER

1 § 5-1606.1 OF THIS SUBTITLE THAN IS THE CASE AS CALCULATED UNDER THIS
2 SECTION.

3 5-1606.1.

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

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

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

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

21 (I) REJECT THE PROPOSED ALTERNATIVE AFFORESTATION,
22 REFORESTATION, AND PRESERVATION REQUIREMENTS; AND

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

25 (3) IN DETERMINING WHETHER PROPOSED ALTERNATIVE
26 AFFORESTATION, REFORESTATION, AND PRESERVATION REQUIREMENTS ARE
27 EXPECTED TO MAINTAIN THE LOCAL JURISDICTION'S BASELINE LEVEL OF FOREST
28 COVER, THE DEPARTMENT SHALL CONSIDER CREDITS GENERATED UNDER §
29 5-1607(B)(3) OF THIS SUBTITLE TO BE FOREST ACREAGE.

30 (4) THE DEPARTMENT SHALL RESCIND APPROVAL OF ALTERNATIVE
31 AFFORESTATION, REFORESTATION, AND PRESERVATION REQUIREMENTS IF THE
32 LOCAL PROGRAM DOES NOT MAINTAIN THE LOCAL JURISDICTION'S BASELINE
33 LEVEL OF FOREST COVER OVER TWO CONSECUTIVE 2-YEAR PERIODS.

5-1607.

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

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

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

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

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

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

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

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

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

(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:

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

(i) Transplanted or nursery stock;

(ii) Whip and seedling stock; or

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

(2) [The] **FOR A QUALIFIED PROJECT, THE** use of qualified conservation completed in a forest mitigation bank, in which case, the afforestation or reforestation credit granted may not exceed 50% of the forest area encumbered in perpetuity[.];

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

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

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

(III) THE RESTORATION OF DEGRADED FOREST, INCLUDING SOIL AMENDMENT AND STABILIZATION, THE REMOVAL OF INVASIVE SPECIES, WILDLIFE CONTROL, THE ESTABLISHMENT OF UNDERSTORY, AND NEW TREE PLANTINGS, AS APPROPRIATE, IN WHICH CASE THE AFFORESTATION OR REFORESTATION CREDIT GRANTED MAY NOT EXCEED 50% OF THE AREA OF FOREST RESTORED; AND

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

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

(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; **AND**

(III) TREES, SHRUBS, AND PLANTS IN URBAN AREAS THAT ARE ESSENTIAL FOR PROVIDING WILDLIFE HABITAT OR MITIGATING FLOODING, HIGH TEMPERATURES, OR AIR POLLUTION.

(2) 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 the applicant qualifies for a variance under § 5-1611 of this subtitle:

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

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

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

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

[(i)] (V) Trees, shrubs, or plants identified on the list of rare, threatened, and endangered species of the U.S. Fish and Wildlife Service or the Department;

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

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

1. 30 inches; or

1 2. 75% of the diameter, measured at 4.5 feet above the
2 ground, of the current State Champion Tree of that species as designated by the
3 Department.

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

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

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

10 (3) Establish or enhance forest buffers adjacent to critical habitats where
11 appropriate;

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

13 (5) Establish plantings to stabilize slopes of 25% or greater and slopes of
14 15% or greater with a soil K value greater than 0.35 including the slopes of ravines or other
15 natural depressions;

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

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

20 (8) Use native plant materials for afforestation or reforestation, when
21 appropriate.

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

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

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

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

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

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

Article – Tax – Property

8–211.

(a) (1) In this section the following words have the meaning indicated.

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

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

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

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

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

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

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

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

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

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

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**

1 7 of this Act shall remain effective for a period of 3 years and 1 month and, at the end of
2 June 30, 2024, [Sections 1, 2, and] **SECTION 7** of this Act, with no further action required
3 by the General Assembly, shall be abrogated and of no further force and effect. Subject to
4 Section 10 of this Act, Sections 3, 4, and 5 of this Act shall remain effective for a period of
5 10 years and 1 month and, at the end of June 30, 2031, Sections 3, 4, and 5 of this Act, with
6 no further action required by the General Assembly, shall be abrogated and of no further
7 force and effect. Section 6 of this Act shall remain effective for a period of 2 years and 1
8 month and, at the end of June 30, 2023, Section 6 of this Act, with no further action required
9 by the General Assembly, shall be abrogated and of no further force and effect.

10 **SECTION 4. AND BE IT FURTHER ENACTED,** That this Act shall take effect
11 October 1, 2023.