

HOUSE BILL 588

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71r1322

By: **Delegate Hubbard**

Introduced and read first time: February 8, 2007

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 16, 2007

CHAPTER _____

1 AN ACT concerning

2 **Natural Resources – Forest Conservation – Net Tract Area**

3 FOR the purpose of altering the definition of “net tract area” for forest conservation
4 requirements and forest mitigation bank credits to include certain forested
5 areas of certain tracts of land partially within 100-year floodplains or wetlands
6 under certain circumstances; ~~including in the definition of “net tract area” a~~
7 ~~nontidal wetland, stream buffer, and the forested area of a 100-year floodplain~~
8 ~~or wetland under certain circumstances~~; providing for the application of this
9 Act; providing for the termination of this Act; and generally relating to the
10 forest conservation program.

11 ~~BY repealing and reenacting, with amendments,~~
12 ~~Article – Natural Resources~~
13 ~~Section 5-1601(z) and (aa)~~
14 ~~Annotated Code of Maryland~~
15 ~~(2005 Replacement Volume and 2006 Supplement)~~

16 ~~BY repealing and reenacting, without amendments,~~
17 ~~Article – Natural Resources~~
18 ~~Section 5-1601(bb), (ff), and (jj) and 5-1607(c)(1) through (3) and (d)(1) through~~
19 ~~(4)~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 ~~Annotated Code of Maryland~~
 2 ~~(2005 Replacement Volume and 2006 Supplement)~~

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 4 MARYLAND, That ~~the Laws of Maryland read as follows:~~ for purposes of the
 5 application of Title 5, Subtitle 16 of the Natural Resources Article to a tract of land of
 6 at least 350 acres of which at least 15% is within the boundaries of a 100-year
 7 floodplain or wetland, the term “net tract area” includes the forested areas within the
 8 floodplain or wetland if a perpetual conservation easement is placed on the forested
 9 areas at the time the plat of the tract is recorded.

10 ~~Article – Natural Resources~~

11 ~~5-1601.~~

12 ~~(z) (1) “Net tract area” means:~~

13 ~~[(1) (I) Except in agriculture and resource areas or linear project~~
 14 ~~areas, the total area of a site, including both forested and nonforested areas, to the~~
 15 ~~nearest one-tenth acre reduced by that area where forest clearing is restricted by~~
 16 ~~another local ordinance or program, INCLUDING THE FORESTED AREA WITHIN THE~~
 17 ~~BOUNDARIES OF A 100-YEAR FLOODPLAIN OR WETLAND;~~

18 ~~[(2) (II) In agriculture and resource areas, the portion of the total~~
 19 ~~tract for which land use will be changed or will no longer be used for primarily~~
 20 ~~agricultural activities reduced by that area where forest clearing is restricted by~~
 21 ~~another local ordinance or program, INCLUDING THE FORESTED AREA WITHIN THE~~
 22 ~~BOUNDARIES OF A 100-YEAR FLOODPLAIN OR WETLAND; and~~

23 ~~[(3) (III) For a linear project:~~

24 ~~[(i) 1. The area of a right-of-way width, new access roads~~
 25 ~~and storage; or~~

26 ~~[(ii) 2. The limits of disturbance as shown on an application~~
 27 ~~for sediment and erosion control approval or in a capital improvements program~~
 28 ~~project description;~~

29 ~~(2) “NET TRACT AREA” INCLUDES A NONTIDAL WETLAND,~~
 30 ~~STREAM BUFFER, AND THE FORESTED AREA OF A 100-YEAR FLOODPLAIN IF THE~~
 31 ~~WETLAND, BUFFER, AND FORESTED 100-YEAR FLOODPLAIN AREA IS PLACED IN~~
 32 ~~A PERPETUAL CONSERVATION EASEMENT AT THE TIME OF RECORD PLAT.~~

1 ~~(aa) (1) "Nontidal wetland" means an area that is inundated or saturated~~
2 ~~by surface or groundwater at a frequency and duration sufficient to support, and~~
3 ~~under normal conditions does support, a prevalence of vegetation typically adapted for~~
4 ~~life in saturated soil conditions, commonly known as hydrophytic vegetation.~~

5 ~~(2) (I) The determination of whether an area is considered a~~
6 ~~nontidal wetland shall be made in accordance with the publication known as the~~
7 ~~"Federal Manual for Identifying and Delineating Jurisdictional Wetlands", published~~
8 ~~in 1989 and as may be amended and interpreted by the U.S. Environmental Protection~~
9 ~~Agency.~~

10 ~~(H) THE REQUIREMENTS OF SUBPARAGRAPH (I) OF THIS~~
11 ~~PARAGRAPH SHALL APPLY, IN THE SAME MANNER, TO ALL JURISDICTIONS OF~~
12 ~~THE STATE.~~

13 ~~(3) "Nontidal wetlands" do not include tidal wetlands regulated under~~
14 ~~Title 16 of the Environment Article.~~

15 ~~(bb) (1) "One hundred year floodplain" means an area along or adjacent to~~
16 ~~a stream or body of water, except tidal waters, that is capable of storing or conveying~~
17 ~~floodwaters during a 100 year frequency storm event.~~

18 ~~(2) A 100 year flood is a flood which has a 1% chance of being equaled~~
19 ~~or exceeded in any given year. Except for Class III waters (natural trout streams), a~~
20 ~~body of water with a watershed less than 400 acres is excluded.~~

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

25 ~~(2) "Reforestation" includes landscaping of areas under an approved~~
26 ~~landscaping plan that establishes a forest that is at least 35 feet wide and covering~~
27 ~~2,500 square feet of area.~~

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

31 ~~(jj) "Stream buffer" means all lands lying within 50 feet, measured from the~~
32 ~~top of each normal bank of any perennial or intermittent stream.~~

1 ~~5-1607.~~

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

7 ~~(1) Trees, shrubs, and plants located in sensitive areas including~~
 8 ~~100-year floodplains, intermittent and perennial streams and their buffers, coastal~~
 9 ~~bays and their buffers, steep slopes, and critical habitats;~~

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

12 ~~(3) Trees, shrubs, or plants identified on the list of rare, threatened,~~
 13 ~~and endangered species of the U.S. Fish and Wildlife Service or the Department;~~

14 ~~(d) The following shall be considered priority for afforestation or~~
 15 ~~reforestation;~~

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

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

21 ~~(3) Establish or enhance forest buffers adjacent to critical habitats~~
 22 ~~where appropriate;~~

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

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be
 25 construed to prevent any person that ~~submitted~~ submits a forest conservation plan
 26 before October 1, 2007, to the State or local authority in accordance with § 5-1605 of
 27 the Natural Resources Article, and has not been issued a building permit, from
 28 revising the net tract area, for a tract of land of at least 350 acres of which at least
 29 15% is within the boundaries of a 100-year floodplain or wetland, to include the
 30 forested area within the boundaries of ~~a~~ the 100-year floodplain or wetland.

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 ~~October~~ July 1, 2007. It shall remain effective for a period of 8 months and, at the end
3 of February 29, 2008, with no further action required by the General Assembly, this
4 Act shall be abrogated and of no further force and effect.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.