

SENATE BILL 573

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71r2660
CF 71r1322

By: **Senator Peters**

Introduced and read first time: February 2, 2007

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

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 100–year floodplains or wetlands under certain circumstances;
6 including in the definition of “net tract area” a nontidal wetland, stream buffer,
7 and the forested area of a 100–year floodplain or wetland under certain
8 circumstances; providing for the application of this Act; and generally relating
9 to the forest conservation program.

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

15 BY repealing and reenacting, without amendments,
16 Article – Natural Resources
17 Section 5–1601(bb), (ff), and (jj) and 5–1607(c)(1) through (3) and (d)(1) through
18 (4)
19 Annotated Code of Maryland
20 (2005 Replacement Volume and 2006 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
22 MARYLAND, That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Natural Resources**

2 5–1601.

3 (z) (1) “Net tract area” means:

4 [(1)] (I) Except in agriculture and resource areas or linear project
5 areas, the total area of a site, including both forested and nonforested areas, to the
6 nearest one–tenth acre reduced by that area where forest clearing is restricted by
7 another local ordinance or program, **INCLUDING THE FORESTED AREA WITHIN THE**
8 **BOUNDARIES OF A 100–YEAR FLOODPLAIN OR WETLAND;**

9 [(2)] (II) In agriculture and resource areas, the portion of the total
10 tract for which land use will be changed or will no longer be used for primarily
11 agricultural activities reduced by that area where forest clearing is restricted by
12 another local ordinance or program, **INCLUDING THE FORESTED AREA WITHIN THE**
13 **BOUNDARIES OF A 100–YEAR FLOODPLAIN OR WETLAND;** and

14 [(3)] (III) For a linear project:

15 [(i)] 1. The area of a right–of–way width, new access roads
16 and storage; or

17 [(ii)] 2. The limits of disturbance as shown on an application
18 for sediment and erosion control approval or in a capital improvements program
19 project description;

20 (2) **“NET TRACT AREA” INCLUDES A NONTIDAL WETLAND,**
21 **STREAM BUFFER, AND THE FORESTED AREA OF A 100–YEAR FLOODPLAIN IF THE**
22 **WETLAND, BUFFER, AND FORESTED 100–YEAR FLOODPLAIN AREA IS PLACED IN**
23 **A PERPETUAL CONSERVATION EASEMENT AT THE TIME OF RECORD PLAT.**

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

28 (2) (I) The determination of whether an area is considered a
29 nontidal wetland shall be made in accordance with the publication known as the
30 “Federal Manual for Identifying and Delineating Jurisdictional Wetlands”, published

1 in 1989 and as may be amended and interpreted by the U.S. Environmental Protection
2 Agency.

3 **(II) THE REQUIREMENTS OF SUBPARAGRAPH (I) OF THIS**
4 **PARAGRAPH SHALL APPLY, IN THE SAME MANNER, TO ALL JURISDICTIONS OF**
5 **THE STATE.**

6 (3) “Nontidal wetlands” do not include tidal wetlands regulated under
7 Title 16 of the Environment Article.

8 (bb) (1) “One hundred year floodplain” means an area along or adjacent to
9 a stream or body of water, except tidal waters, that is capable of storing or conveying
10 floodwaters during a 100–year frequency storm event.

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

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

18 (2) “Reforestation” includes landscaping of areas under an approved
19 landscaping plan that establishes a forest that is at least 35 feet wide and covering
20 2,500 square feet of area.

21 (3) “Reforestation” for a linear project which involves overhead
22 transmission lines may consist of a biological community dominated by trees and
23 woody shrubs with no minimum height or diameter criteria.

24 (jj) “Stream buffer” means all lands lying within 50 feet, measured from the
25 top of each normal bank of any perennial or intermittent stream.

26 5–1607.

27 (c) The following trees, shrubs, plants, and specific areas shall be considered
28 priority for retention and protection, and they shall be left in an undisturbed condition
29 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:

1 (1) Trees, shrubs, and plants located in sensitive areas including
2 100-year floodplains, intermittent and perennial streams and their buffers, coastal
3 bays and their buffers, steep slopes, and critical habitats;

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

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

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

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

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

15 (3) Establish or enhance forest buffers adjacent to critical habitats
16 where appropriate;

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

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be
19 construed to prevent any person that submitted a forest conservation plan before
20 October 1, 2007, to the State or local authority in accordance with § 5-1605 of the
21 Natural Resources Article, and has not been issued a building permit, from revising
22 the net tract area to include the forested area within the boundaries of a 100-year
23 floodplain or wetland.

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2007.