

# HOUSE BILL 991

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By: **Delegate Gilchrist**

Introduced and read first time: February 5, 2021

Assigned to: Environment and Transportation

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## A BILL ENTITLED

1 AN ACT concerning

2 **Natural Resources – Forest Mitigation Banks – Qualified Preservation**

3 FOR the purpose of establishing the use of qualified preservation in a forest mitigation  
4 bank of all or a part of certain existing forests as a standard for meeting afforestation  
5 or reforestation requirements under the Forest Conservation Act; defining the term  
6 “qualified preservation” as it applies to the Forest Conservation Act; altering the  
7 defined term “forest mitigation banking” as it applies to the Forest Conservation Act  
8 to include the qualified preservation of forests for certain purposes; making  
9 conforming changes and a stylistic change; and generally relating to the use of  
10 qualified preservation in a forest mitigation bank.

11 BY renumbering

12 Article – Natural Resources  
13 Section 5–1601(gg) through (pp), respectively  
14 to be Section 5–1601(hh) through (qq), respectively  
15 Annotated Code of Maryland  
16 (2018 Replacement Volume and 2020 Supplement)

17 BY repealing and reenacting, without amendments,

18 Article – Natural Resources  
19 Section 5–1601(a) and (b) and 5–1607(a)  
20 Annotated Code of Maryland  
21 (2018 Replacement Volume and 2020 Supplement)

22 BY repealing and reenacting, with amendments,

23 Article – Natural Resources  
24 Section 5–1601(o), 5–1607(b), and 5–1610.1  
25 Annotated Code of Maryland  
26 (2018 Replacement Volume and 2020 Supplement)

27 BY adding to

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Natural Resources  
 2 Section 5–1601(gg)  
 3 Annotated Code of Maryland  
 4 (2018 Replacement Volume and 2020 Supplement)

5 BY repealing and reenacting, without amendments,  
 6 Article – Natural Resources  
 7 Section 5–1601(hh)  
 8 Annotated Code of Maryland  
 9 (2018 Replacement Volume and 2020 Supplement)  
 10 (As enacted by Section 1 of this Act)

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

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

17 **Article – Natural Resources**

18 5–1601.

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

20 (b) “Afforestation” means the establishment of a tree cover on an area from which  
 21 it has always or very long been absent, or the planting of open areas which are not presently  
 22 in forest cover.

23 (c) “Forest mitigation banking” means the intentional restoration [or creation],  
 24 **CREATION, OR QUALIFIED PRESERVATION** of forests undertaken expressly for the  
 25 purpose of providing credits for afforestation or reforestation requirements with enhanced  
 26 environmental benefits from future activities.

27 **(GG) “QUALIFIED PRESERVATION” MEANS THE PRESERVATION OF ALL OR A**  
 28 **PART OF AN EXISTING FOREST THAT IS:**

29 **(1) APPROVED BY THE APPROPRIATE STATE OR LOCAL FOREST**  
 30 **CONSERVATION PROGRAM FOR THE PURPOSE OF ESTABLISHING A FOREST**  
 31 **MITIGATION BANK; AND**

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

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

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

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

11 5-1607.

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

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

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

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

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

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

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

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

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

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

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

8 (i) Transplanted or nursery stock;

9 (ii) Whip and seedling stock; or

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

12 (2) **THE USE OF QUALIFIED PRESERVATION COMPLETED IN A FOREST**  
13 **MITIGATION BANK.**

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

20 (i) Street trees as a permissible step in the priority sequence for  
21 afforestation or reforestation and, based on a mature canopy coverage, may grant full credit  
22 as a mitigation technique; and

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

27 [(3)] (4) When all other options, both on-site and off-site, have been  
28 exhausted, landscaping as a mitigation technique, conducted under an approved  
29 landscaping plan that establishes a forest at least 35 feet wide and covering at least 2,500  
30 square feet of area.

31 5-1610.1.

32 (a) The Department shall develop standards and adopt regulations for the  
33 creation and use of forest mitigation banks, including criteria for tracking, crediting,  
34 maintaining, bonding, and reporting mitigation bank activities.

1 (b) A local jurisdiction may develop procedures for establishing forest mitigation  
2 banks as part of its forest conservation program.

3 (c) Mitigation banks may be [permitted] **ALLOWED** only in priority areas as  
4 identified in § 5–1607(d) of this subtitle or as identified in a comprehensive plan adopted  
5 by a local jurisdiction.

6 (d) The establishment of mitigation banks and their use may not alter the  
7 sequence for retention, reforestation, or afforestation on a development site as outlined in  
8 § 5–1607 of this subtitle.

9 (e) Criteria established by local or State programs for the use and establishment  
10 of forest mitigation banks shall include protection and conservation in perpetuity of forest  
11 mitigation banks consistent with reasonable management plans, through methods that  
12 include easements, covenants, or similar mechanisms that shall be in place at the time  
13 credits are withdrawn.

14 (f) This section may not be construed to require the Department or a local  
15 jurisdiction to:

16 (1) Establish or fund State or local mitigation banks;

17 (2) Fund the establishment of forest mitigation banking by the private  
18 sector; or

19 (3) Use State or local government land for forest mitigation banking.

20 (g) (1) Credits in a mitigation bank may not be approved for debiting until  
21 construction **OR QUALIFIED PRESERVATION** of the mitigation bank is complete.

22 (2) A mitigation bank **THAT REQUIRES CONSTRUCTION** shall maintain  
23 sufficient credits in reserve to cover anticipated expenses of completion of the mitigation  
24 bank.

25 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
26 October 1, 2021.