
By: **Delegate Frush (Chairman, Joint Committee on the Chesapeake and Atlantic Coastal Bays Critical Area)**

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CHAPTER 546

1 AN ACT concerning

2 **Chesapeake and Atlantic Coastal Bays Critical Area Protection Program -**
3 **Dwelling Units**

4 FOR the purpose of requiring a local jurisdiction to include all dwelling units in
5 calculating a certain dwelling unit density ratio under the Chesapeake and
6 Atlantic Coastal Bays Critical Area Protection Program, with a certain
7 exception; defining the term "dwelling unit" as it applies to the critical area
8 program; authorizing a local jurisdiction to consider one additional dwelling unit
9 as part of a primary dwelling unit under certain circumstances and for certain
10 purposes; providing for the construction of this Act; prohibiting the separate
11 subdivision or conveyance of certain dwelling units under certain circumstances;
12 requiring a local jurisdiction to maintain certain records and to report to the
13 Critical Area Commission for the Chesapeake and Atlantic and Coastal Bays on
14 a certain basis; requiring the Commission to report to certain legislative
15 committees on a certain basis; providing for the application of this Act; and
16 generally relating to dwelling units in the Chesapeake and Atlantic Coastal
17 Bays Critical Area.

18 BY repealing and reenacting, with amendments,
19 Article - Natural Resources
20 Section 8-1802(a) and 8-1808.1(e)
21 Annotated Code of Maryland
22 (2000 Replacement Volume and 2003 Supplement)

1 Preamble

2 WHEREAS, It is the intent of the General Assembly to clarify the definition of
3 "dwelling unit" and to include all structures meeting that definition for the purpose of
4 density calculations in the resource conservation area of the critical area; and

5 WHEREAS, The General Assembly realizes that, subject to certain limitations
6 and local discretion, some local governments may prefer to provide a degree of
7 flexibility in regard to an additional dwelling unit that may be considered part of a
8 primary dwelling unit for density calculations; and

9 WHEREAS, It is the intent of the General Assembly to monitor the effect of this
10 clarification and flexibility and their related density calculations, particularly as
11 these refinements may impact the implementation of local critical area programs, and
12 to provide further clarification, if necessary, to ensure that local programs are
13 implemented in accordance with underlying legislative intent; now, therefore,

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

16 **Article - Natural Resources**

17 8-1802.

18 (a) (1) In this subtitle the following words have the meanings indicated.

19 (2) "Atlantic Coastal Bays" means the Assawoman, Isle of Wight,
20 Sinepuxent, Newport, and Chincoteague Bays.

21 (3) "Atlantic Coastal Bays Critical Area" means the initial planning area
22 identified under § 8-1807 of this subtitle.

23 (4) "Chesapeake Bay Critical Area" means the initial planning area
24 identified under § 8-1807 of this subtitle.

25 (5) "Commission" means the Critical Area Commission for the
26 Chesapeake and Atlantic Coastal Bays established in this subtitle.

27 (6) "Critical Area" means the Chesapeake Bay Critical Area and the
28 Atlantic Coastal Bays Critical Area.

29 (7) "Development" means any activity that materially affects the
30 condition or use of dry land, land under water, or any structure.

31 (8) (I) "DWELLING UNIT" MEANS A SINGLE UNIT PROVIDING
32 COMPLETE, INDEPENDENT LIVING FACILITIES FOR AT LEAST ONE PERSON,
33 INCLUDING PERMANENT PROVISIONS FOR SANITATION, COOKING, EATING,
34 SLEEPING, AND OTHER ACTIVITIES ROUTINELY ASSOCIATED WITH DAILY LIFE.

1 (II) "DWELLING UNIT" INCLUDES A LIVING QUARTERS FOR A
2 DOMESTIC OR OTHER EMPLOYEE OR TENANT, AN IN-LAW OR ACCESSORY
3 APARTMENT, A GUEST HOUSE, OR A CARETAKER RESIDENCE.

4 (9) "Growth allocation" means the number of acres of land in the
5 Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area that a local
6 jurisdiction may use to create new intensely developed areas and new limited
7 development areas.

8 [(9)] (10) "Includes" means includes or including by way of illustration
9 and not by way of limitation.

10 [(10)] (11) "Land classification" means the designation of land in the
11 Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in accordance
12 with the criteria adopted by the Commission as an intensely developed area or
13 district, a limited development area or district, or a resource conservation area or
14 district.

15 [(11)] (12) "Local jurisdiction" means a county, or a municipal
16 corporation with planning and zoning powers, in which any part of the Chesapeake
17 Bay Critical Area or the Atlantic Coastal Bays Critical Area, as defined in this
18 subtitle, is located.

19 [(12)] (13) (i) "Program" means the critical area protection program of
20 a local jurisdiction.

21 (ii) "Program" includes any amendments to the program.

22 [(13)] (14) (i) "Program amendment" means any change to an adopted
23 program that the Commission determines will result in a use of land or water in the
24 Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area in a manner
25 not provided for in the adopted program.

26 (ii) "Program amendment" includes a change to a zoning map that
27 is not consistent with the method for using the growth allocation contained in an
28 adopted program.

29 [(14)] (15) (i) "Program refinement" means any change to an adopted
30 program that the Commission determines will result in a use of land or water in the
31 Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area in a manner
32 consistent with the adopted program.

33 (ii) "Program refinement" includes:

34 1. A change to a zoning map that is consistent with the
35 development area designation of an adopted program; and

36 2. The use of the growth allocation in accordance with an
37 adopted program.

1 [(15)] (16) (i) "Project approval" means the approval of development,
 2 other than development by a State or local government agency, in the Chesapeake
 3 Bay Critical Area or the Atlantic Coastal Bays Critical Area by the appropriate local
 4 approval authority.

5 (ii) "Project approval" includes:

- 6 1. Approval of subdivision plats and site plans;
- 7 2. Inclusion of areas within floating zones;
- 8 3. Issuance of variances, special exceptions, and conditional
 9 use permits; and
- 10 4. Approval of rezoning.

11 (iii) "Project approval" does not include building permits.

12 8-1808.1.

13 (e) ~~In (1) EXCEPT AS AUTHORIZED UNDER PARAGRAPH (2) OF THIS~~
 14 SUBSECTION, IN calculating the 1-in-20 acre density of development that is
 15 permitted on a parcel located within the resource conservation area, a local
 16 jurisdiction [may]:

17 ~~(+) (I) SHALL COUNT EACH DWELLING UNIT, REGARDLESS OF THE~~
 18 ~~SIZE OF THE DWELLING UNIT, ITS LOCATION OR CONFIGURATION, OR ANY~~
 19 ~~RESTRICTIONS ON ITS OCCUPANCY; AND~~

20 ~~(2) (II) MAY~~ permit the area of any private wetlands located on the
 21 property to be included, under the following conditions:

22 [(1)] ~~(+)~~ 1. The density of development on the upland portion of the
 23 parcel may not exceed 1 dwelling unit per 8 acres; and

24 [(2)] ~~(+)~~ 2. The area of private wetlands shall be estimated on the
 25 basis of vegetative information as designated on the State wetlands maps.

26 (2) (I) WITHIN A RESOURCE CONSERVATION AREA, A LOCAL
 27 JURISDICTION MAY CONSIDER ONE ADDITIONAL DWELLING UNIT PER LOT OR
 28 PARCEL AS PART OF A PRIMARY DWELLING UNIT FOR THE PURPOSE OF THE DENSITY
 29 CALCULATION UNDER THIS SUBSECTION IF THE ADDITIONAL DWELLING UNIT:

30 1. A. IS LOCATED WITHIN THE PRIMARY DWELLING UNIT
 31 OR ITS ENTIRE PERIMETER IS WITHIN 100 FEET OF THE PRIMARY DWELLING UNIT;

32 B. DOES NOT EXCEED 900 SQUARE FEET IN TOTAL
 33 ENCLOSED AREA; AND

34 C. IS SERVED BY THE SAME SEWAGE DISPOSAL SYSTEM AS
 35 THE PRIMARY DWELLING UNIT; OR

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
2 effect June 1, 2004.