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

Introduced and read first time: February 10, 2006

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Chesapeake and Atlantic Coastal Bays Critical Area Protection Program -**
3 **Critical Area Commission - Authority**

4 FOR the purpose of clarifying the authority of the Critical Area Commission and the
5 chairman regarding program amendments and program refinements; altering
6 the guidelines for local jurisdictions for the location of new intensely developed
7 and limited development areas; altering the Commission's approval process for
8 program amendments and program refinements; clarifying the procedures for
9 growth allocation requests by local jurisdictions; clarifying certain terms;
10 defining certain terms; and generally relating to the authority of the
11 Commission and the Chairman of the Chesapeake and Atlantic Coastal Bays
12 Critical Area Protection Program.

13 BY repealing and reenacting, with amendments,
14 Article - Natural Resources
15 Section 8-1802(a), 8-1808.1(c), and 8-1809(o), (p), and (q)
16 Annotated Code of Maryland
17 (2000 Replacement Volume and 2005 Supplement)

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

20 **Article - Natural Resources**

21 8-1802.

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

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

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

1 (4) "Buffer" means an existing, naturally vegetated area, or an area
2 established in vegetation and managed to protect aquatic, wetlands, shoreline, and
3 terrestrial environments from man-made disturbances.

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

6 (6) "Commission" means the Critical Area Commission for the
7 Chesapeake and Atlantic Coastal Bays established in this subtitle.

8 (7) "Critical Area" means the Chesapeake Bay Critical Area and the
9 Atlantic Coastal Bays Critical Area.

10 (8) "DEVELOPER" MEANS:

11 (I) A PERSON WHO UNDERTAKES DEVELOPMENT AS DEFINED IN
12 THIS SECTION; OR

13 (II) A PERSON WHO UNDERTAKES DEVELOPMENT ACTIVITIES AS
14 DEFINED IN THE CRITERIA OF THE COMMISSION.

15 (9) "Development" means any activity that materially affects the
16 condition or use of dry land, land under water, or any structure.

17 [(9)] (10) (i) "Dwelling unit" means a single unit providing complete,
18 independent living facilities for at least one person, including permanent provisions
19 for sanitation, cooking, eating, sleeping, and other activities routinely associated with
20 daily life.

21 (ii) "Dwelling unit" includes a living quarters for a domestic or
22 other employee or tenant, an in-law or accessory apartment, a guest house, or a
23 caretaker residence.

24 [(10)] (11) "Growth allocation" means the number of acres of land in the
25 Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area that a local
26 jurisdiction may use to create new intensely developed areas and new limited
27 development areas.

28 [(11)] (12) "Includes" means includes or including by way of illustration
29 and not by way of limitation.

30 [(12)] (13) "Land classification" means the designation of land in the
31 Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in accordance
32 with the criteria adopted by the Commission as an intensely developed area or
33 district, a limited development area or district, or a resource conservation area or
34 district.

35 [(13)] (14) "Local jurisdiction" means a county, or a municipal corporation
36 with planning and zoning powers, in which any part of the Chesapeake Bay Critical
37 Area or the Atlantic Coastal Bays Critical Area, as defined in this subtitle, is located.

1 [(14)] (15) (i) "Program" means the critical area protection program of a
2 local jurisdiction.

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

4 [(15)] (16) (i) "Program amendment" means any change OR PROPOSED
5 CHANGE to an adopted program [that the Commission determines will result in a use
6 of land or water in the Chesapeake Bay Critical Area or the Atlantic Coastal Bays
7 Critical Area in a manner not provided for in the adopted program] THAT IS NOT
8 DETERMINED BY THE COMMISSION CHAIRMAN TO BE A PROGRAM REFINEMENT.

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

12 [(16)] (17) (i) "Program refinement" means any change OR PROPOSED
13 CHANGE to an adopted program that the Commission CHAIRMAN determines will
14 result in a use of land or water in the Chesapeake Bay Critical Area or the Atlantic
15 Coastal Bays Critical Area in a manner consistent with the adopted program, OR
16 THAT WILL NOT SIGNIFICANTLY AFFECT THE USE OF LAND OR WATER IN THE
17 CRITICAL AREA.

18 (ii) "Program refinement" [includes] MAY INCLUDE:

19 1. A change to [a zoning map that is consistent with the
20 development area designation of] an adopted program THAT RESULTS FROM STATE
21 LAW; [and]

22 2. [The use of the growth allocation in accordance with an
23 adopted program] A CHANGE TO AN ADOPTED PROGRAM THAT AFFECTS LOCAL
24 PROCESSES AND PROCEDURES;

25 3. A CHANGE TO A LOCAL ORDINANCE OR CODE THAT
26 CLARIFIES AN EXISTING PROVISION; AND

27 4. A MINOR CHANGE TO AN ELEMENT OF AN ADOPTED
28 PROGRAM THAT IS CLEARLY CONSISTENT WITH THE PROVISIONS OF THIS SUBTITLE
29 AND ALL OF THE CRITERIA OF THE COMMISSION.

30 [(17)] (18) (i) "Project approval" means the approval of development,
31 other than development by a State or local government agency, in the Chesapeake
32 Bay Critical Area or the Atlantic Coastal Bays Critical Area by the appropriate local
33 approval authority.

34 (ii) "Project approval" includes:

35 1. Approval of subdivision plats and site plans;

36 2. Inclusion of areas within floating zones;

1 part of its application to the Commission for program approval or at a later date in
2 compliance with § 8-1809(g) of this subtitle; and

3 [(5)] (VII) In Calvert, Caroline, Cecil, Charles, Dorchester, Kent, Queen
4 Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester counties, if the county
5 is unable to utilize a portion of the growth allocated to the county in [paragraphs (1)
6 and (2)] THIS PARAGRAPH OR PARAGRAPH (1) of this subsection within or adjacent to
7 existing intensely developed or limited development areas as demonstrated in the
8 local plan approved by the Commission, then that portion of the allocated expansion
9 which cannot be so located may be located in the resource conservation area in
10 addition to the expansion allocated in [paragraph (3) of this subsection] ITEM (VI) OF
11 THIS PARAGRAPH. A developer shall be required to cluster any development in an
12 area of expansion authorized under this paragraph.

13 8-1809.

14 (o) (1) For proposed program amendments, a Commission panel shall hold a
15 public hearing in the local jurisdiction, and the Commission shall act on the proposed
16 program amendment within 90 days of the Commission's acceptance of the proposal.
17 If action by the Commission is not taken within 90 days, the proposed program
18 amendment is deemed approved.

19 (2) THE COMMISSION SHALL DETERMINE IF THE PROPOSED
20 AMENDMENT IS CONSISTENT WITH THE COMMISSION'S PURPOSE, POLICIES, GOALS,
21 ALL CRITERIA, AND THE PROVISIONS OF THIS SUBTITLE.

22 (3) IN ACCORDANCE WITH THE COMMISSION'S DETERMINATION IN
23 PARAGRAPH (2) OF THIS SUBSECTION, THE COMMISSION SHALL:

24 (I) APPROVE THE PROPOSED PROGRAM AMENDMENT AND NOTIFY
25 THE LOCAL JURISDICTION;

26 (II) DENY THE PROPOSED PROGRAM AMENDMENT;

27 (III) APPROVE THE PROPOSED PROGRAM AMENDMENT SUBJECT TO
28 ONE OR MORE CONDITIONS; OR

29 (IV) RETURN THE PROPOSED PROGRAM AMENDMENT TO THE
30 LOCAL JURISDICTION WITH A LIST OF THE CHANGES TO BE MADE.

31 (4) IF THE COMMISSION APPROVES A PROPOSED PROGRAM
32 AMENDMENT SUBJECT TO ONE OR MORE CONDITIONS UNDER ITEM (3)(III) OF THIS
33 SUBSECTION, THE LOCAL JURISDICTION SHALL NOTIFY THE COMMISSION WITHIN 30
34 DAYS OF ITS INTENT TO COMPLY WITH THE CONDITIONS.

35 [(2)] (5) The local jurisdiction shall incorporate the approved program
36 amendment AND ANY REQUIRED CONDITIONS into the adopted program within 120
37 days of receiving notice from the Commission that the program amendment has been
38 approved.

1 (p) (1) Proposed program refinements shall be determined as provided in
2 this subsection.

3 (2) (i) Within 30 days of the Commission's acceptance of a proposal to
4 change an adopted program, the chairman, on behalf of the Commission, may
5 determine that the proposed change is a program refinement. Immediately upon
6 making a determination under this paragraph, the chairman shall notify the
7 Commission of that determination.

8 (ii) If a proposed change that was specifically submitted as a
9 program refinement is not acted on by the chairman within the 30-day period, the
10 Commission shall notify the appropriate local jurisdiction that the proposed change
11 has been deemed to be a program amendment.

12 (3) (i) The Commission may vote to override the chairman's
13 determination only at the first Commission meeting where a quorum is present
14 following the chairman's determination.

15 (ii) If the chairman's determination is overridden, the proposed
16 change is deemed a program amendment, which shall be decided by the Commission
17 in accordance with the procedures for program amendments provided in this section,
18 except that the Commission shall act on the program amendment within 60 days
19 after a vote to override the chairman.

20 (iii) If the chairman's determination is not overridden, within 10
21 working days after the opportunity to override the chairman's decision under (i)
22 of this paragraph, the chairman, on behalf of the Commission, shall:

23 1. Approve the proposed program refinement and notify the
24 local jurisdiction;

25 2. Deny the program refinement; [or]

26 3. [Send the proposed program refinement back to the local
27 jurisdiction with a list of specific changes to be made] APPROVE THE PROPOSED
28 PROGRAM REFINEMENT SUBJECT TO ONE OR MORE CONDITIONS; OR

29 4. RETURN THE PROPOSED PROGRAM REFINEMENT BACK
30 TO THE LOCAL JURISDICTION WITH A LIST OF THE CHANGES TO BE MADE.

31 (iv) [Within 10 working days of receiving a changed program
32 refinement changed in accordance with item (iii)3 of this paragraph, the chairman
33 shall approve or deny the program refinement.] IF THE COMMISSION APPROVES A
34 PROPOSED PROGRAM REFINEMENT SUBJECT TO ONE OR MORE CONDITIONS UNDER
35 ITEM (III)3 OF THIS PARAGRAPH, THE LOCAL JURISDICTION SHALL NOTIFY THE
36 COMMISSION WITHIN 30 DAYS OF ITS INTENT TO COMPLY WITH THE CONDITIONS.

37 (4) A local jurisdiction shall incorporate an approved program
38 refinement into its adopted program within 120 days of receiving notice from the
39 chairman that the program refinement has been approved.

1 (q) (1) As necessary, a local jurisdiction may combine any or all proposed
2 program amendments or program refinements required for a specific project approval
3 into a single request to the Commission for program amendment, program
4 refinement, or both.

5 (2) A PROJECT FOR WHICH A LOCAL JURISDICTION REQUESTS GROWTH
6 ALLOCATION MAY BE SUBMITTED AS A PROPOSED PROGRAM AMENDMENT,
7 PROGRAM REFINEMENT, OR BOTH.

8 (3) Approval by the Commission of a program amendment, program
9 refinement, or both does not affect the Commission's authority to receive notice of or
10 intervene in a project approval that was not specifically approved by the Commission
11 as part of its approval of a program amendment or program refinement.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 June 1, 2006.