HOUSE BILL 278

N1, M1 1lr0379

By: Delegates McConkey, Glenn, and Holmes

Introduced and read first time: January 31, 2011

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

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Chesapeake and Atlantic Coastal Bays Critical Area – Prospective Land Purchases – Inspections

4 FOR the purpose of requiring a local jurisdiction to inspect or contract for the inspection of a lot or parcel that is in the Chesapeake and Atlantic Coastal Bays 5 6 critical area at the request of a prospective purchaser to determine if a critical 7 area violation exists on the lot or parcel; establishing that a certain subsequent 8 purchaser of a lot or parcel in the critical area is not liable for certain criminal 9 or civil penalties for certain violations under certain circumstances; clarifying 10 that the statute of limitations for critical area violations does not subject certain 11 subsequent purchasers to liability for certain penalties for certain critical area 12 violations; authorizing a local jurisdiction to impose a certain inspection fee; 13 requiring a local jurisdiction that performs or contracts for an inspection under 14 this Act to provide the prospective purchaser with a certain report; authorizing 15 the recordation in the appropriate land records of an inspection report and 16 certain remedial action taken to address critical area violations; requiring the 17 Chesapeake and Atlantic Coastal Bays Critical Area Commission to adopt 18 regulations to establish standards and procedures for inspections performed and remedies required under this Act; and generally relating to local inspections for 19 20 a prospective purchaser of a lot or parcel in the Chesapeake and Atlantic 21 Coastal Bays critical area.

- 22 BY repealing and reenacting, with amendments,
- 23 Article Natural Resources
- 24 Section 8–1806 and 8–1815(a)(2)
- 25 Annotated Code of Maryland
- 26 (2007 Replacement Volume and 2010 Supplement)
- 27 BY repealing and reenacting, with amendments,
- 28 Article Real Property
- 29 Section 3–102



$\begin{array}{c} 1 \\ 2 \end{array}$	Annotated Code of Maryland (2010 Replacement Volume and 2010 Supplement)					
3 4 5 6 7	BY adding to Article – Real Property Section 10–206 Annotated Code of Maryland (2010 Replacement Volume and 2010 Supplement)					
8 9	SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:					
10	Article - Natural Resources					
11	8–1806.					
12 13	(a) The Commission has all powers necessary for carrying out the purposes of this subtitle, including the following:					
14 15 16 17 18	(1) In accordance with Title 2, Subtitle 5 (Joint Committee on Administrative, Executive and Legislative Review) and Title 10, Subtitle 1 (Administrative Procedure Act) of the State Government Article, to adopt and amend regulations as authorized under this subtitle for the administration and enforcement of the State and local programs;					
19 20	(2) To conduct hearings in connection with policies, proposed programs, and proposed regulations or amendments to regulations;					
21	(3) To contract for consultant or other services; and					
22 23 24	(4) To establish an advisory committee, composed of members of the Commission and local citizens and local stakeholder groups, to make recommendations to the Commission with respect to Atlantic Coastal Bays Critical Area programs.					
25 26	(b) Regulations adopted or amended under subsection (a)(1) of this section shall:					
27	(1) Establish comprehensive standards and procedures for:					
28 29	(i) Buffer establishment, maintenance, measurement, mitigation, and enforcement;					
30	(ii) Buffer exemption areas;					
31	(iii) Impacts of shore erosion control activities on the buffer;					
32	(iv) Community piers;					

1		(v)	Comn	nercial marinas;
2		(vi)	Water	r dependent facilities;
3		(vii)	Publi	c water access;
4 5 6		abita	-	protection and conservation of the buffer as a State arce essential to the restoration of the Chesapeake and
7 8		(ix) y and		ing the critical area, with respect to revision of the cary additions of property to the critical area;
9		(x)	Devel	opment in the critical area, with respect to:
10			1.	Clearing, grading, and construction activity;
11 12	features;		2.	Clustering to promote conservation of natural site
13			3.	Flexibility for redevelopment;
14			4.	Stormwater management;
15			5.	Application of the 10% pollutant reduction rule;
16			6.	Forest and developed woodlands protections;
17			7.	Clearing of natural vegetation;
18			8.	Lot coverage standards;
19 20	consolidation; and		9.	Commission review of local provisions for lot
21 22 23				The exclusion of State tidal wetlands from and developed woodlands protections, limitations on lot coverage standards;
24 25		(xi) establ		stent enforcement of State and local critical area law, nt of minimum penalties and mitigation requirements;
26		(xii)	Grow	th allocation applications, with respect to:
27			1.	The deduction of growth allocation acreage;
28			2.	Commission review and determinations;

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amendment or refinement; and

1 2 3	jurisdictions concerning require growth allocation		Accommodation of variations among local uses in the resource conservation area that do not
4		4.	The location of septic systems;
5		5.	Golf courses; and
6 7	use of cluster developmen	6. nt und	The Commission's evaluation of a local jurisdiction's ler § 8–1808.1 of this subtitle;
8 9	(xiii) the conservation and pro		nsultation with appropriate State and federal agencies, n of:
10		1.	Habitat protection areas;
11		2.	Threatened and endangered species;
12		3.	Species in need of conservation;
13		4.	Forest interior dwelling birds;
14		5.	Anadromous fish propagation waters; and
15		6.	Plant and wildlife habitat;
16 17	(xiv) implementation, with res		etives for local program development and o:
18		1.	Notification of project applications;
19 20	area program;	2.	The 6-year comprehensive review of a local critical
21		3.	For a State or local government development activity:
22 23 24	newspaper of general cir would occur; and	A. culatio	Public notice, including notice to be published in a on in the area where the proposed development activity
25 26	jurisdiction in which the	B. propo	An opportunity for public comment in the local sed development activity would be located;
27		4.	Reporting requirements;
28		5.	The submission and processing of a proposed program

$\frac{1}{2}$	from the critical area;	Provisions applicable to areas requested for exclusion
3 4	(xv) In surface mining in the critic	n consultation with the Department of the Environment, al area; [and]
5 6	(xvi) T respect to:	he application for and processing of a variance, with
7	1	Amending a variance application;
8	2	Advance notice to the Commission;
9	3	The contents of a complete variance application;
10 11	4 made part of the variance r	8
12	5	The use of variance standards; and
13	6	Notice of a variance decision; and
14 15 16 17	CONTRACTED BY A LOCA	CRITICAL AREA INSPECTIONS PERFORMED OR L JURISDICTION AND ACTIONS REQUIRED TO REMEDY ONS ON A LOT OR PARCEL UNDER § 10–206 OF THE E; AND
18 19	(2) Provide variations among local prog	flexibility wherever possible in order to accommodate trams.
20 21 22	* *	of the Commission who reside in the Atlantic Coastal Bays any committee established under subsection (a)(4) of this
23	8–1815.	
24 25 26	* * * * * * * * * * * * * * * * * * * *	person who violates a provision of an order, permit, plan, e, or regulations adopted, approved, or issued under the all be:
27 28 29	district court by the chairn remedies afforded by State	nan or local authorities, who may invoke the sanctions and

Guilty of a misdemeanor; and

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1 2 3	3. On conviction in a court of competent jurisdiction, subject to a fine not exceeding \$10,000 or imprisonment not exceeding 90 days or both, with costs imposed in the discretion of the court.
4 5 6 7 8 9	(ii) 1. [A] SUBJECT TO SUBSUBPARAGRAPH 2 OF THIS SUBPARAGRAPH, A criminal prosecution or a suit for a civil penalty for violation of a provision of an order, permit, plan, local program, this subtitle, or regulations adopted, approved, or issued under the authority of this subtitle shall be instituted within 3 years after the Commission or the local authorities in fact knew or reasonably should have known of the violation.
10 11 12 13 14 15 16	2. If a lot or parcel is inspected for critical area violations under § 10–206 of the Real Property Article and no violation is discovered or any violation discovered is remedied, a criminal prosecution or a suit for a civil penalty may not be instituted against the subsequent purchaser who requested the inspection of the lot or parcel for a subsequently discovered violation that occurred before the time of inspection.
17	Article - Real Property
18	3–102.
19 20 21	(a) (1) Any other instrument affecting property, including any contract for the grant of property, or any subordination agreement establishing priorities between interests in property may be recorded.
22	(2) The following instruments also may be recorded:
23 24	(i) Any notice of deferred property footage assessment for street construction;
25 26	(ii) Any boundary survey plat signed and sealed by a professional land surveyor or property line surveyor licensed in the State;
27 28 29	(iii) Any assumption agreement by which a person agrees to assume the liability of a debt or other obligation secured by a mortgage or deed of trust;
30 31	(iv) Any release of personal liability of a borrower or guarantor under a mortgage or under a note or other obligation secured by a deed of trust;
32 33 34	(v) A ground rent redemption certificate or a ground rent extinguishment certificate issued under § 8–110 of this article or a ground lease extinguishment certificate issued under § 8–708 of this article; [or]

1 2 3	(vi) An affordable housing land trust agreement executed under Title 14, Subtitle 5 of this article with any transfer of property for which an affordable housing land trust has a reversionary interest; OR
4 5 6	(VII) AN INSPECTION REPORT ON CRITICAL AREA VIOLATIONS AND ANY ACTION TAKEN TO REMEDY CRITICAL AREA VIOLATIONS, AS REQUIRED UNDER § 10–206 OF THIS ARTICLE.
7 8	(3) The recording of any instrument constitutes constructive notice from the date of recording.
9 10	(b) This section may not be construed to authorize the recording of a subdivision plat without any prior review and approval otherwise required by law.
11	10–206.
12 13 14 15 16	(A) A LOCAL JURISDICTION SHALL INSPECT OR CONTRACT FOR THE INSPECTION OF A LOT OR PARCEL THAT IS IN THE JURISDICTION'S CRITICAL AREA AT THE REQUEST OF A PROSPECTIVE PURCHASER OF THE LOT OR PARCEL TO DETERMINE IF A VIOLATION OF TITLE 8, SUBTITLE 18 OF THE NATURAL RESOURCES ARTICLE EXISTS ON THE LOT OR PARCEL.
17 18 19 20 21 22	(B) If a lot or parcel is inspected under subsection (a) of this section and no violation is discovered or any violation discovered is remedied, a subsequent purchaser who requested the inspection is not liable for criminal or civil penalties under Title 8, Subtitle 18 of the Natural Resources Article for a subsequently discovered violation that occurred before the time of the inspection.
23 24 25	(C) (1) A LOCAL JURISDICTION THAT PERFORMS OR CONTRACTS FOR AN INSPECTION UNDER THIS SECTION SHALL PROVIDE THE PROSPECTIVE PURCHASER WITH A FINAL REPORT DESCRIBING:
26	(I) THE PROPERTY INSPECTED;
27	(II) ANY VIOLATIONS DISCOVERED;
28 29 30	(III) ANY CITATIONS ISSUED BY THE LOCAL JURISDICTION AND REMEDIES RECOMMENDED BY THE LOCAL JURISDICTION OR CONTRACTOR; AND
31	(IV) ANY REMEDIES FINALLY IMPLEMENTED.

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- 1 (2) A LOCAL JURISDICTION MAY IMPOSE AN INSPECTION FEE ON 2 A PROSPECTIVE PURCHASER IN AN AMOUNT TO COVER THE COST OF THE 3 INSPECTION OR CONTRACT FOR INSPECTION.
- SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect 5 October 1, 2011.