

Department of Legislative Services
2011 Session

FISCAL AND POLICY NOTE

House Bill 278

(Delegate McConkey, *et al.*)

Environmental Matters

**Chesapeake and Atlantic Coastal Bays Critical Area - Prospective Land
Purchases - Inspections**

This bill requires the Chesapeake and Atlantic Coastal Bays Critical Area Commission to adopt regulations establishing comprehensive standards and procedures for, with respect to lots or parcels for sale, (1) critical area inspections performed or contracted by local jurisdictions; and (2) actions required to remedy critical area violations. Upon the request of a prospective land purchaser, local jurisdictions must inspect or contract for the inspection of critical area properties within their jurisdiction to determine whether a critical area violation exists. If a property is inspected and there are no violations or any violation discovered is remedied, a subsequent purchaser who requests another inspection is not liable for specified criminal or civil penalties. Local jurisdictions are required to provide a prospective purchaser an inspection report that describes the property inspected, violations discovered, citations issued, remedies recommended, and remedies implemented. The bill authorizes that inspection report to be recorded in land records. Local jurisdictions are authorized to establish an inspection fee on prospective purchasers to cover the cost of the inspections.

Fiscal Summary

State Effect: No significant impact on State finances.

Local Effect: Local expenditures for jurisdictions in the critical area increase to conduct critical area property inspections. Local revenues may increase due to the imposition of critical area property inspection fees. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Minimal.

Analysis

Current Law: Among other things, the Chesapeake and Atlantic Coastal Bays Critical Area Commission has the authority to (1) adopt and amend regulations concerning the administration and enforcement of State and local critical area programs; and (2) contract for consultant and other services.

Background: The Chesapeake Bay Critical Area Protection Program is within the Department of Natural Resources (DNR) and was established by Chapter 794 of 1984 in order to minimize damage to water quality and wildlife habitat by fostering more sensitive development activity along the shoreline of the Chesapeake Bay and its tributaries. The law identified the “critical area” as all land within 1,000 feet of the mean high water line of tidal waters or the landward edge of tidal wetlands and all waters of and lands under the Chesapeake Bay and its tributaries. In 2002, the program was expanded to include the Atlantic Coastal Bays.

A report released in May 2006, by the Environmental Law Clinic at the University of Maryland School of Law, highlighted a number of limitations of and weaknesses in the critical area law due to a lack of enforcement combined with other weaknesses in the statute. Another report released by the Chesapeake Bay Foundation in February 2008 recommended, among other things, that the Governor and the General Assembly reform the critical area law to ensure consistent application of the law, provide more robust and equitable enforcement, correct critical area boundaries to reflect current conditions, update variance and grandfathering procedures to minimize natural resource and water quality impacts, and ensure that development in the critical area is consistent with Maryland’s smart growth policies.

Chapter 119 of 2008 sought to address program concerns by providing greater authority to the Critical Area Commission, updating the basic components of the program, enhancing buffer and water quality protection, coordinating new development more closely with growth management policies and other environmental protection and planning processes, and strengthening enforcement and variance provisions.

Local Fiscal Effect: The bill may result in a significant increase in revenues and expenditures for local jurisdictions with land located in the critical area (16 counties, Baltimore City, and 47 municipalities). The extent of this increase depends in part on the number of inspection requests received, the workload associated with each request, and the local fees associated with conducting inspections.

DNR advises that each local inspection may require staff to dedicate significant time to performing inspections and associated legal research and mitigation strategy development. For example, a local inspector finding no violations on a site may still

spend 16 hours of staff time conducting the on-the-ground inspection; researching permit files to determine if local permits were issued for all structures, improvements, and cleared forest areas on the site; and preparing a final report. If inspectors find violations, staff time increases to determine appropriate fines and necessary mitigation and restoration measures. Inspections of large sites or sites with multiple accessory structures and uses (such as sheds; storage buildings; pools; walkways and patios; and a mixture of forested, cleared, and graded areas) may require more than 16 hours of staff time.

Several local jurisdictions advise that developing this critical area property inspection program may require additional staff and expenditures. Prince George's County reports its expenditures increase by at least \$250,000 in fiscal 2012 and subsequent years for necessary staff and equipment. Baltimore City reports that revenues increase and expenditures increase by \$60,000 in fiscal 2012 and subsequent years to meet the bill's requirements. Although the bill provides local jurisdictions with the authority to impose fees to cover the costs of inspections, the Maryland Association of Counties advises that a fee set at a reasonable level would likely not be sufficient to entirely offset inspection costs.

To the extent the bill results in the discovery of additional critical area violations, local fine revenues may increase.

Additional Information

Prior Introductions: HB 729 of 2009, a similar bill, received an unfavorable report from the House Environmental Matters Committee.

Cross File: None.

Information Source(s): City of Bowie, Baltimore City, Prince George's and Montgomery counties, Maryland Association of Counties, Board of Public Works, Department of Natural Resources, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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mc/lgc

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