

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 233

(Chair, Environment and Transportation Committee)(By
Request - Critical Area Commission)

Environment and Transportation

Education, Energy, and the Environment

Chesapeake and Atlantic Coastal Bays Critical Area Protection Program –
Climate, Equity, and Administrative Provisions

This departmental bill modifies the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program to incorporate climate resilience, environmental justice, and equity measures. The bill also extends the requirement that Critical Area maps be updated on a regular interval and makes various technical, conforming, and administrative changes. **Provisions related to Critical Area maps take effect upon notification of completion of a statewide base map project required by Chapter 119 of 2008.**

Fiscal Summary

State Effect: General fund expenditures for the Critical Area Commission (CAC) to provide funding to local governments may increase by more than \$100,000 annually beginning as early as FY 2025. The bill is not anticipated to materially affect overall State spending on capital projects, as discussed below. State agencies can generally handle the bill’s administrative requirements with existing budgeted resources. Revenues are not affected.

Local Effect: Local administrative and capital expenditures may increase beginning as early as FY 2025. Local revenues may increase from CAC grants beginning as early as FY 2025. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: CAC has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services (DLS) disagrees with this assessment, as discussed below. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary:

Incorporated, Newly Defined, and Modified Terms

Existing definitions for environmental justice, overburdened community, underrepresented community, and underserved community are incorporated into the Critical Area law and the following new terms are defined: climate resiliency; equity; natural features; and nature-based features. The term “dwelling unit” is modified by repealing a requirement that dwelling unit include *permanent* provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. Under the modified definition, such provisions must exist but do not need to be permanent.

Commission Regulations Must Address Climate Change, Resilience, Environmental Justice, and Equity

In addition to other modifications, regulations adopted by CAC must establish comprehensive standards and procedures for:

- assessing and adapting the Critical Area for climate resiliency;
- enhancing the resilience of the Critical Area by protecting, creating, and restoring natural and nature-based features; and
- environmental justice and equity initiatives that address disparate impacts of development and ensure the benefits of development, restoration, mitigation, and conservation are shared equitably.

Annual State Funding for Local Critical Area Programs

Provisions requiring the Governor to include money in the budget to reimburse local governments for reasonable costs of *developing* local critical area programs are repealed. The ongoing requirement that the Governor include funds in the budget each year to provide grants to assist local governments with reasonable costs of *implementing* local programs is expanded to also include *updating* local programs; local jurisdictions must still submit detailed funding requests to CAC by May 1 of each year.

A new annual funding requirement is added specifically to provide grants to assist local jurisdictions to incorporate the climate and equity provisions required under the bill into updated local programs; local jurisdictions must submit detailed funding requests to CAC by May 1 of each year; however, on request of a local jurisdiction, the chair may extend the May 1 deadline.

Local Program Changes

Core Elements

In addition to requirements for local critical area programs under current law, each program must consist of those elements, which are necessary or appropriate to:

- reduce vulnerability to the impacts of climate change and incorporate measures to improve the climate resiliency of the Chesapeake and Atlantic Coastal Bays and its tributaries; and
- ensure an equitable distribution of the burdens and benefits of development, mitigation, restoration, conservation, and adaptation to climate change within the Critical Area.

Minimum Requirements

In addition to technical and administrative changes, minimum requirements for local government programs are updated to require:

- consideration to be given to underserved communities in the assessment and mapping of shoreline areas suitable for specified public uses and water-related activities;
- provisions for (1) identifying areas vulnerable to climate change; (2) mitigation and adaptation measures that address sea level rise, storm surge, precipitation-induced flooding, other extreme weather events, migrating wetlands, and coastal forests; and (3) enhancing the climate resiliency of the Critical Area by identifying, restoring, and creating and conserving existing and projected future natural and nature-based features;
- provisions for (1) identifying underserved and overburdened communities within the Critical Area; (2) measures to ensure the equitable distribution of the benefits and burdens of development, restoration, and mitigation within the Critical Area; and (3) ensuring equity in the public participation process;
- provisions to ensure public access to the water, shoreline, and other natural areas for underserved or overburdened communities; and
- methods to ensure effective allocation, accounting, and reporting of fee in lieu funds.

Local Development Standards, Density Calculations, and Lot Coverage

The bill also adds an additional standard pertaining to climate change that a local government must use when locating new intensely developed areas (IDAs) or limited

development areas (LDAs). More specifically, a local government must locate IDAs and LDAs outside of areas vulnerable to climate change, unless the local jurisdiction proposes and CAC approves (1) areas identified by the local jurisdiction as vulnerable to climate change (as described above) and (2) measures that assess climate resiliency and vulnerability and incorporate siting, design, construction, and other natural features to significantly enhance climate resiliency and reduce vulnerability.

The bill also modifies requirements related to development in Resource Conservation Areas (RCAs) as they pertain to density calculations and additional dwelling units and makes changes related to lot coverage. For development that uses pervious materials that have been approved by CAC as part of a local program, specified coverage limits on lots or parcels of less than one acre in size may be exceeded by up to 500 square feet.

Program Updates and Amendments

The frequency with which each local jurisdiction must review its entire critical area program and propose any necessary amendments is increased from 6 years to 10 years. On request of a local jurisdiction, CAC must extend the deadline by 1 year. Beginning January 1, 2028, a local jurisdiction that does not meet the program review requirement is prohibited from proposing local amendments or refinements.

If a local jurisdiction fails to update an adopted program after the 10-year deadline or after the expiration of a 1-year extension granted under the bill, CAC must make a good faith effort to notify the local jurisdiction that an update is necessary by at least four documented notification attempts over a 3-year period. The local jurisdiction must adopt a program update within 2 years of the last notice from CAC; if at that point the local jurisdiction fails to do so, the commission may update the local program.

Provisions governing zoning map amendments are updated to include additional specificity for when an amendment may be made due to a mistake. Additionally, a zoning map amendment may be granted if it proposes to change the land classification from a more developed to a less developed classification. Other existing allowable reasons for amendments are not substantively changed.

Mapping Project Extended

The bill specifies a process for updating the statewide base map for the Critical Area as required under Chapter 119. The process requires CAC, with the assistance of the Department of Natural Resources (DNR) and the Maryland Department of the Environment (MDE), to prepare an update to the map at appropriate intervals, but not less than every eight years, that includes a State-determined shoreline and landward boundary of tidal wetlands and a digitally generated, georeferenced 1,000-foot Critical Area

boundary, as appropriate for integration into a Geographic Information System, under specified standards.

Subject to specified requirements, a local jurisdiction must formally adopt its updated Critical Area map based on the statewide base map within six months of its receipt from DNR and CAC and may request an extension of time for an additional six months if evidence of reasonable progress has been made and is satisfactory to the commission. Once adopted, each local jurisdiction must ensure that, where applicable, each project submittal uses the updated digitally generated, georeferenced Critical Area boundary.

These provisions take effect seven days after DNR notifies DLS in writing on the date of official completion of the statewide base map project required by Chapter 119.

Other Changes

The bill makes extensive administrative, technical, conforming, and other changes, including:

- The findings of the General Assembly related to the Critical Area are modified to expressly include climate change and equity, including three new findings.
- The requirement to establish an advisory committee to make recommendations with respect to the Atlantic Coastal Bays Critical Area programs is repealed.
- CAC regulations must also establish comprehensive standards and procedures for development in the Critical Area with respect to the transfer of development rights.
- In reviewing map amendments or refinements involving the use of growth allocation under the Critical Area Program, CAC must also consider environmental impacts on underserved or overburdened communities.
- CAC is authorized to direct, rather than request, that a local jurisdiction submit a proposed program amendment or program refinement to correct what CAC determines is a clear mistake, omission, or conflict with CAC program criteria or law.
- A provision requiring CAC approval for certain State or local agency projects not subject to project approval by a local jurisdiction is updated to include the Atlantic Coastal Bays Critical Area, instead of just the Chesapeake Bay Critical Area.
- A provision requiring CAC, by January 1, 1994, to adopt criteria for the production or exploration of oil or natural gas in certain areas that assure the protection of land and water resources in the Critical Area is repealed.

Current Law: See the Background section below for a general overview of the Critical Area Program.

Existing Definitions Incorporated into Critical Area Law

“Environmental justice” means equal protection from environmental and public health hazards for all people regardless of race, income, culture, and social status.

“Overburdened community” means any census tract for which three or more specified environmental health indicators are above the seventy-fifth percentile statewide. Indicators include particulate matter, lead paint, cancer risk, and proximity to traffic and various toxic or pollution source points.

“Underrepresented community” means a community whose members self-identify as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native or with one or more of those groups.

“Underserved community” means any census tract in which, according to the most recent U.S. Census Bureau Survey (1) at least 25% of the residents qualify as low-income; (2) at least 50% of the residents identify as nonwhite; or (3) at least 15% of the residents have limited English proficiency.

Core Critical Area Program Elements

A local critical area program must consist of those elements, which are necessary or appropriate:

- to minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;
- to conserve fish, wildlife, and plant habitat; and
- to establish land use policies for development in the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area, which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

Minimum Critical Area Program Requirements

At a minimum, a local program sufficient to meet the goals of the Critical Area law must include:

- a map designating the Critical Area in a local jurisdiction;
- a comprehensive zoning map for the Critical Area;
- as necessary, new or amended provisions of specified regulations, plans, enforcement provisions, and, as appropriate, grandfathering provisions;

- provisions requiring project approvals to be based on findings that meet specified standards;
- provisions to limit lot coverage and to require or encourage cluster development, where necessary or appropriate;
- establishment of buffer areas along shorelines;
- requirements for minimum setbacks for structures and septic fields along shorelines;
- designation of shoreline areas, if any, that are suitable public uses and water-related recreation;
- designation of shoreline areas, if any, that are suitable for ports, marinas, and industries that use water for transportation or derive economic benefits from shore access;
- provisions requiring that all harvesting of timber in the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area be in accordance with plans approved by the district forestry board;
- provisions for reasonable accommodations in policies or procedures when the accommodations are necessary to avoid discrimination on the basis of physical disability;
- procedures, including consolidation or reconfiguration of lots, approved by CAC, that assure that certain lots and lands are brought into conformance with the Critical Area law to the extent possible;
- provisions for granting a variance to a local program; and
- penalty provisions and administrative enforcement procedures.

Program Review

Each local jurisdiction must review its entire program and propose any necessary amendments to its entire program, including local zoning maps, at least every six years. Each local jurisdiction must send in writing to CAC, within 60 days after the completion of its review, the following information:

- a statement certifying that the required review has been accomplished;
- any necessary requests for program amendments, program refinements, or other matters that the local jurisdiction wishes CAC to consider;
- an updated resource inventory; and
- a statement quantifying acreages within each land classification, the growth allocation used, and the growth allocation remaining.

A program may not be amended or refined except with approval of CAC, subject to specified administrative requirements.

Land Classifications and Growth Allocations

Land within the Critical Area is mapped and classified based on land uses that existed at the time the local program was adopted. The Critical Area law uses three land use designations:

- IDAs, areas of concentrated development where little natural habitat occurs;
- LDAs, areas in which development is of a low or moderate intensity; and
- RCAs, areas characterized by natural environments or by resource-utilization activities.

Certain provisions of critical area criteria apply throughout the Critical Area, while other provisions are specific to the land classifications of IDA, LDA, and RCA; these result in particular development criteria and performance standards.

In order to accommodate future population growth, the total acreage of IDAs and LDAs may be increased by a “growth allocation.” This allowable development increase is calculated by a formula. Each county has a finite amount of growth allocation acreage that can be used, and this acreage was determined at the time of original Critical Area mapping. Local governments consider the use of growth allocation on a project-by-project basis through a local review and approval process. Following local review and approval, CAC must also review and approve all growth allocation proposals as a map amendment to a local program.

When locating new IDAs or LDAs, local jurisdictions must follow specified guidelines, such as locating a new IDA in an existing LDA or adjacent to an existing IDA. Growth allocation projects must also comply with all of the purposes, policies, and goals of the law and criteria.

Background:

Critical Area Program Overview

The General Assembly established CAC in 1984 through the Chesapeake Bay Critical Area Protection Act. In 2002, the law was extended to the Atlantic Coastal Bays in Worcester County and Ocean City. CAC operates as an administrative unit within DNR. The law creates a partnership between the State and local governments. Sixty-four Maryland jurisdictions, including 16 counties, Baltimore City, and 47 municipalities, have lands that border a portion of the Chesapeake or Atlantic Coastal bays, their tidal tributaries, or tidal wetlands. The purpose of this partnership is to address development in a comprehensive fashion in order to improve water quality, conserve wildlife habitats, and manage land uses in a 1,000-foot-wide zone, known as the

“Critical Area,” adjacent to these tidal shorelines. The 642,000 acres in the Critical Area comprise approximately 10% of the State’s land area.

Each jurisdiction is responsible for managing land use development in the Critical Area through a local program. The participating counties and municipalities base their programs on the requirements of the State law, the commission’s original program criteria, and regulations that the General Assembly authorized the commission to adopt under comprehensive statutory amendments enacted in 2008. Standard provisions in each program include limits on forest clearing and the amount of certain semi-impervious surfaces that contribute to stormwater runoff. All local critical area programs, and subsequent amendments, must be approved by the commission. The commission also reviews and comments on land development projects that are subject to local approval. State agencies must obtain commission approval for development projects in the Critical Area.

Climate Resilience, Environmental Justice, and Equity

Maryland’s shorelines are on the front lines of climate change. The State’s coastal communities are experiencing rising seas, heightened flooding and erosion from intensifying storms, and losses in natural habitat. Many of these communities are historically underserved or overburdened, working to overcome decades of disparity in green infrastructure investment and environmental protection as climate threats mount. New development in these sensitive areas can compound these problems – or help overcome them.

CAC advises that the Critical Area Program lacks key tools to help communities become more resilient in the face of climate change. It also does not fully reflect current values and practices that increase equity and advance environmental justice. For example, CAC cannot ensure that the location and design of new development accounts for climate impacts expected over the full lifespan of the project. This puts existing neighborhoods and new residents at increased risk. It is also challenging for CAC to compel mitigation that corrects disparities in environmental quality or more equitably builds resilience to climate change.

State Expenditures: CAC advises that the administrative requirements in the bill can be handled with existing budgeted resources, including updating Critical Area maps. DNR and MDE likewise indicate that existing resources are sufficient for implementation. The Maryland Department of Planning, an *ex-officio* member of CAC, advises that any assistance it may provide to CAC does not require additional staff, but that other tasks may need to be reprioritized due to broadly reduced staffing levels at the department. The Department of General Services did not indicate the need for any additional staff or related administrative costs.

State Assistance to Local Governments

CAC currently provides a small amount of local assistance funds for program implementation in its operating budget. The fiscal 2025 budget includes \$159,400 in general funds for such purposes. Under current practice, local governments will submit requests to CAC for an allocation of the fiscal 2025 funds by May 1, 2024.

The bill modifies the provisions under which this funding must be provided to also apply to *updating* local programs and to specifically include funding for local jurisdictions for climate resiliency and equitable planning. However, no specific funding level is required, and the requirement is to assist, not fully fund, the costs.

The bill's language does not meet the requirements necessary to establish a mandated appropriation. Generally, any legislation mandating funding of a program must include either an exact dollar figure or a funding formula that makes it possible to compute the level of funding required. Therefore, the extent to which affected local governments will request, and receive, discretionary funding for climate resiliency and equitable planning under the bill is unknown. Based on the bill's October 1, 2024 effective date and current practice, the first local requests made by May 1, 2025, will be for a portion of the funding available in the fiscal 2026 budget, although that does not preclude discretionary funding being made available in fiscal 2025.

Accordingly, general fund expenditures to provide funding to local governments under the bill may increase beginning as early as fiscal 2025. Although the amount is unknown, a few local jurisdictions indicated costs associated with the bill. Fully meeting local requests may require additional general fund expenditures of more than \$100,000 annually, particularly in the first few fiscal years of implementation. See the Local Fiscal Effect Section below for additional information.

State Projects

State agencies must incorporate the bill's climate resilience, environmental justice, and equity measures into Critical Area development projects, which may change the location, design, and/or mitigation efforts of such projects. CAC advises that climate resilience measures result in long-term savings to State agencies as expenditures related to maintenance, repair, and disaster recovery due to climate change impacts are reduced. DLS notes that current law requires State and local capital projects that cost \$500,000 or more and are funded with at least 50% State funds to be constructed in compliance with Coast Smart design criteria to address sea level rise inundation and coastal flood impacts. Further, existing State [regulations](#) require State projects located on State-owned land in the Critical Area to incorporate climate resiliency measures. While additional costs for State entities are possible due to the bill's climate resilience requirements beginning as early as

fiscal 2025, a reliable estimate of such costs cannot be made at this time. Nevertheless, any such costs are not anticipated to materially affect overall State spending on capital projects.

The environmental justice and equity measures likely involve using additional screening tools and analysis to determine impacts; CAC advises that additional expenditures to complete these tasks are negligible.

Local Fiscal Effect: The bill incorporates climate resilience, environmental justice, and equity measures into the Critical Area law, which must be incorporated into local critical area programs. CAC advises that its staff plans to provide technical assistance and that the measures can be incorporated during the currently required comprehensive review of local critical area programs. Most local governments that responded to requests for information for this fiscal and policy note did not indicate significant expenditures or revenues associated with the bill. However, Worcester County advises that it requires a full-time staff (\$90,000 in total compensation annually) and \$10,000 annually in contractual support services.

As described above, the extent to which affected local governments will request, and receive, State funding for climate resiliency and equitable planning under the bill is unknown. The bill requires funding be provided to *assist* local governments with reasonable costs to update local programs and incorporate climate resiliency and equitable planning – not to fully cover such costs. Given that at least one local government anticipates costs, and the recent minimal levels of State funding provided to local programs in the absence of specific funding minimums in statute, it is possible that some local governments incur costs in excess of State funding. Fully funding local requests may require more than \$100,000 annually, particularly in the first few years of implementation. Such discretionary funding may be provided as early as fiscal 2025.

Local Projects

Local governments must also incorporate the bill's climate resilience, environmental justice, and equity measures into Critical Area development projects in much the same way as the State government. Those measures may result in long-term savings as expenditures related to maintenance, repair, and disaster recovery due to climate change impacts are reduced. While additional costs for local governments are possible due to these requirements beginning as early as fiscal 2025, a reliable estimate of such costs cannot be made at this time.

Small Business Effect: CAC advises that the bill has no immediate adverse direct or indirect impacts to small businesses. DLS disagrees with this assessment due to the scope of the bill and the potential for some small businesses to be negatively affected – particularly in the short term – by new siting and design requirements in the Critical Area.

New locations, designs, and mitigation measures may be required of some development projects, for example. Conversely, the bill likely has positive meaningful effects on other small businesses, including those engaged directly in climate or resiliency projects. Long-term, small businesses (along with all other businesses) likely benefit from increased climate resiliency in the Critical Area.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 306 (Chair, Education, Energy, and the Environment Committee)(By Request - Critical Area Commission) - Education, Energy, and the Environment.

Information Source(s): Critical Area Commission; Department of Natural Resources; Department of Commerce; Maryland Department of Emergency Management; Maryland Department of Agriculture; Department of Budget and Management; Maryland Department of the Environment; Maryland Department of Planning; Maryland Department of Transportation; Department of General Services; Department of Housing and Community Development; Anne Arundel, Calvert, Charles, Harford, Kent, Prince George's, Queen Anne's, St. Mary's, and Worcester counties; cities of Annapolis and Havre de Grace; Town of Leonardtown; Department of Legislative Services

Fiscal Note History: First Reader - January 28, 2024
rh/lgc Third Reader - March 25, 2024
Revised - Amendment(s) - March 25, 2024
Enrolled - April 29, 2024
Revised - Amendment(s) - April 29, 2024
Revised - Updated Information - April 29, 2024

Analysis by: Stephen M. Ross

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: CHESAPEAKE AND ATLANTIC COASTAL BAYS CRITICAL AREA PROTECTION PROGRAM – CLIMATE, EQUITY, AND ADMINISTRATIVE PROVISIONS

BILL NUMBER: HB0233

PREPARED BY: Nick Kelly, Critical Area Commission

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed statutory changes are intended to revise and update the Critical Area law to address climate resiliency, environmental justice, and equity. The purpose is to ensure the long-term sustainability of communities that may be impacted by sea level rise and to ensure that environmental justice and equity are considered. There are no immediate adverse direct or indirect impacts to small businesses.