

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 268

(Chair, Education, Energy, and the Environment
Committee)(By Request - Critical Area Commission)

Education, Energy, and the Environment

Environment and Transportation

Chesapeake and Atlantic Coastal Bays Critical Area Program - Enforcement

This departmental bill alters the enforcement and after-the-fact application approval procedures required as minimum elements of a local jurisdiction’s Chesapeake and Atlantic Coastal Bays Critical Area Program to apply to all Critical Area violations. The bill also (1) repeals a 30-day waiting period before the chair of the Critical Area Commission (CAC) may refer certain enforcement matters to the Attorney General and (2) expands the authority of the Attorney General to take certain equitable actions to include Critical Area violations of an order, a permit, a plan, a local program, the Critical Area law, or regulations adopted, approved, or issued under the Critical Area law.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations, as discussed below.

Local Effect: The bill does not materially affect local government finances or operations, as discussed below.

Small Business Effect: CAC has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary/Current Law:

Expansion to All Critical Area Violations

Current Law: A local jurisdiction may not issue a permit, approval, variance, or special exception unless the person seeking it has, in addition to having prepared a restoration or mitigation plan and performed required abatement measures, fully paid all *administrative, civil, and criminal penalties* imposed under the statute setting minimum elements of local critical area programs.

A local jurisdiction may not accept an application for a variance to legalize a violation of the critical area law, including an unpermitted structure or development activity, unless the local jurisdiction first issues a notice of violation, including assessment of an *administrative or civil penalty*, for the violation.

The Bill: References to specific types of penalties are repealed.

Waiting Period

Current Law: Whenever the chair of CAC has reason to believe that a local jurisdiction is failing to enforce the requirements of a program applicable to a particular development, the chair must serve notice upon the local enforcement authorities. If, within 30 days after service of the notice, the local authorities have failed to initiate an action to remedy or punish the violation, the chair may refer the matter to the Attorney General.

The Bill: The 30-day waiting period required for the chair to refer the matter to the Attorney General is repealed.

Attorney General Remedies

Current Law: In addition to any other sanction or remedy available, the Attorney General may bring an action in equity to compel compliance or restrain noncompliance with the requirements of approved project plans and to compel restoration of lands or structures to their condition prior to any modification, which was done in violation of those plans.

Notwithstanding any other provision of § 8-1815 of the Natural Resources Article, whenever a development in the Critical Area is proceeding in violation of approved project plans and threatens to immediately and irreparably degrade the quality of tidal waters or fish, wildlife, or plant habitat, the Attorney General, upon request of the chair of CAC, may

bring an action to restrain the violation and, as appropriate, to compel restoration of any land or water areas affected by the development.

The Bill: The above enforcement actions may be taken by the Attorney General based on noncompliance with an order, a permit, a plan, a local program, the Critical Area law, or regulations adopted, approved, or issued under the critical area law.

Background: 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 the Department of Natural Resources. 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.

State/Local Fiscal Effect: CAC advises that the bill’s changes to enforcement provisions and after-the-fact variance procedures are necessary to accommodate all of the varied processes and procedures of local critical area programs. According to CAC, the changes are technical and not substantive in nature. CAC further advises that changes related to the three-day response period and conditions under which the Attorney General may bring an enforcement action are necessary to ensure effective and consistent enforcement for all Critical Area violations, as current provisions have, at times, constrained the commission and the Attorney General’s Office from being able to pursue certain enforcement matters. The commission advises that, while these changes may result in more actions taken by the Office of the Attorney General, the impacts should be minimal based on the limited number

of severe local Critical Area violations. The Office of the Attorney General likewise indicates only a potential minimal impact.

Additional Information

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

Designated Cross File: None.

Information Source(s): Critical Area Commission; Department of Natural Resources; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Anne Arundel, Kent, Prince George's, Queen Anne's, and St. Mary's counties; cities of Havre de Grace and Salisbury; Town of Leonardtown; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services.

Fiscal Note History: First Reader - January 25, 2024
km/lgc Third Reader - February 28, 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 Program - Enforcement

BILL NUMBER: SB0268

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

This statutory change is intended to clarify Critical Area enforcement provisions when violations to Critical Area law occur. There are no immediate adverse direct or indirect impacts to small businesses.