

SENATE BILL 607

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2001 Regular Session
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By: **Senator Dyson (Chairman, Joint Committee on Chesapeake Bay
Critical Areas)**

Introduced and read first time: February 2, 2001
Assigned to: Economic and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Chesapeake Bay Critical Area Protection Program - Variances**

3 FOR the purpose of altering the requirements for local critical area programs to
4 include certain variance provisions; prohibiting a variance from being granted
5 unless certain conditions are met; defining a certain term; and generally
6 relating to the granting of variances under the Chesapeake Bay Critical Area
7 Protection Program.

8 BY repealing and reenacting, without amendments,
9 Article - Natural Resources
10 Section 8-1801
11 Annotated Code of Maryland
12 (2000 Replacement Volume)

13 BY repealing and reenacting, with amendments,
14 Article - Natural Resources
15 Section 8-1808
16 Annotated Code of Maryland
17 (2000 Replacement Volume)

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 8-1801.

22 (a) The General Assembly finds and declares that:

23 (1) The Chesapeake Bay and its tributaries are natural resources of
24 great significance to the State and the nation;

1 (2) The shoreline and adjacent lands constitute a valuable, fragile, and
2 sensitive part of this estuarine system, where human activity can have a particularly
3 immediate and adverse impact on water quality and natural habitats;

4 (3) The capacity of these shoreline and adjacent lands to withstand
5 continuing demands without further degradation to water quality and natural
6 habitats is limited;

7 (4) National studies have documented that the quality and productivity
8 of the waters of the Chesapeake Bay and its tributaries have declined due to the
9 cumulative effects of human activity that have caused increased levels of pollutants,
10 nutrients, and toxics in the Bay System and declines in more protective land uses
11 such as forestland and agricultural land in the Bay region;

12 (5) Those portions of the Chesapeake Bay and its tributaries within
13 Maryland are particularly stressed by the continuing population growth and
14 development activity concentrated in the Baltimore-Washington metropolitan
15 corridor;

16 (6) The quality of life for the citizens of Maryland is enhanced through
17 the restoration of the quality and productivity of the waters of the Chesapeake Bay
18 and its tributaries;

19 (7) The restoration of the Chesapeake Bay and its tributaries is
20 dependent, in part, on minimizing further adverse impacts to the water quality and
21 natural habitats of the shoreline and adjacent lands;

22 (8) The cumulative impact of current development is inimical to these
23 purposes; and

24 (9) There is a critical and substantial State interest for the benefit of
25 current and future generations in fostering more sensitive development activity in a
26 consistent and uniform manner along shoreline areas of the Chesapeake Bay and its
27 tributaries so as to minimize damage to water quality and natural habitats.

28 (b) It is the purpose of the General Assembly in enacting this subtitle:

29 (1) To establish a Resource Protection Program for the Chesapeake Bay
30 and its tributaries by fostering more sensitive development activity for certain
31 shoreline areas so as to minimize damage to water quality and natural habitats; and

32 (2) To implement the Resource Protection Program on a cooperative
33 basis between the State and affected local governments, with local governments
34 establishing and implementing their programs in a consistent and uniform manner
35 subject to State criteria and oversight.

1 8-1808.

2 (a) (1) It is the intent of this subtitle that each local jurisdiction shall have
3 primary responsibility for developing and implementing a program, subject to review
4 and approval by the Commission.

5 (2) The Governor shall include in the budget a sum of money to be used
6 for grants to reimburse local jurisdictions for the reasonable costs of developing a
7 program under this section. Each local jurisdiction shall submit to the Governor by
8 October 31, 1984 a detailed request for funds that are equivalent to the additional
9 costs incurred in developing the program under this section.

10 (3) The Governor shall include in the budget annually a sum of money to
11 be used for grants to assist local jurisdictions with the reasonable costs of
12 implementing a program under this section. Each local jurisdiction shall submit to
13 the Governor by May 1 of each year a detailed request for funds to assist in the
14 implementation of a program under this section.

15 (b) A program shall consist of those elements which are necessary or
16 appropriate:

17 (1) To minimize adverse impacts on water quality that result from
18 pollutants that are discharged from structures or conveyances or that have run off
19 from surrounding lands;

20 (2) To conserve fish, wildlife, and plant habitat; and

21 (3) To establish land use policies for development in the Chesapeake Bay
22 Critical Area which accommodate growth and also address the fact that, even if
23 pollution is controlled, the number, movement, and activities of persons in that area
24 can create adverse environmental impacts.

25 (c) At a minimum, a program sufficient to meet the goals stated in subsection
26 (b) of this section includes:

27 (1) A map designating the critical area in a local jurisdiction;

28 (2) A comprehensive zoning map for the critical area;

29 (3) As necessary, new or amended provisions of the jurisdiction's:

30 (i) Subdivision regulations;

31 (ii) Comprehensive or master plan;

32 (iii) Zoning ordinances or regulations;

33 (iv) Provisions relating to enforcement; and

34 (v) Provisions as appropriate relating to grandfathering of
35 development at the time the program is adopted or approved by the Commission;

1 (4) Provisions requiring that project approvals shall be based on findings
2 that projects are consistent with the standards stated in subsection (b) of this section;

3 (5) Provisions to limit the amount of land covered by buildings, roads,
4 parking lots, or other impervious surfaces, and to require or encourage cluster
5 development, where necessary or appropriate;

6 (6) Establishment of buffer areas along shorelines within which
7 agriculture will be permitted only if best management practices are used, provided
8 that structures or any other use of land which is necessary for adjacent agriculture
9 shall also be permitted in any buffer area;

10 (7) Requirements for minimum setbacks for structures and septic fields
11 along shorelines;

12 (8) Designation of shoreline areas, if any, that are suitable for parks,
13 hiking, biking, wildlife refuges, scenic drives, public access or assembly, and
14 water-related recreation such as boat slips, piers, and beaches;

15 (9) Designation of shoreline areas, if any, that are suitable for ports,
16 marinas, and industries that use water for transportation or derive economic benefits
17 from shore access;

18 (10) Provisions requiring that all harvesting of timber in the Chesapeake
19 Bay Critical Area be in accordance with plans approved by the district forestry board;

20 (11) Provisions establishing that the controls in a program which are
21 designed to prevent runoff of pollutants will not be required on sites where the
22 topography prevents runoff from directly or indirectly reaching tidal waters; [and]

23 (12) Provisions for reasonable accommodations in policies or procedures
24 when the accommodations are necessary to avoid discrimination on the basis of
25 physical disability, including provisions that authorize a local jurisdiction to require
26 removal of a structure that was installed or built to accommodate a physical disability
27 and require restoration when the accommodation permitted by this paragraph is no
28 longer necessary; AND

29 (13) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,
30 PROVISIONS FOR GRANTING A VARIANCE TO THE LOCAL JURISDICTION'S CRITICAL
31 AREA PROGRAM, IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE
32 COMMISSION CONCERNING VARIANCES SET FORTH IN COMAR 27.01.011.

33 (D) (1) IN THIS SUBSECTION, "UNWARRANTED HARDSHIP" MEANS
34 THAT, WITHOUT A VARIANCE, AN APPLICANT WOULD BE DENIED REASONABLE AND
35 SIGNIFICANT USE OF THE ENTIRE PARCEL OR LOT FOR WHICH THE VARIANCE IS
36 REQUESTED.

37 (2) A VARIANCE TO A LOCAL JURISDICTION'S CRITICAL AREA PROGRAM
38 MAY NOT BE GRANTED UNLESS:

1 (I) DUE TO SPECIAL FEATURES OF A SITE, OR SPECIAL
2 CONDITIONS OR CIRCUMSTANCES PECULIAR TO THE APPLICANT'S LAND OR
3 STRUCTURE, A LITERAL ENFORCEMENT OF THE CRITICAL AREA PROGRAM WOULD
4 RESULT IN UNWARRANTED HARDSHIP TO THE APPLICANT;

5 (II) THE LOCAL JURISDICTION FINDS THAT THE APPLICANT HAS
6 SATISFIED EACH ONE OF THE VARIANCE PROVISIONS; AND

7 (III) WITHOUT THE VARIANCE, THE APPLICANT WOULD BE
8 DEPRIVED OF A USE OF LAND OR A STRUCTURE PERMITTED TO OTHERS UNDER THE
9 JURISDICTION'S CRITICAL AREA PROGRAM.

10 [(d)] (E) (1) The Commission shall adopt by regulation on or before
11 December 1, 1985 criteria for program development and approval, which are
12 necessary or appropriate to achieve the standards stated in subsection (b) of this
13 section. Prior to developing its criteria and also prior to adopting its criteria, the
14 Commission shall hold at least 6 regional public hearings, 1 in each of the following
15 areas:

- 16 (i) Harford, Cecil, and Kent counties;
- 17 (ii) Queen Anne's, Talbot, and Caroline counties;
- 18 (iii) Dorchester, Somerset, and Wicomico counties;
- 19 (iv) Baltimore City and Baltimore County;
- 20 (v) Charles, Calvert, and St. Mary's counties; and
- 21 (vi) Anne Arundel and Prince George's counties.

22 (2) During the hearing process, the Commission shall consult with each
23 affected local jurisdiction.

24 [(e)] (F) Nothing in this section shall impede or prevent the dredging of any
25 waterway in a critical area. However, dredging in a critical area is subject to other
26 applicable federal and State laws and regulations.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2001.