

**HOUSE BILL 298**  
**EMERGENCY BILL**

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M1

2002 Regular Session  
2lr0184  
CF 2lr0183

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By: **The Speaker (Administration)**  
Introduced and read first time: January 23, 2002  
Assigned to: Environmental Matters

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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; making this Act an  
6 emergency measure; and generally relating to the granting of variances under  
7 the Chesapeake Bay Critical Area 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 and 2001 Supplement)

13 BY repealing and reenacting, with amendments,  
14 Article - Natural Resources  
15 Section 8-1808  
16 Annotated Code of Maryland  
17 (2000 Replacement Volume and 2001 Supplement)

18 **Preamble**

19 WHEREAS, State lawmakers in 1984 recognized the importance of fostering  
20 more sensitive development activity along the shoreline areas of the Chesapeake Bay  
21 and its tributaries, from the standpoint of protecting and preserving water quality  
22 and natural habitats, with the adoption of the Chesapeake Bay Critical Area  
23 Protection Act; and

24 WHEREAS, The grandfathering provisions of the enabling Act and its  
25 accompanying criteria provided certain exemptions for grandfathered properties from  
26 density limits, the criteria expressly provided that grandfathered properties were not  
27 exempt from Habitat Protection Area (HPA) or water-dependent facilities  
28 requirements; and

1 WHEREAS, The criteria provide that variances to a jurisdiction's local Critical  
2 Area Program may be granted in certain circumstances; and

3 WHEREAS, Recent decisions by the Maryland Court of Appeals have held that  
4 a variance may be granted if the regulations would deny development on a specific  
5 portion of an applicant's property rather than considering alternative locations  
6 on-site; and

7 WHEREAS, The Court of Appeals has ruled that a local Board of Appeals, when  
8 determining if denial of a variance would deny an applicant the rights commonly  
9 enjoyed by others in the Critical Area Program, may compare a proposal to  
10 nonconforming uses or development that predated implementation of a local Critical  
11 Area Program; and

12 WHEREAS, The Court of Appeals has ruled that an applicant for a variance  
13 from Critical Area Program requirements may generally satisfy the variance  
14 standards of a local zoning ordinance, rather than satisfy all of the standards; and

15 WHEREAS, These recent rulings by the Court of Appeals are contrary to the  
16 intent of the General Assembly in enacting the Chesapeake Bay Critical Area  
17 Protection Act; and

18 WHEREAS, It is the intent of this Act to overrule these recent decisions of the  
19 Court of Appeals regarding variances to Critical Area Program regulations; now,  
20 therefore,

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article - Natural Resources**

24 8-1801.

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

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

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

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

34 (4) National studies have documented that the quality and productivity  
35 of the waters of the Chesapeake Bay and its tributaries have declined due to the  
36 cumulative effects of human activity that have caused increased levels of pollutants,

1 nutrients, and toxics in the Bay System and declines in more protective land uses  
2 such as forestland and agricultural land in the Bay region;

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

7 (6) The quality of life for the citizens of Maryland is enhanced through  
8 the restoration of the quality and productivity of the waters of the Chesapeake Bay  
9 and its tributaries;

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

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

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

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

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

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

27 8-1808.

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

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

36 (3) The Governor shall include in the budget annually a sum of money to  
37 be used for grants to assist local jurisdictions with the reasonable costs of  
38 implementing a program under this section. Each local jurisdiction shall submit to

1 the Governor by May 1 of each year a detailed request for funds to assist in the  
2 implementation of a program under this section.

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

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

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

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

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

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

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

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

18 (i) Subdivision regulations;

19 (ii) Comprehensive or master plan;

20 (iii) Zoning ordinances or regulations;

21 (iv) Provisions relating to enforcement; and

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

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

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

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

33 (7) Requirements for minimum setbacks for structures and septic fields  
34 along shorelines;

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

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

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

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

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

18 (13) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,  
19 PROVISIONS FOR GRANTING A VARIANCE TO THE LOCAL JURISDICTION'S CRITICAL  
20 AREA PROGRAM, IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE  
21 COMMISSION CONCERNING VARIANCES SET FORTH IN COMAR 27.01.11; AND

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

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

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

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

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

37 [(d)] (E) (1) The Commission shall adopt by regulation on or before  
38 December 1, 1985 criteria for program development and approval, which are  
39 necessary or appropriate to achieve the standards stated in subsection (b) of this

1 section. Prior to developing its criteria and also prior to adopting its criteria, the  
2 Commission shall hold at least 6 regional public hearings, 1 in each of the following  
3 areas:

- 4 (i) Harford, Cecil, and Kent counties;
- 5 (ii) Queen Anne's, Talbot, and Caroline counties;
- 6 (iii) Dorchester, Somerset, and Wicomico counties;
- 7 (iv) Baltimore City and Baltimore County;
- 8 (v) Charles, Calvert, and St. Mary's counties; and
- 9 (vi) Anne Arundel and Prince George's counties.

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

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

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency  
16 measure, is necessary for the immediate preservation of the public health or safety,  
17 has been passed by a ye and nay vote supported by three-fifths of all the members  
18 elected to each of the two Houses of the General Assembly, and shall take effect from  
19 the date it is enacted.