

HOUSE BILL 528

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SB 607/01 - EEA

2002 Regular Session
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By: **Delegate Weir (Chairman, Joint Committee on the Chesapeake Bay
Critical Areas) and Delegates W. Baker, Cadden, and Owings**

Introduced and read first time: January 31, 2002

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Chesapeake Bay Critical Area Protection Program**

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; requiring a local jurisdiction, in considering
6 an application for a variance, to consider reasonable use of the entire parcel or
7 lot for which the variance is requested; providing that certain provisions of this
8 Act do not apply to certain permits or activities which comply with certain buffer
9 exemption plans or buffer management plans; revising the period of time for the
10 review of certain critical area programs by local jurisdictions; defining a certain
11 term; removing certain obsolete language; and generally relating to the
12 Chesapeake Bay Critical Area Protection Program.

13 BY repealing and reenacting, without amendments,
14 Article - Natural Resources
15 Section 8-1801
16 Annotated Code of Maryland
17 (2000 Replacement Volume and 2001 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article - Natural Resources
20 Section 8-1808 and 8-1809(g)
21 Annotated Code of Maryland
22 (2000 Replacement Volume and 2001 Supplement)

23 **Preamble**

24 WHEREAS, State lawmakers in 1984 recognized the importance of fostering
25 more sensitive development activity along the shoreline areas of the Chesapeake Bay
26 and its tributaries, from the standpoint of protecting and preserving water quality
27 and natural habitats, with the adoption of the Chesapeake Bay Critical Area
28 Protection Act; and

1 WHEREAS, The grandfathering provisions of the enabling Act and its
2 accompanying Criteria provided certain exemptions for grandfathered properties
3 from density limits, but the Criteria expressly provided that grandfathered properties
4 were not exempt from Habitat Protection Area (HPA) or water-dependent facilities
5 requirements; and

6 WHEREAS, The Criteria provide that variances to a jurisdiction's local Critical
7 Area Program may be granted in certain circumstances; and

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

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

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

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

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

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

26 **Article - Natural Resources**

27 8-1801.

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

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

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

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

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

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

10 (6) The quality of life for the citizens of Maryland is enhanced through
11 the restoration of the quality and productivity of the waters of the Chesapeake Bay
12 and its tributaries;

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

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

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

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

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

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

30 8-1808.

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

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

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

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

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

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

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

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

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

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

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

21 (i) Subdivision regulations;

22 (ii) Comprehensive or master plan;

23 (iii) Zoning ordinances or regulations;

24 (iv) Provisions relating to enforcement; and

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

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

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

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

1 (7) Requirements for minimum setbacks for structures and septic fields
2 along shorelines;

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

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

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

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

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

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

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

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

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

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

36 (III) WITHOUT THE VARIANCE, THE APPLICANT WOULD BE
37 DEPRIVED OF A USE OF LAND OR A STRUCTURE PERMITTED TO OTHERS IN
38 ACCORDANCE WITH THE PROVISIONS OF THE JURISDICTION'S CRITICAL AREA
39 PROGRAM.

1 (3) IN CONSIDERING AN APPLICATION FOR A VARIANCE, A LOCAL
2 JURISDICTION SHALL CONSIDER THE REASONABLE USE OF THE ENTIRE PARCEL OR
3 LOT FOR WHICH THE VARIANCE IS REQUESTED.

4 (4) THIS SUBSECTION DOES NOT APPLY TO BUILDING PERMITS OR
5 ACTIVITIES THAT COMPLY WITH A BUFFER EXEMPTION PLAN OR BUFFER
6 MANAGEMENT PLAN OF A LOCAL JURISDICTION WHICH HAS BEEN APPROVED BY
7 THE COMMISSION.

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

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

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

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

25 8-1809.

26 (g) Each local jurisdiction shall review its entire program and propose any
27 necessary amendments to its entire program, including local zoning maps, at least
28 every [4] 6 years [beginning with the 4-year anniversary of the date that the
29 program became effective and every 4 years after that date] IN COORDINATION WITH
30 THE REVIEW OF THE COMPREHENSIVE PLAN BY THE PLANNING COMMISSION AS
31 REQUIRED UNDER ARTICLE 66B, §§ 1.03(B) AND 3.05(B) OF THE CODE. Each local
32 jurisdiction shall send in writing to the Commission, within 60 days after [each
33 4-year anniversary,] THE COMPLETION OF ITS REVIEW, the following information:

34 (1) A statement certifying that the required review has been
35 accomplished;

1 (2) Any necessary requests for program amendments, program
2 refinements, or other matters that the local jurisdiction wishes the Commission to
3 consider;

4 (3) An updated resource inventory; and

5 (4) A statement quantifying acreages within each land classification, the
6 growth allocation used, and the growth allocation remaining.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 June 1, 2002.