Unofficial Copy M1 2002 Regular Session 2lr0183 CF 2lr0184

By: The President (Administration)

Introduced and read first time: January 18, 2002

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

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1	ΔN	A("I	concerning

2 Chesapeake Bay Critical Area Protection Program -	Variances
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- 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)

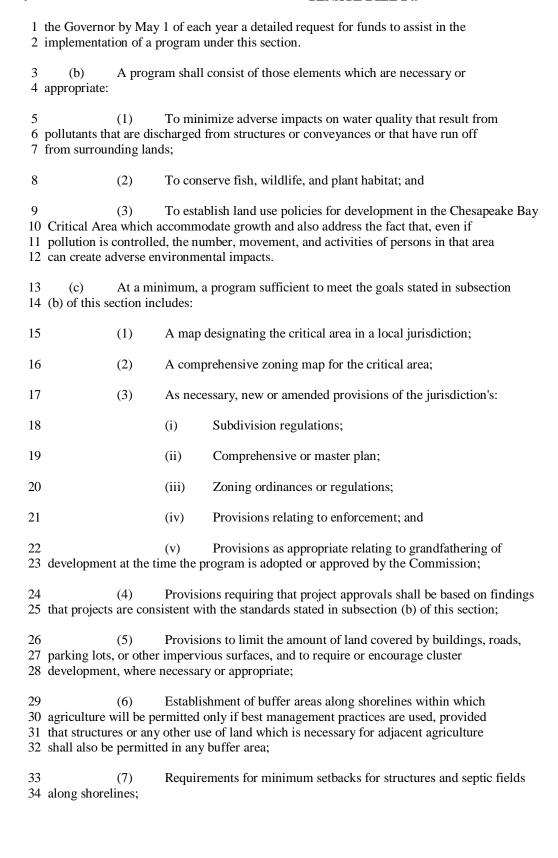
18 Preamble

- 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

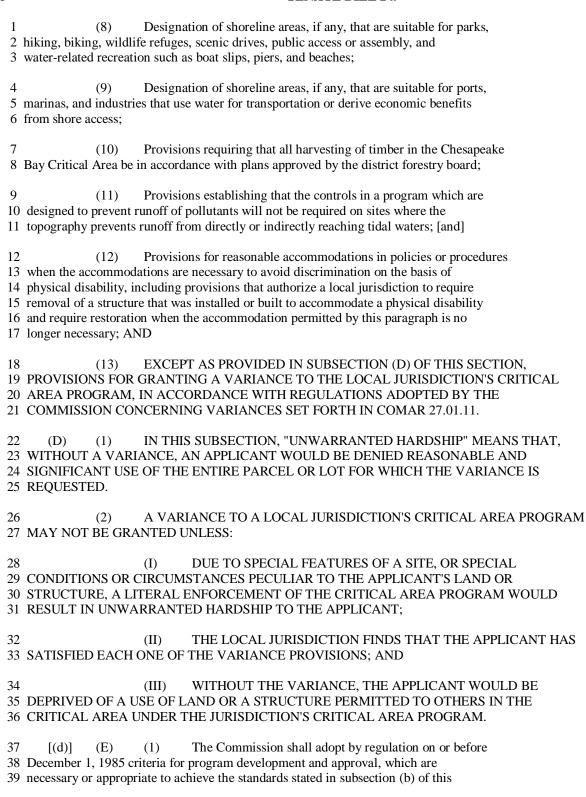
- WHEREAS, The criteria provide that variances to a jurisdiction's local Critical
- 2 Area Program may be granted in certain circumstances; and
- 3 WHEREAS, Recent decisions by the Maryland Court of Appeals have held that
- 4 a variance may be granted if the regulations would deny development on a specific
- 5 portion of an applicant's property rather than considering alternative locations
- 6 on-site; and
- 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
- 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
- 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; Those portions of the Chesapeake Bay and its tributaries within 3 4 Maryland are particularly stressed by the continuing population growth and 5 development activity concentrated in the Baltimore-Washington metropolitan 6 corridor; 7 The quality of life for the citizens of Maryland is enhanced through (6)8 the restoration of the quality and productivity of the waters of the Chesapeake Bay 9 and its tributaries; 10 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 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 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 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 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. The Governor shall include in the budget a sum of money to be used 31 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



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			s criteria and also prior to adopting its criteria, the t 6 regional public hearings, 1 in each of the following
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	

- During the hearing process, the Commission shall consult with each 11 affected local jurisdiction.
- 12 (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.
- SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety,
- 17 has been passed by a yea 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.