

**SENATE BILL 326**  
**EMERGENCY BILL**

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M3

2002 Regular Session  
(2r0915)

**ENROLLED BILL**

*-- Education, Health, and Environmental Affairs/Environmental Matters --*

Introduced by **Senator Dyson (Chairman, Joint Committee on the Chesapeake Bay Critical Areas)** ~~and Senators Frosh and Sfikas, the President (Administration), and Senators Frosh, Sfikas, Blount, Hollinger, Collins, Conway, Harris, Schrader, and Stone~~

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

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Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this  
\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_ M.

\_\_\_\_\_  
President.

CHAPTER \_\_\_\_\_

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;~~ requiring a local jurisdiction, in  
8 considering an application for a variance, to consider reasonable use of the entire  
9 parcel or lot for which the variance is requested; providing that certain  
10 provisions of this Act do not apply to certain permits or activities which comply  
11 with certain buffer exemption plans or buffer management plans; revising the  
12 period of time for the review of certain critical area programs by local  
13 jurisdictions; ~~defining a certain term;~~ removing certain obsolete language;  
14 ~~making this Act an emergency measure~~ providing for the application of this Act;

1 and generally relating to the Chesapeake Bay Critical Area Protection Program.

2 BY repealing and reenacting, without amendments,  
3 Article - Natural Resources  
4 Section 8-1801  
5 Annotated Code of Maryland  
6 (2000 Replacement Volume and 2001 Supplement)

7 BY repealing and reenacting, with amendments,  
8 Article - Natural Resources  
9 Section 8-1808 and 8-1809(g)  
10 Annotated Code of Maryland  
11 (2000 Replacement Volume and 2001 Supplement)

12 Preamble

13 WHEREAS, State lawmakers in 1984 recognized the importance of fostering  
14 more sensitive development activity along the shoreline areas of the Chesapeake Bay  
15 and its tributaries, from the standpoint of protecting and preserving water quality  
16 and natural habitats, with the adoption of the Chesapeake Bay Critical Area  
17 Protection Act; and

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

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

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

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

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

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

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

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

5 **Article - Natural Resources**

6 8-1801.

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

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

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

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

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

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

25 (6) The quality of life for the citizens of Maryland is enhanced through  
26 the restoration of the quality and productivity of the waters of the Chesapeake Bay  
27 and its tributaries;

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

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

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

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

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

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

9 8-1808.

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

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

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

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

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

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

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

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

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

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

- 1           (3)     As necessary, new or amended provisions of the jurisdiction's:
- 2                   (i)     Subdivision regulations;
- 3                   (ii)    Comprehensive or master plan;
- 4                   (iii)  Zoning ordinances or regulations;
- 5                   (iv)   Provisions relating to enforcement; and
- 6                   (v)   Provisions as appropriate relating to grandfathering of  
7 development at the time the program is adopted or approved by the Commission;
- 8           (4)     Provisions requiring that project approvals shall be based on findings  
9 that projects are consistent with the standards stated in subsection (b) of this section;
- 10           (5)    Provisions to limit the amount of land covered by buildings, roads,  
11 parking lots, or other impervious surfaces, and to require or encourage cluster  
12 development, where necessary or appropriate;
- 13           (6)    Establishment of buffer areas along shorelines within which  
14 agriculture will be permitted only if best management practices are used, provided  
15 that structures or any other use of land which is necessary for adjacent agriculture  
16 shall also be permitted in any buffer area;
- 17           (7)    Requirements for minimum setbacks for structures and septic fields  
18 along shorelines;
- 19           (8)    Designation of shoreline areas, if any, that are suitable for parks,  
20 hiking, biking, wildlife refuges, scenic drives, public access or assembly, and  
21 water-related recreation such as boat slips, piers, and beaches;
- 22           (9)    Designation of shoreline areas, if any, that are suitable for ports,  
23 marinas, and industries that use water for transportation or derive economic benefits  
24 from shore access;
- 25           (10)   Provisions requiring that all harvesting of timber in the Chesapeake  
26 Bay Critical Area be in accordance with plans approved by the district forestry board;
- 27           (11)   Provisions establishing that the controls in a program which are  
28 designed to prevent runoff of pollutants will not be required on sites where the  
29 topography prevents runoff from directly or indirectly reaching tidal waters; [and]
- 30           (12)   Provisions for reasonable accommodations in policies or procedures  
31 when the accommodations are necessary to avoid discrimination on the basis of  
32 physical disability, including provisions that authorize a local jurisdiction to require  
33 removal of a structure that was installed or built to accommodate a physical disability  
34 and require restoration when the accommodation permitted by this paragraph is no  
35 longer necessary; AND

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

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

9 ~~(2)~~ A VARIANCE TO A LOCAL JURISDICTION'S CRITICAL AREA PROGRAM  
 10 MAY NOT BE GRANTED UNLESS:

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

15 (II) THE LOCAL JURISDICTION FINDS THAT THE APPLICANT HAS  
 16 SATISFIED EACH ONE OF THE VARIANCE PROVISIONS SET FORTH IN THE LOCAL  
 17 JURISDICTION'S CRITICAL AREA PROGRAM; AND

18 (III) WITHOUT THE VARIANCE, THE APPLICANT WOULD BE  
 19 DEPRIVED OF A USE OF LAND OR A STRUCTURE PERMITTED TO OTHERS IN  
 20 ACCORDANCE WITH THE PROVISIONS OF THE ~~JURISDICTION'S~~ CRITICAL AREA  
 21 PROGRAM.

22 ~~(3)~~ (2) IN CONSIDERING AN APPLICATION FOR A VARIANCE, A LOCAL  
 23 JURISDICTION SHALL CONSIDER THE REASONABLE USE OF THE ENTIRE PARCEL OR  
 24 LOT FOR WHICH THE VARIANCE IS REQUESTED.

25 ~~(4)~~ (3) THIS SUBSECTION DOES NOT APPLY TO BUILDING PERMITS OR  
 26 ACTIVITIES THAT COMPLY WITH A BUFFER EXEMPTION PLAN OR BUFFER  
 27 MANAGEMENT PLAN OF A LOCAL JURISDICTION WHICH HAS BEEN APPROVED BY  
 28 THE COMMISSION.

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

- 35 (i) Harford, Cecil, and Kent counties;
- 36 (ii) Queen Anne's, Talbot, and Caroline counties;
- 37 (iii) Dorchester, Somerset, and Wicomico counties;
- 38 (iv) Baltimore City and Baltimore County;

1 (v) Charles, Calvert, and St. Mary's counties; and

2 (vi) Anne Arundel and Prince George's counties.

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

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

8 8-1809.

9 (g) Each local jurisdiction shall review its entire program and propose any  
10 necessary amendments to its entire program, including local zoning maps, at least  
11 every [4] 6 years [beginning with the 4-year anniversary of the date that the  
12 program became effective and every 4 years after that date] ~~IN COORDINATION WITH  
13 THE REVIEW OF THE COMPREHENSIVE PLAN BY THE PLANNING COMMISSION AS  
14 REQUIRED UNDER ARTICLE 66B, §§ 1.03(B) AND 3.05(B) OF THE CODE.~~ Each local  
15 jurisdiction shall send in writing to the Commission, within 60 days after [each  
16 4-year anniversary,] ~~THE COMPLETION OF ITS REVIEW,~~ the following information:

17 (1) A statement certifying that the required review has been  
18 accomplished;

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

22 (3) An updated resource inventory; and

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

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
26 construed to apply only prospectively and may not be applied or interpreted to have  
27 any effect on or application to any variance application for which a petition for judicial  
28 review of a decision to grant or deny a variance under a local critical area program  
29 was filed before the effective date of this Act.

30 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect~~  
31 ~~June 1, 2002.~~

32 ~~SECTION 2. 3. AND BE IT FURTHER ENACTED, That this Act is an~~  
33 ~~emergency measure, is necessary for the immediate preservation of the public health~~  
34 ~~or safety, has been passed by a yea and nay vote supported by three-fifths of all the~~  
35 ~~members elected to each of the two Houses of the General Assembly, and shall take~~  
36 ~~effect from the date it is enacted shall take effect June 1, 2002.~~

