

Department of Legislative Services  
Maryland General Assembly  
2002 Session

FISCAL NOTE

House Bill 1183

(Delegate Bozman, *et al.*)

Environmental Matters

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Coastal Bays Protection Program - Establishment - Worcester County

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This bill establishes a Coastal Bays Protection Program in Worcester County to protect the “coastal bays” and their watersheds. The bill establishes criteria for development and establishes enforcement provisions. The Department of Natural Resources (DNR) is responsible for review and initial approval of the program, but the Worcester County Commissioners are responsible for its implementation.

The bill takes effect June 1, 2002. The bill does not apply to permitted uses or structures in existence on June 1, 2002, except under specified conditions.

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Fiscal Summary

**State Effect:** The bill’s requirements could be handled with existing budgeted resources.

**Local Effect:** Increase in Worcester County expenditures of an estimated \$202,400 in FY 2003 related to the new program. Potential minimal increase in revenues related to mitigation payments. Future year expenditures related to continuing salary and operating expenses. **This bill imposes a mandate on a unit of local government.**

**Small Business Effect:** Potential meaningful.

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Analysis

**Bill Summary:** Except for specified exemptions, the planning area for determination of the coastal bays shall consist of all waters and lands of the coastal bays and their watersheds, as designed by maps approved by the county commissioners. The bill does

not apply to Assateague Island, a municipal corporation, and a residential planned community, or specified planned unit developments.

Coastal bays means all the Maryland coastal estuaries that are located in the area that is west of Fenwick Island proceeding south to the area that is west of Assateague Island. Coastal bays include Assawoman Bay, Isle of Wight Bay, Sinepuxent Bay, Newport Bay, and Chincoteague Bay.

The bill states that the purpose of the General Assembly in enacting this subtitle is to: (1) establish a coastal bays protection program to protect the coastal bays and their watersheds by providing for reasonable enforcement of balanced restrictions on land use in the coastal bays watersheds; and (2) implement this program on a collaborative basis between the State and Worcester County, with the county establishing and administering the program subject to State criteria under the subtitle.

The program must use all practicable means to: (1) minimize adverse impacts on water quality that result from pollutants that are discharged from structures or runoff from surrounding lands; (2) conserve fish, wildlife, and plant habitat; and (3) establish land use policies for development in the coastal bays watersheds that accommodate growth and address the potentially adverse environmental impacts of increased population. At a minimum, the program must include:

- a map designating the coastal bays and their watersheds;
- a Worcester County zoning map; and
- as appropriate, amended subdivision regulations, comprehensive or master plans, zoning ordinances or regulations, and enforcement provisions.

The bill establishes criteria the county must follow with respect to development under the program, including the establishment of buffer areas where development would be limited. The bill establishes exceptions to those requirements and establishes conditions that must be met for specified permits. The bill also establishes conditions for specified uses within the affected area, such as agriculture, timber harvesting, and surface mining activities.

The Worcester County Board of Zoning Appeals may grant a variance under specified conditions. An application for a variance must be made in writing to the board on forms prescribed by the Worcester County Department of Development Review and Permitting. Before making a decision regarding a variance request, the board must review the comments of that department. The board must impose reasonable conditions on the use or development of a property granted a variance under the bill, including the planting of

trees and shrubs and a mitigation payment to the County Forestry Conservation Fund. The bill establishes requirements and procedures related to the appeals process.

A violation of the bill or a regulation adopted under the bill is a civil infraction. Each day a violation occurs is a separate offense. A violation shall be subject to prosecution or suit by the commissioners, who may invoke the sanctions and remedies afforded by State or local law. The bill outlines other actions the commissioners may bring, including an action in equity to compel compliance or restrain noncompliance and to compel restoration. Upon the filing of a cause of action, the circuit court must expedite the hearing of the case.

DNR must conduct a review of the Worcester County Department of Development Review and Permitting's program at least once every two years from the date of initial departmental approval. In its biennial review, DNR must evaluate compliance and report the results to the commissioners and the Worcester County Department of Development Review and Permitting. After review by DNR, the commissioners may modify the State criteria under the bill if the modified county criteria are more stringent. The bill establishes prohibitions relating to the Secretary of Natural Resources' ability to alter the county program.

The bill outlines the responsibilities and authorities of the county commissioners with respect to the delegation of enforcement authority, staffing and budgetary issues, the adoption of ordinances and criteria, hearings, and the ability to hire contractors. The bill also requires Worcester County to incorporate a specified plan into the County's Master Water and Sewer Plan within 90 days of the date of State enactment of the plan.

**Current Law:** Existing local zoning and planning laws, and federal and State agencies, govern development in Worcester County and its coastal bays watershed. Worcester County's Shoreline Commission evaluates and approves requests for the construction of piers, docks, and boathouses, and the installation of shoreline stabilization structures such as rip rap and bulkheads. Projects extending more than 125 feet channelward of mean high water, or exceeding more than one half the distance from the mean high water line to the centerline of the body of water upon which the structure is situated, requires action by the Board of Zoning Appeals in the form of a special exception. While local permits are issued in accordance with the county's regulations, the U.S. Army Corps of Engineers and the Maryland Department of the Environment are also involved in the process. In addition, DNR's Shore Erosion Control Program provides technical assistance, loans and/or grants to shorefront property owners for shoreline stabilization.

The shoreline protection setback and buffer along the tidal portions of the coastal bays watershed is a county requirement. The Worcester County shoreline protection setback

and buffer requires a vegetated strip 25 feet in width within a 50-foot setback on lots created after March 10, 1992 which lie along the tidal waters of the coastal bays and their tidal tributaries.

Worcester County law provides that any clearing or grading is subject to the county's Sediment and Erosion Control and Stormwater Management Regulations. An applicant must submit a Stormwater Management Plan and a Sediment and Erosion Control Plan to the Worcester Soil Conservation District for approval. Stormwater Management Plans are valid for a period of one year; while Sediment and Erosion Control Plans are valid for a term of two years.

In 1999 the Maryland Coastal Bays Program, a National Estuary Program, completed a management plan for the long term protection of the coastal bays and watersheds, in cooperation with Worcester County, the Town of Berlin, Ocean City, the State, the U.S. Environmental Protection Agency, Assateague Island National Seashore, and local citizens. The plan identifies strategies to enhance water quality, recreation and navigation, fish and wildlife, and community development.

**Background:** Many land-based activities may impact habitat or the water quality of the bays. A watershed is the area of land that drains into a particular water body. Actions taken within the bay watershed can eventually impact the bay. Maryland's coastal bays, often called back bays, are shallow water lagoons behind Ocean City and Assateague Island. According to the Maryland Coastal Bays Program, more than 300 species of migratory waterfowl, songbirds, and birds of prey seek the shallow bays for food and shelter. Additionally, the shallow bays provide habitat for rare species of plants and animals as well as blue crabs, flounder, and clams. Concern about the impact of development along the coastal bays on the bays' natural resources has been growing in recent years. The Coastal Bays Management Plan, which was released in June 1999, identified five primary problems in the coastal bays: degraded water quality, chemical contamination, loss of habitat, changes in living resources, and unsustainable growth and development. The plan also included four action plans for the long-term restoration and protection of the coastal bays.

**Local Fiscal Effect:** Worcester County estimates that its expenditures would increase by \$202,400 in fiscal 2003 to implement this program. That estimate includes \$124,000 in salaries and fringe benefits for one new planner and two sediment erosion control inspectors to develop and implement the program. The estimate also includes \$40,800 for equipment purchases (including two vehicles, three computers and workstation, and a printer) and \$38,000 in other operating costs, including mapping, training, and public outreach. Future year estimates include salaries, fringe benefits, and continuing operating expenses for program implementation.

County revenues may increase minimally from mitigation payments made for variances granted to the zoning restrictions.

**Small Business Effect:** By establishing specified conditions relating to development in Worcester County, the bill is anticipated to result in a decrease in the development of the county. Accordingly, developers and builders would likely be affected. Presumably, most of the development that would otherwise occur in affected areas would be residential; however, any small businesses wishing to expand or locate in areas affected by the bill could potentially be prohibited from doing so.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Worcester County (Department of Comprehensive Planning), Department of Natural Resources, Department of Legislative Services

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Analysis by: Karen S. Benton

Direct Inquiries to:  
John Rixey, Coordinating Analyst  
(410) 946-5510  
(301) 970-5510