

Department of Legislative Services
 Maryland General Assembly
 2002 Session

FISCAL NOTE
Revised

Senate Bill 247 (The President) (Administration)

Education, Health, and Environmental Affairs

Environmental Matters

Atlantic Coastal Bays Protection Act

This Administration bill expands the Chesapeake Bay Critical Area Law to include the “Atlantic Coastal Bays” and their tributaries.

The bill takes effect June 1, 2002.

Fiscal Summary

State Effect: General fund expenditure increase of \$391,000 in FY 2003 to expand the critical area program to include the coastal bays. Any increase in FY 2002 would be minimal. Future year estimates are adjusted for inflation and reflect ongoing operating expenses and grants to local jurisdictions. No direct effect on revenues.

(in dollars)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	391,000	296,500	308,800	321,800	335,600
Net Effect	(\$391,000)	(\$296,500)	(\$308,800)	(\$321,800)	(\$335,600)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Increase in local grant revenues and expenditures of an estimated \$273,000 in FY 2003 to develop and implement local coastal bay critical area programs in Worcester County and Ocean City. Future year grants reflect program implementation. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: The Administration has determined that this bill will have minimal or no impact on small business (attached). Legislative Services disagrees with that assessment. The bill has a potential meaningful impact on the price of land, housing, and development in affected areas. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: “Atlantic Coastal Bays” means the Assawoman, Isle of Wight, Sinepuxent, Newport, and Chincoteague bays. The bill applies the existing provisions of the Chesapeake Bay Critical Area Protection Program and corresponding regulations to the Atlantic Coastal Bays Critical Area. The initial planning area for determination of the Atlantic Coastal Bays Critical Area consists of:

- all waters of and lands under the coastal bays and their tributaries to the head of tide as indicated on the State wetlands maps and all State and private wetlands designated under specified provisions of current law; and
- all land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under specified provisions of current law.

The Atlantic Coastal Bays Critical Area also would include additional areas proposed for inclusion by local jurisdictions and approved by the Critical Area Commission.

The bill directs the Governor to include funds in the fiscal 2003 budget for grants to reimburse local jurisdictions for the reasonable costs of developing a local critical area program in the Atlantic Coastal Bays Critical Area.

By July 15, 2002, each local jurisdiction in the Atlantic Coastal Bays Critical Area must submit to the commission a written statement of its intent either to develop or not develop a local critical area program. If a local jurisdiction does not develop a program or fails to submit a timely statement of intent, the commission must prepare and adopt a program. If a local jurisdiction states its intent to develop a program, it must prepare a proposed program and submit it to the commission by January 1, 2003. The commission may extend this deadline under specified circumstances. Before submission of a program, a local jurisdiction must hold at least one public hearing.

The bill requires local jurisdictions within the Atlantic Coastal Bays Critical Area to map and establish the three land use designations used in the existing Chesapeake Bay Critical Area Protection Program:

- Intensely Developed Areas (IDAs), areas of concentrated development where little natural habitat occurs;
- Limited Development Areas (LDAs), areas in which development is of a low or moderate intensity; and

- Resource Conservation Areas (RCAs), areas characterized by natural environments or by resource-utilization activities.

The local programs of Worcester County and Ocean City must classify specified areas as IDAs. There are specific development and resource protection guidelines for residential, commercial, institutional, industrial, and resource conservation activities within each of these land use designations. Local jurisdictions will use current guidelines established under the existing critical area law and critical area criteria to develop local critical area programs to address the protection of special habitats, reduction of pollutant loads, provision of public access, reduction of impervious surfaces, and proper siting of water dependent facilities.

The land use designations within the Atlantic Coastal Bays Critical Area are based on land uses and development in existence as of June 1, 2002. In the same manner as the current Chesapeake Bay Critical Area, in order to accommodate future population growth, the total acreage of IDAs and LDAs may be increased by a “growth allocation.” This allowable population increase is calculated by formula and is transferable between the Chesapeake Bay and Atlantic Coastal Bays critical areas under certain conditions.

Concerning development activity on existing lots, if a lot is legally recorded, legally buildable, and was approved by a local jurisdiction before the date of final program approval, then development activity is permissible. There are other administrative procedures that an applicant or local jurisdiction may need to address depending on the type of development, location, and date of final approval.

Each local jurisdiction in the Atlantic Coastal Bays Critical Area must also include a provision requiring proposed development sites in IDAs to provide a forest or developed woodland cover of at least 15% after development or a provision for a fee-in-lieu payment, with exceptions for certain single lots. Each program may include provisions regarding: the use of bioretention and other nonstructural stormwater best management practices; minimum buffer requirements to specified tributary streams located outside the critical area and within the coastal bays watershed; and wetland improvements.

Within 60 days after the commission receives a proposed Atlantic Coastal Bays Critical Area program from a local jurisdiction, the commission must approve the proposal or notify the local jurisdiction of changes that need to be made. If the commission does neither, the proposal is deemed approved. The bill requires that programs approved or adopted by the commission must take effect by September 29, 2003.

The bill also:

- allows for the limited grandfathering of certain development projects;

- establishes provisions specific to the Atlantic Coastal Bays Critical Area regarding development in that portion of the critical area;
- establishes procedures for local jurisdictions within the Atlantic Coastal Bays watershed and not in the Atlantic Coastal Bays Critical Area, allowing such local jurisdictions to opt out;
- requires the Department of Natural Resources (DNR), upon request, to assist a local jurisdiction in the preparation of specified maps, studies, and wetland protection provisions;
- authorizes the commission to establish an advisory committee to make recommendations regarding the Atlantic Coastal Bays Critical Area programs;
- modifies the membership of the commission to add two members from Worcester County and to provide that one of the existing at-large members be from the Atlantic Coastal Bays watershed; and
- makes several conforming changes to the Critical Area Law.

Current Law: The initial planning area for determination of the Chesapeake Bay Critical Area consists of: (1) all waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps, and all State and specified private wetlands; and (2) all land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and specified heads of tides. In determining the critical area within its boundaries, a local jurisdiction may exclude those portions of the planning area that meet specified conditions.

Each local jurisdiction has primary responsibility for developing and implementing a local critical area program, subject to review and approval by the Chesapeake Bay Critical Area Commission. Each year, the Governor must include money in the budget for grants to assist local jurisdictions with the reasonable costs of implementing such a program. At a minimum, a program sufficient to meet the goals of the critical area law includes: (1) a map designating the critical area in a local jurisdiction; (2) a comprehensive zoning map for the critical area; (3) as necessary, new or amended provisions of specified regulations, plans, and enforcement provisions; (4) provisions requiring project approvals to be based on findings that meet specified standards; (5) provisions to limit the amount of land covered by specified impervious surfaces and to require or encourage cluster development; (6) establishment of buffer areas along shorelines; (7) requirements for minimum setbacks for structures and septic fields along shorelines; (8) designation of shoreline areas suitable for specified uses; (9) provisions related to harvesting of timber; (10) provisions establishing the applicability of specified water pollution controls; and (11) provisions for reasonable accommodations in policies or procedures when the accommodations are necessary to avoid discrimination on the basis of physical disability.

Background: Chapter 794 of 1984 established the Chesapeake Bay Critical Area Protection Program in DNR to foster more sensitive development activity in a consistent and uniform manner along shoreline areas of the Chesapeake Bay and its tributaries so as to minimize damage to water quality and natural habitats. The commission currently provides grants to local jurisdictions of approximately \$750,000 annually to implement local critical area programs.

Maryland's coastal bays, often called the 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.

State Fiscal Effect: General fund expenditures could increase by an estimated \$391,000 in fiscal 2003, of which \$273,000 is for grants to local jurisdictions for program development and implementation. This estimate also reflects the cost of two positions (two natural resource planners) for the Critical Area Commission to provide guidance, oversight, and technical assistance to affected local governments; review and comment on local subdivisions, site plans, re-zonings, special exceptions, and variances related to the coastal bays; and perform site visits, attend public hearings, and provide public outreach and training. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- Worcester County and Ocean City would be the only local jurisdictions affected by the bill (the Town of Berlin, which is in the Atlantic Coastal Bays watershed but not in the Atlantic Coastal Bays Critical Area, could opt out);
- Worcester County currently has a critical area program but would need an additional \$192,400 grant in fiscal 2003 to significantly expand its existing program;
- Ocean City does not currently have a critical area program and would need a grant of \$80,600 in fiscal 2003 to develop and begin implementing a local program;
- routine travel for staff and commission members (including the two new commission members added by the bill) to the coastal bays region; and
- contractual services to advertise public hearings and print guidance materials for local jurisdictions.

Salaries and Fringe Benefits	\$99,300
Grants to Local Jurisdictions	273,000
Equipment and Operating Expenses	<u>18,700</u>
Total FY 2003 State Expenditures	\$391,000

DNR advises that expenditures would increase by only \$208,700 in fiscal 2003. DNR's estimate differs primarily because it assumes that grants to local jurisdictions would total only \$95,000 in fiscal 2003 (\$65,000 for Worcester County and \$30,000 for Ocean City) and that local jurisdictions would pay for any expenditures above those amounts. However, the bill requires the State to provide grants to reimburse local jurisdictions with the reasonable costs of developing local programs under the bill.

Future year expenditures reflect: (1) salaries with 3.5% annual increases and 3% employee turnover; (2) 1% annual increases in ongoing operating expenses; and (3) ongoing grants to Worcester County and Ocean City. Legislative Services advises that to the extent local expenditures vary from these estimates, grants would vary correspondingly.

Although the bill takes effect June 1, 2002, it is assumed that any costs in fiscal 2002 would be minimal and absorbable within existing budgeted resources.

Local Fiscal Effect: Worcester County and Ocean City would be the only jurisdictions materially affected by the bill. (It is assumed that the Town of Berlin, which does not fall within the Atlantic Coastal Bays Critical Area but does fall within the Atlantic Coastal Bays watershed, will choose to opt out.) Under the bill, the State would provide grants to reimburse local jurisdictions for reasonable costs of developing a local critical area program. In addition, pursuant to current law, the State must provide grants to local jurisdictions to assist with the reasonable costs of implementing a local critical area program. Accordingly, it is assumed that any increase in local expenditures would be offset by an increase in grants from the State. Estimated local expenditures (and corresponding grant revenues) from fiscal 2003 through fiscal 2007 are shown below.

	<u>FY 2003</u>	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>
Worcester	\$192,400	\$138,800	\$146,300	\$154,200	\$162,500
Ocean City	<u>80,600</u>	<u>47,500</u>	<u>47,500</u>	<u>47,500</u>	<u>47,500</u>
Total	\$273,000	\$186,300	\$193,800	\$201,700	\$210,000

Worcester County has had a local critical area program since 1988. The current program receives approximately \$5,000 annually in State funding. Worcester County advises that approximately 5% of one employee's time is dedicated to the existing program. Because this bill would expand the program significantly, it is estimated that the county would need an additional \$192,400 in grants for fiscal 2003 for program development and implementation. This estimate includes \$123,700 in salaries and fringe benefits for three new planners to develop the coastal bays critical area program and review proposed permit applications within the Atlantic Coastal Bays Critical Area. The estimate also includes \$40,800 for equipment purchases (including two vehicles, three computers and workstations, and a printer) and \$27,900 in other operating costs, including map development, training, and public outreach. Future year estimates include salaries, fringe benefits, and ongoing operating expenses for program implementation.

Ocean City does not currently have a local critical area program. According to Ocean City, it would need a grant of an estimated \$80,600 in fiscal 2003 to develop and implement a local critical area program. This estimate assumes that existing staff would be used for program development. The estimate includes \$28,100 (salary and fringe benefits) to hire an environmental inspector, \$50,000 for a consultant to prepare a technical manual, and \$2,500 to develop maps. Beginning in fiscal 2004, the city would need an estimated \$47,500 annually in grants for program implementation.

Legislative Services advises that local expenditures could vary depending on the amount of technical assistance provided by the State. In addition, DNR advises that despite the requirements in the bill and current law that the State must provide grants to locals to cover the reasonable costs of developing and implementing local critical area programs, historically, local expenditures exceed grant revenues received. Legislative Services advises that to the extent this happens, the bill could have a significant impact on affected jurisdictions and would impose a mandate on a unit of local government.

Additional Information

Prior Introductions: HB 99 of 2001 would have modified the areas designated as being within the Chesapeake Bay Critical Area to include all coastal bays of the State. The bill was referred to the House Environmental Matters Committee but was withdrawn.

Cross File: HB 301 (Delegates Morhaim and Weir and the Speaker, *et al.*)
(Administration) – Environmental Matters.

Information Source(s): Department of Natural Resources (Critical Area Commission),
Worcester County, Ocean City, Maryland Department of Planning, Department of
Legislative Services

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