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By: **Delegate Frush (Chairman, Joint Committee on the Chesapeake and Atlantic Coastal Bays Critical Area) and Delegates Cadden, James, Owings, Walkup, Barkley, Barve, Bobo, Bronrott, Brown, Busch, Cane, V. Clagett, Conroy, Cryor, Doory, Dumais, Feldman, Gaines, Gilleland, Glassman, Goldwater, Gordon, Griffith, Healey, Holmes, Howard, Hubbard, Hurson, Jennings, Jones, King, Lee, Leopold, Madaleno, Malone, Mandel, McConkey, McIntosh, McKee, Menes, Moe, Montgomery, Morhaim, Murray, Nathan-Pulliam, Niemann, Parker, Patterson, Pendergrass, Petzold, Proctor, Quinter, Ramirez, Ross, Shank, Simmons, Sophocleus, Sossi, Stern, Stull, Taylor, F. Turner, V. Turner, Vallario, Vaughn, and Weir**

Introduced and read first time: February 12, 2004

Assigned to: Environmental Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Chesapeake and Atlantic Coastal Bays Critical Area Protection Program -**  
3 **Miscellaneous Enforcement Provisions**

4 FOR the purpose of requiring a local jurisdiction to make a certain presumption when  
5 considering a variance application under the Chesapeake and Atlantic Coastal  
6 Bays Critical Area Protection Program; establishing certain burdens of proof  
7 and persuasion in an application for a certain variance; requiring a local  
8 jurisdiction to make certain findings and authorizing the findings to be based on  
9 certain evidence and testimony; authorizing a local jurisdiction to consider  
10 certain facts when making certain findings; requiring a local jurisdiction's  
11 critical area program to include certain buffer requirements and penalty  
12 provisions; authorizing a local jurisdiction under certain circumstances to  
13 request certain enforcement assistance from the Chairman of the Chesapeake  
14 and Atlantic Coastal Bays Critical Area Commission or the Attorney General;  
15 declaring and clarifying certain findings of the General Assembly; altering the  
16 application of a certain defined term; providing for the application of this Act;  
17 and generally relating to the enforcement of the Chesapeake and Atlantic  
18 Coastal Bays Critical Area Protection Program.

19 BY repealing and reenacting, with amendments,  
20 Article - Natural Resources  
21 Section 8-1801, 8-1802(a), 8-1808, 8-1808.5(a), 8-1815, and 8-1815.1  
22 Annotated Code of Maryland  
23 (2000 Replacement Volume and 2003 Supplement)

1 Preamble

2 WHEREAS, With the enactment of the Chesapeake Bay Critical Area  
3 Protection Act in 1984, State lawmakers recognized the major detrimental impact of  
4 development activity along the shoreline of the Chesapeake Bay and its tributaries,  
5 an area that is pivotal to the preservation and protection of water quality and natural  
6 habitat; and

7 WHEREAS, Two years later, in approving the State Critical Area program and  
8 its criteria, the General Assembly specified the need for a shoreline buffer of at least  
9 100 feet, and this minimum buffer has been an essential critical area component ever  
10 since that time; and

11 WHEREAS, Also considered fundamental to the critical area criteria since their  
12 inception in the mid-1980s is, under certain circumstances, the allowance of  
13 variances to a local jurisdiction's critical area program; and

14 WHEREAS, In keeping with an equitable application of critical area  
15 requirements, on average 90% or more of the variances requested each year have  
16 been granted; and

17 WHEREAS, The General Assembly has always recognized, nevertheless, that  
18 attainment of critical area program goals necessitates a clear authority in support of  
19 local jurisdictions when, in their discretion, a variance must be denied; and

20 WHEREAS, In 2002, with a particular awareness of the growing danger to  
21 water quality and natural habitat presented by the magnitude of waterfront  
22 development, the General Assembly expanded the application of critical area  
23 protections so as to include the ecologically sensitive Atlantic Coastal Bays and their  
24 tributaries; and

25 WHEREAS, Also in 2002, the General Assembly overruled three then-recent  
26 decisions by the Maryland Court of Appeals that had substantially weakened the  
27 authority of local jurisdictions' critical area programs in the denial of variances; and

28 WHEREAS, A recent decision by the Court of Appeals, *Lewis v. Department of*  
29 *Natural Resources*, has: rejected the finding of the General Assembly that the  
30 cumulative impact of development is harmful to the critical area; shifted the burdens  
31 of proof and persuasion to local jurisdictions with respect to the denial of a critical  
32 area variance application, thus adding burdensome requirements and unnecessary  
33 expenses to their consideration of variance applications; and opened the door for  
34 citizens to view unpermitted development activity in the critical area as viable due to  
35 the lack of detrimental consequence; and

36 WHEREAS, The *Lewis* ruling is clearly contrary to the intent of the General  
37 Assembly's enactment of both the Chesapeake Bay Critical Area Protection Act and  
38 the Atlantic Coastal Bays Protection Act; and

39 WHEREAS, Over the past two decades, despite the vigilant efforts of the State  
40 and local critical area programs and the ongoing focus of the General Assembly, State

1 agencies, advocacy groups, and private citizens, the health of the Chesapeake Bay has  
2 continued to deteriorate, as has water quality overall, and this fact has been  
3 substantiated in dozens of studies by a variety of government and private interest  
4 groups; and

5 WHEREAS, It has become readily apparent that local jurisdictions must have  
6 more viable enforcement options available to them if their critical area programs are  
7 to be implemented as intended by the General Assembly; and

8 WHEREAS, Acting out of this long-standing and consistent commitment to the  
9 preservation of the Chesapeake and Atlantic Coastal Bays and their ecosystems,  
10 which are among Maryland's most precious resources, it is the intent of the General  
11 Assembly that this Act shall overrule the Lewis decision, as well as enhance the  
12 enforcement mechanisms available to local programs in the administration of their  
13 critical area programs; now, therefore,

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

16 **Article - Natural Resources**

17 8-1801.

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

19 (1) The Chesapeake and the Atlantic Coastal Bays and their tributaries  
20 are natural resources of great significance to the State and the nation;

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

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

27 (4) HUMAN ACTIVITY IS ESPECIALLY HARMFUL IN THESE SHORELINE  
28 AREAS, WHERE THE NEW DEVELOPMENT OF NONWATER-DEPENDENT STRUCTURES  
29 OR THE ADDITION OF IMPERVIOUS SURFACES IS PRESUMED TO BE CONTRARY TO  
30 THE PURPOSE OF THIS SUBTITLE, BECAUSE EACH ACTIVITY CAUSES ADVERSE  
31 IMPACTS, OF BOTH AN IMMEDIATE AND A LONG-TERM NATURE, TO THE  
32 CHESAPEAKE AND ATLANTIC COASTAL BAYS, AND THUS IT IS NECESSARY  
33 WHEREVER POSSIBLE TO MAINTAIN A BUFFER OF AT LEAST 100 FEET LANDWARD  
34 FROM THE MEAN HIGH WATER LINE OF TIDAL WATERS, TRIBUTARY STREAMS, AND  
35 TIDAL WETLANDS;

36 (5) National studies have documented that the quality and productivity  
37 of the waters of the Chesapeake Bay and its tributaries have declined due to the  
38 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;

3 [(5)] (6) Those portions of the Chesapeake and the Atlantic Coastal Bays  
4 and their tributaries within Maryland are particularly stressed by the continuing  
5 population growth and development activity concentrated in the  
6 Baltimore-Washington metropolitan corridor and along the Atlantic Coast;

7 [(6)] (7) The quality of life for the citizens of Maryland is enhanced  
8 through the restoration of the quality and productivity of the waters of the  
9 Chesapeake and the Atlantic Coastal Bays, and their tributaries;

10 [(7)] (8) The restoration of the Chesapeake and the Atlantic Coastal  
11 Bays and their tributaries is dependent, in part, on minimizing further adverse  
12 impacts to the water quality and natural habitats of the shoreline and adjacent lands,  
13 PARTICULARLY IN THE BUFFER;

14 [(8)] (9) The cumulative impact of current development AND OF EACH  
15 NEW DEVELOPMENT ACTIVITY IN THE BUFFER is inimical to these purposes; and

16 [(9)] (10) There is a critical and substantial State interest for the benefit  
17 of current and future generations in fostering more sensitive development activity in  
18 a consistent and uniform manner along shoreline areas of the Chesapeake and the  
19 Atlantic Coastal Bays and their tributaries so as to minimize damage to water quality  
20 and natural habitats.

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

22 (1) To establish a Resource Protection Program for the Chesapeake and  
23 the Atlantic Coastal Bays and their tributaries by fostering more sensitive  
24 development activity for certain shoreline areas so as to minimize damage to water  
25 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 8-1802.

31 (a) (1) In this subtitle the following words have the meanings indicated.

32 (2) "Atlantic Coastal Bays" means the Assawoman, Isle of Wight,  
33 Sinepuxent, Newport, and Chincoteague Bays.

34 (3) "Atlantic Coastal Bays Critical Area" means the initial planning area  
35 identified under § 8-1807 of this subtitle.

36 (4) "BUFFER" MEANS AN EXISTING, NATURALLY VEGETATED AREA, OR  
37 AN AREA ESTABLISHED IN VEGETATION AND MANAGED TO PROTECT AQUATIC,

1 WETLANDS, SHORELINE, AND TERRESTRIAL ENVIRONMENTS FROM MAN-MADE  
2 DISTURBANCES.

3 (5) "Chesapeake Bay Critical Area" means the initial planning area  
4 identified under § 8-1807 of this subtitle.

5 [(5)] (6) "Commission" means the Critical Area Commission for the  
6 Chesapeake and Atlantic Coastal Bays established in this subtitle.

7 [(6)] (7) "Critical Area" means the Chesapeake Bay Critical Area and  
8 the Atlantic Coastal Bays Critical Area.

9 [(7)] (8) "Development" means any activity that materially affects the  
10 condition or use of dry land, land under water, or any structure.

11 [(8)] (9) "Growth allocation" means the number of acres of land in the  
12 Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area that a local  
13 jurisdiction may use to create new intensely developed areas and new limited  
14 development areas.

15 [(9)] (10) "Includes" means includes or including by way of illustration  
16 and not by way of limitation.

17 [(10)] (11) "Land classification" means the designation of land in the  
18 Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in accordance  
19 with the criteria adopted by the Commission as an intensely developed area or  
20 district, a limited development area or district, or a resource conservation area or  
21 district.

22 [(11)] (12) "Local jurisdiction" means a county, or a municipal corporation  
23 with planning and zoning powers, in which any part of the Chesapeake Bay Critical  
24 Area or the Atlantic Coastal Bays Critical Area, as defined in this subtitle, is located.

25 [(12)] (13) (i) "Program" means the critical area protection program of a  
26 local jurisdiction.

27 (ii) "Program" includes any amendments to the program.

28 [(13)] (14) (i) "Program amendment" means any change to an adopted  
29 program that the Commission determines will result in a use of land or water in the  
30 Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area in a manner  
31 not provided for in the adopted program.

32 (ii) "Program amendment" includes a change to a zoning map that  
33 is not consistent with the method for using the growth allocation contained in an  
34 adopted program.

35 [(14)] (15) (i) "Program refinement" means any change to an adopted  
36 program that the Commission determines will result in a use of land or water in the

1 Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area in a manner  
2 consistent with the adopted program.

3 (ii) "Program refinement" includes:

4 1. A change to a zoning map that is consistent with the  
5 development area designation of an adopted program; and

6 2. The use of the growth allocation in accordance with an  
7 adopted program.

8 [(15)] (16) (i) "Project approval" means the approval of development,  
9 other than development by a State or local government agency, in the Chesapeake  
10 Bay Critical Area or the Atlantic Coastal Bays Critical Area by the appropriate local  
11 approval authority.

12 (ii) "Project approval" includes:

13 1. Approval of subdivision plats and site plans;

14 2. Inclusion of areas within floating zones;

15 3. Issuance of variances, special exceptions, and conditional  
16 use permits; and

17 4. Approval of rezoning.

18 (iii) "Project approval" does not include building permits.

19 8-1808.

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

23 (2) (i) The Governor shall include in the budget a sum of money to be  
24 used for grants to reimburse local jurisdictions for the reasonable costs of developing  
25 a program under this section.

26 (ii) Each local jurisdiction shall submit to the Governor a detailed  
27 request for funds that are equivalent to the additional costs incurred in developing  
28 the program under this section.

29 (iii) The Governor shall include in the fiscal year 2003 budget a sum  
30 of money to be used for grants to reimburse local jurisdictions in the Atlantic Coastal  
31 Bays Critical Area for the reasonable costs of developing a program under this  
32 section.

33 (3) The Governor shall include in the budget annually a sum of money to  
34 be used for grants to assist local jurisdictions with the reasonable costs of  
35 implementing a program under this section. Each local jurisdiction shall submit to

1 the Governor by May 1 of each year a detailed request for funds to assist in the  
2 implementation of a program under this section.

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

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

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

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

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

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

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

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

18 (i) Subdivision regulations;

19 (ii) Comprehensive or master plan;

20 (iii) Zoning ordinances or regulations;

21 (iv) Provisions relating to enforcement; and

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

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

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

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

33 (7) Requirements for minimum setbacks for structures and septic fields  
34 along shorelines, INCLUDING THE ESTABLISHMENT OF A MINIMUM BUFFER

1 LANDWARD FROM THE MEAN HIGH WATER LINE OF TIDAL WATERS, TRIBUTARY  
2 STREAMS, AND TIDAL WETLANDS.

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 or the Atlantic Coastal Bays Critical Area be in accordance with  
11 plans approved by the district forestry board;

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

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

21 (13) Except as provided in subsection (d) of this section, provisions for  
22 granting a variance to the local jurisdiction's critical area program, in accordance  
23 with regulations adopted by the Commission concerning variances set forth in  
24 COMAR 27.01.11; AND

25 (14) PENALTY PROVISIONS ESTABLISHING THAT, IN ADDITION TO ANY  
26 OTHER PENALTY APPLICABLE UNDER STATE OR LOCAL LAW, A PERSON WHO  
27 VIOLATES A PROVISION OF THIS SUBTITLE OR OF A PROGRAM IS SUBJECT TO A FINE  
28 NOT EXCEEDING \$10,000.

29 (d) (1) IN THIS SUBSECTION, "UNWARRANTED HARDSHIP" MEANS THAT,  
30 WITHOUT A VARIANCE, AN APPLICANT WOULD BE DENIED REASONABLE AND  
31 SIGNIFICANT USE OF THE ENTIRE PARCEL OR LOT FOR WHICH THE VARIANCE IS  
32 REQUESTED.

33 (2) (I) IN CONSIDERING AN APPLICATION FOR A VARIANCE, A LOCAL  
34 JURISDICTION SHALL PRESUME THAT ANY NEW DEVELOPMENT ACTIVITY IN THE  
35 CRITICAL AREA FOR WHICH A VARIANCE IS REQUIRED DOES NOT CONFORM WITH  
36 THE LOCAL PROGRAM.

37 (II) IF THE VARIANCE REQUEST IS BASED ON CONDITIONS OR  
38 CIRCUMSTANCES THAT ARE THE RESULT OF ACTIONS BY THE APPLICANT,  
39 INCLUDING THE COMMENCEMENT OF DEVELOPMENT ACTIVITY BEFORE AN



1 APPLICATION FOR A VARIANCE HAS BEEN FILED, A LOCAL JURISDICTION MAY  
2 CONSIDER THAT FACT.

3 (3) (I) AN APPLICANT HAS THE BURDEN OF PROOF AND THE BURDEN  
4 OF PERSUASION TO OVERCOME THE PRESUMPTION ESTABLISHED UNDER  
5 PARAGRAPH (2)(I) OF THIS SUBSECTION.

6 (II) 1. A LOCAL JURISDICTION SHALL MAKE WRITTEN FINDINGS  
7 AS TO WHETHER THE APPLICANT HAS OVERCOME THE PRESUMPTION ESTABLISHED  
8 UNDER PARAGRAPH (2)(I) OF THIS SUBSECTION.

9 2. WITH DUE REGARD FOR THE PERSON'S EXPERIENCE,  
10 TECHNICAL COMPETENCE, AND SPECIALIZED KNOWLEDGE, THE WRITTEN FINDINGS  
11 MAY BE BASED ON EVIDENCE INTRODUCED AND TESTIMONY PRESENTED BY:

12 A. THE APPLICANT;

13 B. THE LOCAL JURISDICTION OR ANY OTHER GOVERNMENT  
14 AGENCY; OR

15 C. ANY OTHER PERSON DEEMED APPROPRIATE BY THE  
16 LOCAL JURISDICTION.

17 (4) A variance to a local jurisdiction's critical area program may not be  
18 granted unless:

19 (i) Due to special features of a site, or special conditions or  
20 circumstances peculiar to the applicant's land or structure, a literal enforcement of  
21 the critical area program would result in unwarranted hardship to the applicant;

22 (ii) The local jurisdiction finds that the applicant has satisfied each  
23 one of the variance provisions; and

24 (iii) Without the variance, the applicant would be deprived of a use  
25 of land or a structure permitted to others in accordance with the provisions of the  
26 critical area program.

27 [(2) In considering an application for a variance, a local jurisdiction shall  
28 consider the reasonable use of the entire parcel or lot for which the variance is  
29 requested.

30 (3)] (5) This subsection does not apply to building permits or activities  
31 that comply with a buffer exemption plan or buffer management plan of a local  
32 jurisdiction which has been approved by the Commission.

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

- 1 (i) Harford, Cecil, and Kent counties;
- 2 (ii) Queen Anne's, Talbot, and Caroline counties;
- 3 (iii) Dorchester, Somerset, and Wicomico counties;
- 4 (iv) Baltimore City and Baltimore County;
- 5 (v) Charles, Calvert, and St. Mary's counties; and
- 6 (vi) Anne Arundel and Prince George's counties.

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

9 (f) Nothing in this section shall impede or prevent the dredging of any  
10 waterway in a critical area. However, dredging in a critical area is subject to other  
11 applicable federal and State laws and regulations.

12 (g) In adopting the initial land classification for the Atlantic Coastal Bays  
13 Critical Area, the local program:

14 (1) Of the Town of Ocean City shall classify as an intensely developed  
15 area that area that is within the municipal boundaries of Ocean City as of January 1,  
16 2002; and

17 (2) Of Worcester County shall classify as an intensely developed area  
18 that area located on the western mainland that is east of Golf Course Road, south of  
19 Charles Street, and north of Route 707 (Old Bridge Road).

20 (h) The provisions of this subtitle and Title 27 of the Code of Maryland  
21 Regulations apply to the Atlantic Coastal Bays Critical Area.

22 8-1808.5.

23 (a) (1) In this section [the following words have the meanings indicated.

24 (2) "Buffer" means an existing, naturally vegetated area, or an area  
25 established in vegetation and managed to protect aquatic, wetlands, shoreline, and  
26 terrestrial environments from man-made disturbances.

27 (3) (i) "Community], "COMMUNITY pier" means a boat docking facility  
28 associated with a subdivision or similar residential area, or with condominiums,  
29 apartments, or other multiple-family dwelling units.

30 [(ii)] (2) "Community pier" does not include a private pier or a  
31 mooring.

1 8-1815.

2 (a) (1) Violators of the provisions of programs approved or adopted by the  
3 Commission shall be subject to prosecution or suit by local authorities, who may  
4 invoke the sanctions and remedies afforded by State or local law.

5 (2) A LOCAL AUTHORITY MAY REQUEST:

6 (I) ASSISTANCE FROM THE COMMISSION IN AN ENFORCEMENT  
7 ACTION; OR

8 (II) THAT THE CHAIRMAN REFER AN ENFORCEMENT ACTION TO  
9 THE ATTORNEY GENERAL.

10 (b) Whenever the chairman has reason to believe that a local jurisdiction is  
11 failing to enforce the requirements of a program applicable to a particular  
12 development, the chairman shall serve notice upon the local enforcement authorities.  
13 If within 30 days after service of the notice, the local authorities have failed to initiate  
14 an action to remedy or punish the violation, the chairman may refer the matter to the  
15 Attorney General.

16 (c) Upon referral of an alleged violation under subsection (A) OR (b) of this  
17 section, the Attorney General may invoke any sanction or remedy available to local  
18 authorities, in any court of competent jurisdiction in which the local authorities would  
19 be authorized to prosecute or sue the violator.

20 (d) In addition to any other sanction or remedy available, the Attorney  
21 General may bring an action in equity to compel compliance or restrain  
22 noncompliance with the requirements of approved project plans, and to compel  
23 restoration of lands or structures to their condition prior to any modification which  
24 was done in violation of approved project plans.

25 (e) Notwithstanding any other provision of this section, whenever a  
26 development in the Critical Area is proceeding in violation of approved project plans  
27 and threatens to immediately and irreparably degrade the quality of tidal waters or  
28 fish, wildlife, or plant habitat, the Attorney General, upon request of the chairman,  
29 may bring an action to restrain the violation and, as appropriate, to compel  
30 restoration of any land or water areas affected by the development.

31 8-1815.1.

32 (a) (1) The provisions of this section are in addition to any other sanction,  
33 remedy, or penalty provided by law.

34 (2) This section does not apply to any cutting or clearing of trees that is  
35 allowed under regulations adopted by the Commission under this subtitle.

36 (b) If a person cuts or clears or plans to cut or clear trees within the  
37 Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in violation of  
38 AN APPROVED LOCAL CRITICAL AREA PROGRAM OR OF regulations adopted by the

1 Commission, the local jurisdiction may bring an action OR REQUEST THAT THE  
2 CHAIRMAN OF THE COMMISSION REFER THE MATTER TO THE ATTORNEY GENERAL  
3 TO BRING AN ACTION:

4 (1) To require the person to replant trees where the cutting or clearing  
5 occurred in accordance with a plan prepared by the State Forester, a registered  
6 professional forester, or a registered landscape architect;

7 (2) To restrain the planned violation; or

8 (3) For damages:

9 (i) To be assessed by a circuit court in an amount equal to the  
10 estimated cost of replanting trees; and

11 (ii) To be paid to the Department by the person found to have  
12 violated the provisions of this subsection.

13 (c) If the Chairman of the Commission has reason to believe that the local  
14 jurisdiction is failing to enforce the requirements of subsection (b) of this section, the  
15 Chairman shall refer the matter to the Attorney General as provided under § 8-1815  
16 (b) of this subtitle.

17 (d) On the Chairman of the Commission's referral of an alleged violation  
18 under subsection (c) of this section to the Attorney General, the Attorney General may  
19 invoke the remedies available to the local jurisdiction under subsection (b) of this  
20 section in any court of competent jurisdiction in which the local jurisdiction would be  
21 authorized to prosecute or sue.

22 (e) On the request of a local jurisdiction or the Chairman of the Commission,  
23 the State Forester, a registered professional forester, or a registered landscape  
24 architect may prepare, oversee, and approve the final implementation of a plan to:

25 (1) Replant trees in any part of the Chesapeake Bay Critical Area where  
26 trees in the Chesapeake Bay Critical Area are cut or cleared in violation of subsection  
27 (b) of this section; and

28 (2) Replant trees in any part of the Atlantic Coastal Bays Critical Area  
29 where trees in the Atlantic Coastal Bays Critical Area are cut or cleared in violation  
30 of subsection (b) of this section.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
32 construed to apply only prospectively and may not be applied or interpreted to have  
33 any effect on or application to any dwelling unit in existence or for which all necessary  
34 permits for construction had been issued before the effective date of this Act.

35 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take  
36 effect June 1, 2004.