

SENATE BILL 694

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2004 Regular Session
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By: **Senator Dyson (Chairman, Joint Committee on the Chesapeake and Atlantic Coastal Bays Critical Area) and Senators Grosfeld, Stone, and Frosh**

Introduced and read first time: February 6, 2004
Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 22, 2004

CHAPTER _____

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 to consider certain factors in
13 determining the amount of a certain penalty; authorizing a local jurisdiction
14 under certain circumstances to request certain enforcement assistance from the
15 Chairman of the Chesapeake and Atlantic Coastal Bays Critical Area
16 Commission or the Attorney General; declaring and clarifying certain findings of
17 the General Assembly; altering the application of a certain defined term;
18 ~~providing for the application of this Act~~; and generally relating to the
19 enforcement of the Chesapeake and Atlantic Coastal Bays Critical Area
20 Protection Program.

21 BY repealing and reenacting, with amendments,
22 Article - Natural Resources
23 Section 8-1801, 8-1802(a), 8-1808, 8-1808.5(a), 8-1815, and 8-1815.1
24 Annotated Code of Maryland

1 (2000 Replacement Volume and 2003 Supplement)

2 Preamble

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

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

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

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

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

21 WHEREAS, From the beginning of the critical area program in the mid-1980s
22 through 1999, courts consistently interpreted the variance standard of unwarranted
23 hardship in accordance with the intent of the General Assembly, that is, as a
24 deprivation of the reasonable use of the entire property which is equivalent to an
25 unnecessary or unreasonable hardship; and

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

31 WHEREAS, Also in During that same legislative session, in Chapter 431 of the
32 Acts of 2002, the General Assembly overruled three then-recent decisions by the
33 Maryland Court of Appeals that, by undermining the variance standard of
34 unwarranted hardship, had, in effect, substantially weakened undermined the
35 authority of local jurisdictions' critical area programs in the denial of to deny
36 variances; and

37 WHEREAS, Despite the authority of Chapter 431 and its clear direction that
38 local jurisdictions are to consider the entire parcel or lot in determining if a variance
39 applicant would be subject to unwarranted hardship, some courts and administrative

1 decision makers continue to focus on only part of the property, the 100-foot buffer;
2 and

3 WHEREAS, In its recent decision of Lewis v. Department of Natural Resources,
4 the Court of Appeals suggested that a prohibition on new development in the buffer,
5 even when viable alternatives exist elsewhere on the parcel, may constitute a taking
6 of property without just compensation, and the General Assembly profoundly
7 disagrees with this suggestion; and

8 ~~WHEREAS, A recent decision by~~ Moreover, in its Lewis ruling, the Court of
9 Appeals, ~~Lewis v. Department of Natural Resources,~~ has: rejected the finding of the
10 General Assembly that the cumulative impact of development is harmful to the
11 critical area; shifted the burdens of proof and persuasion to local jurisdictions with
12 respect to the denial of a critical area variance application, thus adding burdensome
13 requirements and unnecessary expenses to their consideration of variance
14 applications; and opened the door for citizens to view unpermitted development
15 activity in the critical area as viable due to the lack of detrimental consequence; and

16 ~~WHEREAS, The~~ Although the Lewis ruling is holding and its associated dicta
17 are clearly contrary to the intent of the General Assembly's enactment of both the
18 Chesapeake Bay Critical Area Protection Act and the Atlantic Coastal Bays
19 Protection Act, these erroneous understandings have already been cited by lower
20 courts and administrative decision makers as binding precedent or at least as
21 persuasive authority, and it is the goal of the General Assembly to put an end to this
22 developing trend as soon as possible; and

23 WHEREAS, Over the past two decades, despite the vigilant efforts of the State
24 and local critical area programs and the ongoing focus of the General Assembly, State
25 agencies, advocacy groups, and private citizens, the health of the Chesapeake Bay has
26 continued to deteriorate, as has water quality overall, and this fact has been
27 substantiated in dozens of studies by a variety of government and private interest
28 groups; and

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

32 WHEREAS, Acting out of this long-standing and consistent commitment to the
33 preservation of the Chesapeake and Atlantic Coastal Bays and their ecosystems,
34 which are among Maryland's most precious resources, it is the intent of the General
35 Assembly that this Act shall overrule the Lewis decision and re-establish critical area
36 variance standards, particularly the historic understanding of unwarranted hardship,
37 that existed until weakened by the Court of Appeals, as well as enhance the
38 enforcement mechanisms available to local programs in the administration of their
39 critical area programs; now, therefore,

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

1

Article - Natural Resources

2 8-1801.

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

4 (1) The Chesapeake and the Atlantic Coastal Bays and their tributaries
5 are natural resources of great significance to the State and the nation;6 (2) The shoreline and adjacent lands constitute a valuable, fragile, and
7 sensitive part of this estuarine system, where human activity can have a particularly
8 immediate and adverse impact on water quality and natural habitats;9 (3) The capacity of these shoreline and adjacent lands to withstand
10 continuing demands without further degradation to water quality and natural
11 habitats is limited;12 (4) ~~HUMAN ACTIVITY IS ESPECIALLY HARMFUL IN THESE SHORELINE~~
13 ~~AREAS, WHERE THE NEW DEVELOPMENT OF NONWATER-DEPENDENT STRUCTURES~~
14 ~~OR THE ADDITION OF IMPERVIOUS SURFACES IS PRESUMED TO BE CONTRARY TO~~
15 ~~THE PURPOSE OF THIS SUBTITLE, BECAUSE EACH ACTIVITY CAUSES THESE~~
16 ~~ACTIVITIES MAY CAUSE~~ ADVERSE IMPACTS, OF BOTH AN IMMEDIATE AND A
17 LONG-TERM NATURE, TO THE CHESAPEAKE AND ATLANTIC COASTAL BAYS, AND
18 THUS IT IS NECESSARY WHEREVER POSSIBLE TO MAINTAIN A BUFFER OF AT LEAST
19 100 FEET LANDWARD FROM THE MEAN HIGH WATER LINE OF TIDAL WATERS,
20 TRIBUTARY STREAMS, AND TIDAL WETLANDS;21 (5) National studies have documented that the quality and productivity
22 of the waters of the Chesapeake Bay and its tributaries have declined due to the
23 cumulative effects of human activity that have caused increased levels of pollutants,
24 nutrients, and toxics in the Bay System and declines in more protective land uses
25 such as forestland and agricultural land in the Bay region;26 [(5)] (6) Those portions of the Chesapeake and the Atlantic Coastal Bays
27 and their tributaries within Maryland are particularly stressed by the continuing
28 population growth and development activity concentrated in the
29 Baltimore-Washington metropolitan corridor and along the Atlantic Coast;30 [(6)] (7) The quality of life for the citizens of Maryland is enhanced
31 through the restoration of the quality and productivity of the waters of the
32 Chesapeake and the Atlantic Coastal Bays, and their tributaries;33 [(7)] (8) The restoration of the Chesapeake and the Atlantic Coastal
34 Bays and their tributaries is dependent, in part, on minimizing further adverse
35 impacts to the water quality and natural habitats of the shoreline and adjacent lands,
36 PARTICULARLY IN THE BUFFER;37 [(8)] (9) The cumulative impact of current development AND OF EACH
38 NEW DEVELOPMENT ACTIVITY IN THE BUFFER is inimical to these purposes; and

1 [(9)] (10) There is a critical and substantial State interest for the benefit
2 of current and future generations in fostering more sensitive development activity in
3 a consistent and uniform manner along shoreline areas of the Chesapeake and the
4 Atlantic Coastal Bays and their tributaries so as to minimize damage to water quality
5 and natural habitats.

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

7 (1) To establish a Resource Protection Program for the Chesapeake and
8 the Atlantic Coastal Bays and their tributaries by fostering more sensitive
9 development activity for certain shoreline areas so as to minimize damage to water
10 quality and natural habitats; and

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

15 8-1802.

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

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

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

21 (4) "BUFFER" MEANS AN EXISTING, NATURALLY VEGETATED AREA, OR
22 AN AREA ESTABLISHED IN VEGETATION AND MANAGED TO PROTECT AQUATIC,
23 WETLANDS, SHORELINE, AND TERRESTRIAL ENVIRONMENTS FROM MAN-MADE
24 DISTURBANCES.

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

27 [(5)] (6) "Commission" means the Critical Area Commission for the
28 Chesapeake and Atlantic Coastal Bays established in this subtitle.

29 [(6)] (7) "Critical Area" means the Chesapeake Bay Critical Area and
30 the Atlantic Coastal Bays Critical Area.

31 [(7)] (8) "Development" means any activity that materially affects the
32 condition or use of dry land, land under water, or any structure.

33 [(8)] (9) "Growth allocation" means the number of acres of land in the
34 Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area that a local
35 jurisdiction may use to create new intensely developed areas and new limited
36 development areas.

1 [(9)] (10) "Includes" means includes or including by way of illustration
2 and not by way of limitation.

3 [(10)] (11) "Land classification" means the designation of land in the
4 Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in accordance
5 with the criteria adopted by the Commission as an intensely developed area or
6 district, a limited development area or district, or a resource conservation area or
7 district.

8 [(11)] (12) "Local jurisdiction" means a county, or a municipal corporation
9 with planning and zoning powers, in which any part of the Chesapeake Bay Critical
10 Area or the Atlantic Coastal Bays Critical Area, as defined in this subtitle, is located.

11 [(12)] (13) (i) "Program" means the critical area protection program of a
12 local jurisdiction.

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

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

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

21 [(14)] (15) (i) "Program refinement" means any change to an adopted
22 program that the Commission determines will result in a use of land or water in the
23 Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area in a manner
24 consistent with the adopted program.

25 (ii) "Program refinement" includes:

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

28 2. The use of the growth allocation in accordance with an
29 adopted program.

30 [(15)] (16) (i) "Project approval" means the approval of development,
31 other than development by a State or local government agency, in the Chesapeake
32 Bay Critical Area or the Atlantic Coastal Bays Critical Area by the appropriate local
33 approval authority.

34 (ii) "Project approval" includes:

35 1. Approval of subdivision plats and site plans;

36 2. Inclusion of areas within floating zones;

1 3. Issuance of variances, special exceptions, and conditional
2 use permits; and

3 4. Approval of rezoning.

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

5 8-1808.

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

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

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

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

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

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

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

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

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

34 (c) (1) At a minimum, a program sufficient to meet the goals stated in
35 subsection (b) of this section includes:

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

- 1 ~~(2)~~ (II) A comprehensive zoning map for the critical area;
- 2 ~~(3)~~ (III) As necessary, new or amended provisions of the jurisdiction's:
- 3 ~~(i)~~ 1. Subdivision regulations;
- 4 ~~(ii)~~ 2. Comprehensive or master plan;
- 5 ~~(iii)~~ 3. Zoning ordinances or regulations;
- 6 ~~(iv)~~ 4. Provisions relating to enforcement; and
- 7 ~~(v)~~ 5. Provisions as appropriate relating to grandfathering of
8 development at the time the program is adopted or approved by the Commission;
- 9 ~~(4)~~ (IV) Provisions requiring that project approvals shall be based on
10 findings that projects are consistent with the standards stated in subsection (b) of this
11 section;
- 12 ~~(5)~~ (V) Provisions to limit the amount of land covered by buildings,
13 roads, parking lots, or other impervious surfaces, and to require or encourage cluster
14 development, where necessary or appropriate;
- 15 ~~(6)~~ (VI) Establishment of buffer areas along shorelines within which
16 agriculture will be permitted only if best management practices are used, provided
17 that structures or any other use of land which is necessary for adjacent agriculture
18 shall also be permitted in any buffer area;
- 19 ~~(7)~~ (VII) Requirements for minimum setbacks for structures and septic
20 fields along shorelines, **INCLUDING THE ESTABLISHMENT OF A MINIMUM BUFFER**
21 **LANDWARD FROM THE MEAN HIGH WATER LINE OF TIDAL WATERS, TRIBUTARY**
22 **STREAMS, AND TIDAL WETLANDS;**
- 23 ~~(8)~~ (VIII) Designation of shoreline areas, if any, that are suitable for
24 parks, hiking, biking, wildlife refuges, scenic drives, public access or assembly, and
25 water-related recreation such as boat slips, piers, and beaches;
- 26 ~~(9)~~ (IX) Designation of shoreline areas, if any, that are suitable for
27 ports, marinas, and industries that use water for transportation or derive economic
28 benefits from shore access;
- 29 ~~(10)~~ (X) Provisions requiring that all harvesting of timber in the
30 Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area be in
31 accordance with plans approved by the district forestry board;
- 32 ~~(11)~~ (XI) Provisions establishing that the controls in a program which are
33 designed to prevent runoff of pollutants will not be required on sites where the
34 topography prevents runoff from directly or indirectly reaching tidal waters;
- 35 ~~(12)~~ (XII) Provisions for reasonable accommodations in policies or
36 procedures when the accommodations are necessary to avoid discrimination on the

1 basis of physical disability, including provisions that authorize a local jurisdiction to
 2 require removal of a structure that was installed or built to accommodate a physical
 3 disability and require restoration when the accommodation permitted by this
 4 paragraph is no longer necessary; [and]

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

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

13 (2) IN DETERMINING THE AMOUNT OF THE PENALTY TO BE ASSESSED
 14 UNDER PARAGRAPH (1)(XIV) OF THIS SUBSECTION, A LOCAL JURISDICTION MAY
 15 CONSIDER:

16 (I) THE GRAVITY OF THE VIOLATION;

17 (II) ANY WILLFULNESS OR NEGLIGENCE INVOLVED IN THE
 18 VIOLATION; AND

19 (III) THE ENVIRONMENTAL IMPACT OF THE VIOLATION.

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

24 (2) (I) IN CONSIDERING AN APPLICATION FOR A VARIANCE, A LOCAL
 25 JURISDICTION SHALL PRESUME THAT ~~ANY NEW~~ THE SPECIFIC DEVELOPMENT
 26 ACTIVITY IN THE CRITICAL AREA THAT IS SUBJECT TO THE APPLICATION AND FOR
 27 WHICH A VARIANCE IS REQUIRED DOES NOT CONFORM WITH THE LOCAL PROGRAM
 28 GENERAL PURPOSE AND INTENT OF THIS SUBTITLE, REGULATIONS ADOPTED UNDER
 29 THIS SUBTITLE, AND THE REQUIREMENTS OF THE LOCAL JURISDICTION'S PROGRAM.

30 (II) IF THE VARIANCE REQUEST IS BASED ON CONDITIONS OR
 31 CIRCUMSTANCES THAT ARE THE RESULT OF ACTIONS BY THE APPLICANT,
 32 INCLUDING THE COMMENCEMENT OF DEVELOPMENT ACTIVITY BEFORE AN
 33 APPLICATION FOR A VARIANCE HAS BEEN FILED, A LOCAL JURISDICTION MAY
 34 CONSIDER THAT FACT.

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

38 (II) 1. BASED ON COMPETENT AND SUBSTANTIAL EVIDENCE, A
 39 LOCAL JURISDICTION SHALL MAKE WRITTEN FINDINGS AS TO WHETHER THE

1 APPLICANT HAS OVERCOME THE PRESUMPTION ESTABLISHED UNDER PARAGRAPH
2 (2)(I) OF THIS SUBSECTION.

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

6 A. THE APPLICANT;

7 B. THE LOCAL JURISDICTION OR ANY OTHER GOVERNMENT
8 AGENCY; OR

9 C. ANY OTHER PERSON DEEMED APPROPRIATE BY THE
10 LOCAL JURISDICTION.

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

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

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

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

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

24 (3)] (5) This subsection does not apply to building permits or activities
25 that comply with a buffer exemption plan or buffer management plan of a local
26 jurisdiction which has been approved by the Commission.

27 (e) (1) The Commission shall adopt by regulation on or before December 1,
28 1985 criteria for program development and approval, which are necessary or
29 appropriate to achieve the standards stated in subsection (b) of this section. Prior to
30 developing its criteria and also prior to adopting its criteria, the Commission shall
31 hold at least 6 regional public hearings, 1 in each of the following areas:

32 (i) Harford, Cecil, and Kent counties;

33 (ii) Queen Anne's, Talbot, and Caroline counties;

34 (iii) Dorchester, Somerset, and Wicomico counties;

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

10 (1) Of the Town of Ocean City shall classify as an intensely developed
11 area that area that is within the municipal boundaries of Ocean City as of January 1,
12 2002; and

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

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

18 8-1808.5.

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

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

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

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

28 8-1815.

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

32 (2) A LOCAL AUTHORITY MAY REQUEST:

33 (I) ASSISTANCE FROM THE COMMISSION IN AN ENFORCEMENT
34 ACTION; OR

1 (II) THAT THE CHAIRMAN REFER AN ENFORCEMENT ACTION TO
2 THE ATTORNEY GENERAL.

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

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

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

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

24 8-1815.1.

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

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

29 (b) If a person cuts or clears or plans to cut or clear trees within the
30 Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in violation of
31 AN APPROVED LOCAL CRITICAL AREA PROGRAM OR OF regulations adopted by the
32 Commission, the local jurisdiction may bring an action OR REQUEST THAT THE
33 CHAIRMAN OF THE COMMISSION REFER THE MATTER TO THE ATTORNEY GENERAL
34 TO BRING AN ACTION:

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

38 (2) To restrain the planned violation; or

39 (3) For damages:

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

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

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

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

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

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

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

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

27 ~~SECTION 3. 2.~~ AND BE IT FURTHER ENACTED, That this Act shall take
28 effect June 1, 2004.