
By: **Senators Brochin, Conway, Dyson, Grosfeld, Klausmeier, Ruben, and Stone**

Introduced and read first time: January 25, 2006

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Critical Areas Program - Resource Conservation Areas - National Wildlife**
3 **Refuges**

4 FOR the purpose of prohibiting the use of growth allocation for the development of
5 certain property that is located within a certain distance of certain tributaries of
6 national wildlife refuges; providing for the application of this Act; making this
7 Act an emergency measure; and generally relating to development in resource
8 conservation areas.

9 BY repealing and reenacting, with amendments,
10 Article - Natural Resources
11 Section 8-1808.1
12 Annotated Code of Maryland
13 (2000 Replacement Volume and 2005 Supplement)

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 8-1808.1.

18 (a) This section is intended to establish conditions for development in the
19 Chesapeake Bay Critical Area and the Atlantic Coastal Bays Critical Area in addition
20 to those established in criteria of the Commission. However, in the event of any
21 inconsistency between the criteria and the provisions of this section, this section shall
22 control.

23 (b) The growth allocation for a local jurisdiction shall be calculated based on 5
24 percent of the total resource conservation area in a local jurisdiction:

25 (1) In the Chesapeake Bay Critical Area at the time of the original
26 approval of the local jurisdiction's program by the Commission, not including tidal
27 wetlands or land owned by the federal government; or

1 (2) In the Atlantic Coastal Bays Critical Area at the time of the original
2 approval of the local jurisdiction's program by the Commission, not including tidal
3 wetlands or land owned by the federal government.

4 (c) When locating new intensely developed or limited development areas, local
5 jurisdictions shall use the following guidelines:

6 (1) New intensely developed areas should be located in limited
7 development areas or adjacent to existing intensely developed areas;

8 (2) New limited development areas should be located adjacent to existing
9 limited development areas or intensely developed areas;

10 (3) Except as provided in paragraph (5) of this subsection, no more than
11 one-half of the expansion allocated in the criteria of the Commission may be located
12 in resource conservation areas;

13 (4) New intensely developed or limited development areas to be located
14 in the resource conservation area shall conform to all criteria of the Commission for
15 intensely developed or limited development areas and shall be designated on the
16 comprehensive zoning map submitted by the local jurisdiction as part of its
17 application to the Commission for program approval or at a later date in compliance
18 with § 8-1809(g) of this subtitle; and

19 (5) [In] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, IN
20 Calvert, Caroline, Cecil, Charles, Dorchester, Kent, Queen Anne's, St. Mary's,
21 Somerset, Talbot, Wicomico, and Worcester counties, if the county is unable to utilize
22 a portion of the growth allocated to the county in paragraphs (1) and (2) of this
23 subsection within or adjacent to existing intensely developed or limited development
24 areas as demonstrated in the local plan approved by the Commission, then that
25 portion of the allocated expansion which cannot be so located may be located in the
26 resource conservation area in addition to the expansion allocated in paragraph (3) of
27 this subsection. A developer shall be required to cluster any development in an area of
28 expansion authorized under this paragraph.

29 (D) (1) ANY PROPERTY THAT IS DESIGNATED AS A RESOURCE
30 CONSERVATION AREA AND THAT IS LOCATED ADJACENT TO, OR WITHIN 1,000 FEET
31 OF THE WATERS OF A MAJOR TIDAL TRIBUTARY OF A NATIONAL WILDLIFE REFUGE,
32 AS DESIGNATED IN U.S.C. TITLE 16, CHAPTER 5A, SUBCHAPTER III, SECTION 668DD,
33 MAY NOT BE DEVELOPED, FOR ANY REASON, USING GROWTH ALLOCATION.

34 (2) THIS SUBSECTION APPLIES TO ALL DEVELOPMENTS THAT MEET THE
35 CRITERIA OF PARAGRAPH (1) OF THIS SUBSECTION, INCLUDING THOSE
36 DEVELOPMENTS PROPOSED BEFORE JANUARY 1, 2006.

37 [(d)] (E) (1) Subject to the conditions under paragraphs (2) and (3) of this
38 subsection, if a jurisdiction has within its territorial limits an area that is subject to
39 the Chesapeake Bay Critical Area program and an area that is subject to the Atlantic
40 Coastal Bays Critical Area program, the growth allocation for that jurisdiction may be

1 utilized within either critical area, as the jurisdiction's local program considers
2 appropriate.

3 (2) A local jurisdiction's program may not utilize the growth allocation
4 from another critical area unless the growth allocation remaining in either critical
5 area is insufficient to allow approval of a growth allocation proposal associated with a
6 program amendment for which the local program seeks commission approval.

7 (3) A local jurisdiction's program may not transfer more than 150 acres
8 of growth allocation to another critical area.

9 [(e)] (F) (1) Except as authorized under paragraph (2) of this subsection, in
10 calculating the 1-in-20 acre density of development that is permitted on a parcel
11 located within the resource conservation area, a local jurisdiction:

12 (i) Shall count each dwelling unit; and

13 (ii) May permit the area of any private wetlands located on the
14 property to be included, under the following conditions:

15 1. The density of development on the upland portion of the
16 parcel may not exceed 1 dwelling unit per 8 acres; and

17 2. The area of private wetlands shall be estimated on the
18 basis of vegetative information as designated on the State wetlands maps.

19 (2) (i) Within a resource conservation area, a local jurisdiction may
20 consider one additional dwelling unit per lot or parcel as part of a primary dwelling
21 unit for the purpose of the density calculation under this subsection if the additional
22 dwelling unit:

23 1. A. Is located within the primary dwelling unit or its
24 entire perimeter is within 100 feet of the primary dwelling unit;

25 B. Does not exceed 900 square feet in total enclosed area; and

26 C. Is served by the same sewage disposal system as the
27 primary dwelling unit; or

28 2. A. Is located within the primary dwelling unit;

29 B. By its construction, does not increase the amount of
30 impervious surface already attributed to the primary dwelling unit; and

31 C. Is served by the same sewage disposal system as the
32 primary dwelling unit.

33 (ii) The provisions of this paragraph may not be construed to
34 require a local jurisdiction to consider an additional dwelling unit as part of a primary
35 dwelling unit for the purpose of the density calculation under this subsection.

1 (iii) An additional dwelling unit meeting all the criteria under
2 subparagraph (i) of this paragraph that is separate from the primary dwelling unit
3 may not be subdivided or conveyed separately from the primary dwelling unit.

4 (3) (i) Each local jurisdiction shall:

5 1. Maintain records of all building permits issued under this
6 subsection for additional dwelling units considered part of a primary dwelling unit;
7 and

8 2. Provide this information on a quarterly basis to the
9 Commission.

10 (ii) Beginning on November 1, 2004 and annually thereafter, the
11 Commission shall report, subject to § 2-1246 of the State Government Article, to the
12 Senate Education, Health, and Environmental Affairs Committee, the House
13 Environmental Matters Committee, and the Joint Committee on the Chesapeake and
14 Atlantic Coastal Bays Critical Area regarding the construction of additional dwelling
15 units considered part of a primary dwelling unit under this subsection.

16 (4) The provisions of this subsection:

17 (i) Apply to density calculations only; and

18 (ii) May not be construed to authorize a local jurisdiction to grant a
19 variance, unless the variance is granted in accordance with the requirements of §
20 8-1808(d) of this subtitle.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
22 measure, is necessary for the immediate preservation of the public health or safety,
23 has been passed by a ye and nay vote supported by three-fifths of all the members
24 elected to each of the two Houses of the General Assembly, and shall take effect from
25 the date it is enacted.