

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 860 (Senator Colburn)
Education, Health, and Environmental Affairs

Critical Area Commission - Buffer Standards - Hydric Soils

This bill exempts counties in which more than 50% of the soil consists of hydric soils from specified regulations requiring expansion of the 100-foot buffer within the critical area. The percentage of hydric soil in a county is equivalent to the amount of hydric soil stated for that county in the current National Cooperative Soil Survey. The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays must adopt implementing regulations.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances.

Local Effect: The bill is not expected to materially affect local finances.

Small Business Effect: Potential meaningful.

Analysis

Current Law: The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays has explicit authority to adopt and amend specified regulations to administer and enforce the State and local critical area protection programs. The parameters of the commission's regulatory authority include the establishment of comprehensive standards and procedures regarding various issues, including buffer establishment, maintenance, measurement, mitigation, and enforcement; buffer exemption areas; impacts of shore erosion control activities on the buffer; and the protection and conservation of the buffer as a State water quality and habitat resource essential to the restoration of the Chesapeake and Atlantic Coastal Bays.

“Buffer” is defined in statute as an existing, naturally vegetated area, or an area established in vegetation and managed to protect aquatic, wetlands, shoreline, and terrestrial environments from manmade disturbances. The buffer is generally required to be at least 100 feet wide, adjacent to tidal waters, tidal wetlands, and tributary streams. Certain conditions such as a steep slope or highly erodible or hydric soils can require an expanded buffer, and in a resource conservation area (one of three land classifications under the program), a minimum buffer of 200 feet is generally required when land is subdivided or there is a land use change requiring site plan approval.

Critical Area Commission regulations require buffer establishment for development or redevelopment activity on a lot that includes a buffer, but that occurs outside of the buffer, and for approval of a new subdivision that includes a buffer. The regulations also require mitigation where development or redevelopment activity occurs inside of a buffer. Disturbance in the buffer is only allowed in certain cases, including development or redevelopment activity associated with a water-dependent facility. The regulations establish criteria for buffer establishment and mitigation, including vegetation types that may be used. The vegetation types include trees and shrubs and herbaceous perennials.

Background:

Critical Area Protection Program

Chapter 794 of 1984 established the Chesapeake Bay Critical Area Protection Program in order to minimize damage to water quality and wildlife habitat by fostering more sensitive development activity along the shoreline areas of the Chesapeake Bay and its tributaries. The goals of the program include the protection of water quality, the conservation of habitat, and the accommodation of future growth and development without adverse environmental impacts.

Chapter 794 identified the critical area as all land within 1,000 feet of the mean high water line of tidal waters or the landward edge of tidal wetlands and all waters of and lands under the Chesapeake Bay and its tributaries. In 2002, the affected area was expanded to include the State’s coastal bays. Under current law, the 1,000-foot wide critical area encompasses approximately 680,000 acres (or roughly 11% of the land area in the State) and spans 64 local jurisdictions (16 counties, Baltimore City, and 47 other municipalities). Efforts are underway to develop updated and uniform maps of the critical area using modern technology.

The 1984 legislation also created a statewide Chesapeake Bay Critical Area Commission (now called the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays) that oversees the development and implementation of local land use programs dealing with the critical area. Each local jurisdiction is charged with the primary responsibility

for development and implementation of its own local program; that local authority, however, is subject to commission review and approval.

Critical Area Buffer

The Critical Area Commission indicates that buffers provide a number of environmental benefits, and a buffer's functions can be grouped into three general categories: (1) water quality management (reducing pollutant loadings); (2) riparian habitat protection (maintaining diverse fish, wildlife, and plant communities along the shoreline); and (3) management of human activities (providing a physical separation between development and other human activities and the natural environment). Because of the benefits of an undeveloped and vegetated buffer, the general prohibition of development activities within the buffer, with certain exceptions, is considered a significant part of the critical area program.

Proposed Changes to Buffer Regulations

The Critical Area Commission adopted regulations establishing comprehensive standards and procedures for critical area buffers in 2010, replacing prior regulations relating to buffers that were often subject to different interpretations and were considered insufficient to adequately protect the buffer. Since the adoption of the regulations in 2010, the commission has communicated with local governments and stakeholders regarding the regulations' impact and effectiveness and has proposed changes that allow for more flexibility and are expected to decrease the cost of compliance. The new regulations take effect on March 5, 2012.

Hydric soil is a soil that formed under flooding conditions long enough during the growing season to develop anaerobic (without oxygen) conditions in the upper part. In accordance with current regulations, if a buffer is contiguous to hydric soil, a local jurisdiction must expand the minimum buffer area. The Critical Area Commission advises that this requirement was developed because hydric soils do not infiltrate stormwater very well.

The Critical Area Commission has advised counties to work with their local Soil Conservation District to establish county-specific listings of hydric soils and determine how best to tailor Natural Resources Conservation Service soil information for local use.

The Department of Natural Resources advises that 8 of the 16 counties in the Critical Area are affected by the bill. The jurisdictions in which more than 50% of the soil consists of hydric soils are Charles, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico, and Worcester counties.

Small Business Effect: Small businesses subject to buffer establishment or mitigation requirements due to development activity are meaningfully impacted to the extent they can meet the requirements for the Critical Area at reduced cost. Small business nurseries and landscapers are affected to the extent the bill leads to a decrease in the purchase of trees and shrubs to meet mitigation requirements.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery County, Maryland Department of Agriculture, Department of Natural Resources (Critical Area Commission), University System of Maryland, U.S. Department of Agriculture, Department of Legislative Services

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