

**Department of Legislative Services**  
Maryland General Assembly  
2012 Session

**FISCAL AND POLICY NOTE**

Senate Bill 1074 (Senator Colburn)  
Education, Health, and Environmental Affairs

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**Critical Area Commission - Planting Credits - Warm Season Grass**

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This bill requires that specified warm season grass be listed as a vegetation type eligible for use in buffer establishment and buffer mitigation pursuant to Critical Area Commission regulations when development or redevelopment activity occurs on a lot or parcel that includes a buffer to tidal waters, a tidal wetland, or a tributary stream. The warm season grass must receive planting credits of a similar weight and value as another specified vegetation type under the regulations and be eligible for credits regardless of the acreage planted. The commission must adopt regulations to implement the bill.

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**Fiscal Summary**

**State Effect:** None. The bill does not directly affect State finances.

**Local Effect:** The bill is not expected to have a direct, material impact on local government finances.

**Small Business Effect:** Potential meaningful.

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**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.

The commission advises that warm season grasses are considered within the category of "herbaceous perennials," but the use of herbaceous perennials is limited in the regulations established in 2010. The new regulations allow for additional flexibility in the use of herbaceous perennials, though still not allowing for unlimited use in meeting buffer establishment and mitigation requirements. The bill allows for even further flexibility in the use of warm season grasses to meet the requirements.

**Small Business Effect:** Small businesses that may be subject to buffer establishment or mitigation requirements due to development activity may be meaningfully impacted by being able to meet the requirements at a lower cost through greater use of warm season grasses in place of trees and shrubs. Small business nurseries and landscapers could be affected to the extent the bill leads to an increase in the use of warm season grasses in place of trees and shrubs to meet buffer establishment and mitigation requirements. It

does not appear, however, that nurseries and landscape businesses would be significantly impacted overall.

**Additional Comments:** It appears that the effectiveness of different types of vegetation used in buffers, with respect to the protection of water quality, can vary depending on site conditions. However, greater use of warm season grasses irrespective of site conditions may produce reduced water quality benefits in comparison to the use of trees, shrubs, and grasses in a manner tailored to the site conditions of a given buffer.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 625 (Delegates Haddaway-Riccio and Eckardt) - Environmental Matters.

**Information Source(s):** Department of Natural Resources (Critical Area Commission); Maryland Department of the Environment; Baltimore, Cecil, and St. Mary's counties; Maryland Nursery and Landscape Association; Environmental Concern; Department of Legislative Services

**Fiscal Note History:** First Reader - March 12, 2012  
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