

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1196 (Delegate Mautz)
Environment and Transportation

Chesapeake and Atlantic Coastal Bays Critical Area - Buffer Establishment and
Buffer Management Plan - Exemption

This bill requires the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (Critical Area Commission) to adopt regulations that exempt a lot or parcel, for which an applicant applies to a local jurisdiction for an approval of a subdivision, from any requirement to establish a buffer on, or provide a buffer management plan for, the lot or parcel, if the lot or parcel has a dwelling unit that was in existence on or before July 1, 2010.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances.

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: Minimal.

Analysis

Current Law/Background:

Chesapeake and Atlantic Coastal Bays 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.

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.

Buffer Requirements

The Critical Area Commission is authorized in statute to adopt and amend regulations for the administration and enforcement of the State and local programs. The regulations must establish comprehensive standards and procedures for, among other things, buffer establishment, maintenance, measurement, mitigation, and enforcement. "Buffer" means an existing, naturally vegetated area, or an area established in vegetation and managed to protect aquatic, wetlands, shoreline, and terrestrial environments from manmade disturbances.

Commission regulations, that became effective in March 2010, establish buffer requirements and procedures for local jurisdictions to follow unless a local jurisdiction adopts alternative procedures and requirements that are at least as effective. Specifically, with regard to subdivision approval, a local jurisdiction must require an applicant to fully establish the buffer in vegetation (if not already fully forested or fully established in existing, naturally occurring woody or wetland vegetation), and provide a buffer management plan, when an applicant applies for approval of a subdivision that includes a buffer to tidal waters, a tidal wetland, or a tributary stream.

Under the regulations, a local jurisdiction must require the measurement of a buffer of at least 100 feet landward from (1) the mean high water line of tidal waters; (2) the edge of each bank of a tributary stream; and (3) the upland boundary of a tidal wetland. The buffer width is expanded according to specified requirements if a buffer is contiguous to a steep slope, a nontidal wetland, a nontidal wetland of special State concern, a hydric soil, or a highly erodible soil. Greater buffer measurements, of at least 200 feet from tidal waters or a tidal wetland, can apply to subdivision or site plan approvals in a resource conservation area, with the exception of those for which final local approval was granted before

July 1, 2008, or the application for subdivision or site plan approval was submitted before July 1, 2008, and legally recorded by July 1, 2010. A resource conservation area is one of three land classifications in the Critical Area – intensely developed areas, limited developed areas, and resource conservation areas – which serve to recognize existing land uses and development in the Critical Area and limit the intensity of future development.

A buffer management plan is a narrative, graphic description, or plan of the buffer that is necessary when an applicant proposes a development activity that will (1) affect a portion of the buffer; (2) alter buffer vegetation; or (3) require the establishment of a portion of the buffer in vegetation.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Natural Resources; Kent, Montgomery, Washington, and Worcester counties; cities of Salisbury and Westminster; Town of Leonardtown; Maryland Municipal League; Department of Legislative Services

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sb/lgc

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