

# SENATE BILL 227

M3

(11r1753)

## ENROLLED BILL

— Education, Health, and Environmental Affairs/Environment and Transportation —

Introduced by **Senators Elfreth, Hester, and Pinsky**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

\_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
President.

### CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Water Pollution – Stormwater Management Regulations and Watershed**  
3 **Implementation Plans – Review and Update**

4 FOR the purpose of requiring certain regulations to incorporate certain precipitation data;  
5 requiring the Department of the Environment to review and update certain  
6 regulations with a certain frequency; ~~requiring the Department to propose the first~~  
7 ~~update to certain regulations on or before a certain date;~~ requiring the Department  
8 to review and update certain regulations in a certain manner; requiring the  
9 Department to report to the General Assembly on certain precipitation data and  
10 plans for updating certain regulations on or before a certain date; requiring the  
11 Department to report to the General Assembly on certain revisions to certain  
12 regulations after a certain date; requiring the Department to take certain actions a  
13 certain amount of time before the proposal of regulations under this Act; altering the  
14 time by which the Department must hold a certain public hearing; ~~requiring the~~  
15 ~~Department to incorporate certain requirements and standards into certain permits~~

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#### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

*Italics indicate opposite chamber/conference committee amendments.*



1 prohibiting the Department from delaying the implementation of certain  
 2 requirements or standards; requiring the Department to submit a certain addendum  
 3 and certain milestones to the U.S. Environmental Protection Agency; requiring the  
 4 Department to fully implement the addendum and milestones on or before a certain  
 5 date; defining a certain term; making stylistic changes and a technical correction;  
 6 and generally relating to water pollution in the State.

7 BY repealing and reenacting, without amendments,

8 Article – Environment

9 Section 4–201.1(a)

10 Annotated Code of Maryland

11 (2013 Replacement Volume and 2020 Supplement)

12 BY adding to

13 Article – Environment

14 Section 4–201.1(e); and 4–901 to be under the new subtitle “Subtitle 9.  
 15 Miscellaneous”

16 Annotated Code of Maryland

17 (2013 Replacement Volume and 2020 Supplement)

18 BY repealing and reenacting, with amendments,

19 Article – Environment

20 Section 4–203

21 Annotated Code of Maryland

22 (2013 Replacement Volume and 2020 Supplement)

23 ~~BY adding to~~

24 ~~Article – Environment~~

25 ~~Section 4–901 to be under the new subtitle “Subtitle 9. Miscellaneous”~~

26 ~~Annotated Code of Maryland~~

27 ~~(2013 Replacement Volume and 2020 Supplement)~~

28 Preamble

29 WHEREAS, On December 29, 2010, the U.S. Environmental Protection Agency  
 30 established the Chesapeake Bay Total Maximum Daily Load (Bay TMDL), requiring that  
 31 Chesapeake Bay watershed jurisdictions take all actions necessary to meet the  
 32 jurisdictions’ water quality standards for dissolved oxygen, water clarity, underwater bay  
 33 grasses, and chlorophyll a by December 31, 2025; and

34 WHEREAS, The Bay TMDL is a combination of 92 smaller TMDLs for individual  
 35 Chesapeake Bay tidal segments, the restoration of which will deliver local water quality  
 36 improvements to communities across Maryland; and

37 WHEREAS, The Watershed Implementation Plans (WIP) under the Bay TMDL are  
 38 required to be submitted by Chesapeake Bay jurisdictions and play a critical role as part of

1 the Chesapeake Bay accountability framework developed by the U.S. Environmental  
2 Protection Agency; and

3 WHEREAS, Maryland is a signatory to the 2014 Chesapeake Bay Watershed  
4 Agreement in which the State agreed to take actions to increase the Chesapeake Bay's  
5 resiliency to withstand the adverse impacts from changing environmental and climate  
6 conditions; and

7 WHEREAS, In December 2017, the Chesapeake Bay Program's Principals' Staff  
8 Committee agreed to include a narrative strategy in Phase III WIPs that describes the  
9 jurisdictions' current action plans and strategies to address climate change, as well as the  
10 jurisdiction-specific nutrient and sediment pollution loadings due to 2025 climate change  
11 conditions; and

12 WHEREAS, The Chesapeake Bay Program and the U.S. Environmental Protection  
13 Agency expect Chesapeake Bay jurisdictions to account for additional nutrient and  
14 sediment pollutant loads caused by climate change conditions in a Phase III WIP addendum  
15 or 2-year milestones beginning in 2022; and

16 WHEREAS, Maryland and local regulatory agencies rely on outdated precipitation  
17 estimates and storm design standards in developing water pollution control permits that  
18 must be updated in order to provide Chesapeake Bay and local water quality resiliency;  
19 and

20 WHEREAS, Outdated precipitation and storm design standards result in  
21 insufficient stormwater controls that fail to protect households and communities from  
22 precipitation-based flooding; now, therefore,

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

25 **Article – Environment**

26 4-201.1.

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

28 (E) **“PRECIPITATION DATA” MEANS HISTORICAL DATA THAT DESCRIBES**  
29 **THE RELATIONSHIP BETWEEN PRECIPITATION INTENSITY, DURATION, AND RETURN**  
30 **PERIOD.**

31 4-203.

32 (a) The Department of the Environment shall implement the provisions of this  
33 subtitle and shall consult the Department of Natural Resources from time to time,

1 including during the adoption of regulations, concerning the impact of stormwater on  
2 waters of the State.

3 (b) (1) The Department shall adopt rules and regulations which establish  
4 criteria and procedures for stormwater management in Maryland.

5 (2) The rules and regulations shall:

6 [(1)] (I) Indicate that the primary goal of the State and local programs  
7 will be to maintain after development, as nearly as possible, the predevelopment runoff  
8 characteristics;

9 [(2)] (II) Make allowance for the difference in hydrologic characteristics  
10 and stormwater management needs of different parts of the State;

11 [(3)] (III) Specify that watershed-wide analyses may be necessary to  
12 prevent undesirable downstream effects of increased stormwater runoff;

13 [(4)] (IV) Specify the exemptions a county or municipality may grant from  
14 the requirements of submitting a stormwater management plan;

15 [(5) (i)] (V) 1. Specify the minimum content of the local  
16 ordinances or the rules and regulations of the affected county governing body to be adopted  
17 which may be done by inclusion of a model ordinance or model rules and regulations; and

18 [(ii)] 2. Establish regulations and a model ordinance that require:

19 [1.] A. The implementation of environmental site design to  
20 the maximum extent practicable;

21 [2.] B. The review and modification, if necessary, of  
22 planning and zoning or public works ordinances to remove impediments to environmental  
23 site design implementation; and

24 [3.] C. A developer to demonstrate that[:

25 A. Environmental] ENVIRONMENTAL site design has been  
26 implemented to the maximum extent practicable[;] and

27 [B. Standard] STANDARD best management practices have  
28 been used only where absolutely necessary;

29 [(6)] (VI) Indicate that water quality practices may be required for any  
30 redevelopment, even when predevelopment runoff characteristics are maintained;

1           **[(7)] (VII)** Specify the minimum requirements for inspection and  
2 maintenance of stormwater practices;

3           **[(8)] (VIII)** Specify that all stormwater management plans shall be designed  
4 to:

5                   **[(i)] 1.** Prevent soil erosion from any development project;

6                   **[(ii)] 2.** Prevent, to the maximum extent practicable, an increase  
7 in nonpoint pollution;

8                   **[(iii)] 3.** Maintain the integrity of stream channels for their  
9 biological function, as well as for drainage;

10                   **[(iv)] 4.** Minimize pollutants in stormwater runoff from new  
11 development and redevelopment in order to:

12                           **[1.] A.** Restore, enhance, and maintain the chemical,  
13 physical, and biological integrity of the waters of the State;

14                           **[2.] B.** Protect public health;

15                           **[3.] C.** Safeguard fish and aquatic life and scenic and  
16 ecological values; and

17                           **[4.] D.** Enhance the domestic, municipal, recreational,  
18 industrial, and other uses of water as specified by the Department;

19                   **[(v)] 5.** Protect public safety through the proper design and  
20 operation of stormwater management facilities;

21                   **[(vi)] 6.** Maintain 100% of average annual predevelopment  
22 groundwater recharge volume for the site;

23                   **[(vii)] 7.** Capture and treat stormwater runoff to remove pollutants  
24 and enhance water quality;

25                   **[(viii)] 8.** Implement a channel protection strategy to reduce  
26 downstream erosion in receiving streams; and

27                   **[(ix)] 9.** Implement quantity control strategies to prevent  
28 increases in the frequency and magnitude of out-of-bank flooding from large, less frequent  
29 storm events; ~~and~~

1            [(9) (i)] (IX) 1. Establish a comprehensive process for approving  
2 grading and sediment control plans and stormwater management plans; and

3            [(ii)] 2. Specify that the comprehensive process established under  
4 item (i) of this item takes into account the cumulative impacts of both plans; AND

5            (X) INCORPORATE THE MOST RECENT PRECIPITATION DATA  
6 AVAILABLE.

7            (3) (I) THE DEPARTMENT SHALL:

8                    ~~1. REVIEW~~ REVIEW AND UPDATE THE REGULATIONS  
9 ADOPTED UNDER THIS SECTION AT LEAST ONCE EVERY 5 YEARS; AND

10                    ~~2. PROPOSE THE FIRST UPDATE TO THE REGULATIONS~~  
11 ON OR BEFORE JANUARY 1, 2022.

12            (II) IN REVIEWING AND UPDATING THE REGULATIONS ADOPTED  
13 UNDER THIS SECTION, THE DEPARTMENT SHALL:

14                    1. ~~USE THE MOST RECENT PRECIPITATION DATA~~  
15 AVAILABLE TO AT A MINIMUM, REVISE WATER QUALITY AND WATER QUANTITY  
16 CONTROL STANDARDS USING THE MOST RECENT PRECIPITATION DATA AVAILABLE;  
17 AND

18                    2. ~~UPDATE AS NECESSARY,~~ UPDATE AND REVISE THE  
19 REGULATIONS AS NECESSARY TO MEET THE REQUIREMENTS OF THIS SUBTITLE.

20            (4) (I) ON OR BEFORE NOVEMBER 1, 2021, THE DEPARTMENT  
21 SHALL REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1257 OF  
22 THE STATE GOVERNMENT ARTICLE, ON:

23                    1. THE MOST RECENT PRECIPITATION DATA AVAILABLE;

24                    2. THE DEPARTMENT'S PLANS FOR IMMEDIATELY  
25 UPDATING WATER QUANTITY CONTROL STANDARDS FOR WATERSHEDS WHERE  
26 FLOODING EVENTS OCCURRED ON OR AFTER JANUARY 1, 2000; AND

27                    3. THE DEPARTMENT'S PLANS FOR UPDATING ALL  
28 OTHER REGULATIONS ADOPTED UNDER THIS SECTION.

29            (II) AFTER NOVEMBER 1, 2021, THE DEPARTMENT SHALL  
30 REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1257 OF THE  
31 STATE GOVERNMENT ARTICLE, ON ANY REVISIONS THE DEPARTMENT INTENDS TO

1 MAKE TO THE REGULATIONS ADOPTED UNDER THIS SECTION BEFORE PUBLISHING  
2 THE REGULATIONS.

3 (c) (1) AT LEAST 6 MONTHS BEFORE THE PROPOSAL OF REGULATIONS  
4 UNDER THIS SECTION, THE DEPARTMENT SHALL:

5 (i) POST THE REGULATORY PROCESS THAT THE DEPARTMENT  
6 FOLLOWS ON THE DEPARTMENT'S WEBSITE; AND

7 (ii) CONSULT WITH THE FOLLOWING GROUPS AND  
8 STAKEHOLDERS ON THE IMPACT OF THE PROPOSED REGULATIONS:

9 1. THE COMMISSION ON ENVIRONMENTAL JUSTICE  
10 AND SUSTAINABLE COMMUNITIES; AND

11 2. STAKEHOLDERS WITH EXPERTISE ON STORMWATER  
12 DESIGN STANDARDS AND CLIMATE SCIENCE, INCLUDING STAKEHOLDERS FROM:

13 A. AN ACADEMIC INSTITUTION;

14 B. THE CHESAPEAKE BAY PROGRAM; ~~AND~~

15 C. THE CHESAPEAKE BAY COMMISSION;

16 D. THE MARYLAND EMERGENCY MANAGEMENT  
17 AGENCY;

18 E. THE MARYLAND ASSOCIATION OF SOIL  
19 CONSERVATION DISTRICTS;

20 ~~F.~~ F. LOCAL GOVERNMENT; ~~AND~~

21 ~~G.~~ G. A PRIVATE SECTOR ENTITY WITH DESIGN AND  
22 CONSTRUCTION EXPERIENCE; AND

23 H. AN ASSOCIATION THAT HAS EXPERTISE IN  
24 STORMWATER RESTORATION PROJECTS.

25 (2) Before [the] ANY regulations required under this [subsection]  
26 SECTION are [final] ADOPTED, the Department shall hold at least one public hearing in  
27 the affected immediate geographic areas of the State and shall consult with the affected  
28 counties and municipalities.

1 (d) ~~FOR A STORMWATER DISCHARGE PERMIT ISSUED UNDER § 9-323 OF~~  
 2 ~~THIS ARTICLE ON OR AFTER JANUARY 1, 2022, THE DEPARTMENT SHALL~~  
 3 ~~INCORPORATE ANY NEW REQUIREMENTS AND STANDARDS ESTABLISHED UNDER~~  
 4 ~~THE REGULATIONS ADOPTED UNDER SUBSECTION (B)(3)(I) OF THIS SECTION INTO~~  
 5 ~~THE PERMIT. THE DEPARTMENT MAY NOT DELAY THE IMPLEMENTATION OF ANY~~  
 6 NEW REQUIREMENTS OR STANDARDS ESTABLISHED UNDER REGULATIONS ADOPTED  
 7 UNDER THIS SECTION.

8 (E) The Department shall provide technical assistance, training, research, and  
 9 coordination in stormwater management technology to the local governments consistent  
 10 with the purposes of this subtitle.

11 **SUBTITLE 9. MISCELLANEOUS.**

12 **4-901.**

13 (A) THE DEPARTMENT SHALL SUBMIT TO THE U.S. ENVIRONMENTAL  
 14 PROTECTION AGENCY A CHESAPEAKE BAY TOTAL MAXIMUM DAILY LOAD PHASE  
 15 III WATERSHED IMPLEMENTATION PLAN CLIMATE LOAD ALLOCATION ADDENDUM  
 16 AND UPDATED 2-YEAR MILESTONES THAT FULLY OFFSET ADDITIONAL NITROGEN,  
 17 PHOSPHORUS, AND SEDIMENT LOADS ATTRIBUTABLE TO THE IMPACTS OF CLIMATE  
 18 CHANGE AS DETERMINED AND ALLOCATED BY THE CHESAPEAKE BAY PROGRAM.

19 (B) THE DEPARTMENT SHALL FULLY IMPLEMENT THE ADDENDUM AND  
 20 UPDATED MILESTONES UNDER SUBSECTION (A) OF THIS SECTION ON OR BEFORE  
 21 DECEMBER 31, 2025.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June  
 23 1, 2021.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.