SENATE BILL 227

M3 1lr1753 (PRE–FILED) CF HB 295

By: Senators Elfreth, Hester, and Pinsky

Requested: November 1, 2020

Introduced and read first time: January 13, 2021

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1	A TAT	AOT	•
T	AN	ACT	concerning

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

4 FOR the purpose of requiring the Department of the Environment to review and update 5 certain regulations with a certain frequency; requiring the Department to propose 6 the first update to certain regulations on or before a certain date; requiring the 7 Department to review and update certain regulations in a certain manner; requiring 8 the Department to take certain actions a certain amount of time before the proposal of regulations under this Act; altering the time by which the Department must hold 9 10 a certain public hearing; requiring the Department to incorporate certain 11 requirements and standards into certain permits; requiring the Department to 12 submit a certain addendum and certain milestones to the U.S. Environmental 13 Protection Agency; requiring the Department to fully implement the addendum and 14 milestones on or before a certain date; making stylistic changes and a technical 15 correction; and generally relating to water pollution in the State.

16 BY repealing and reenacting, with amendments,

17 Article – Environment

18 Section 4–203

19 Annotated Code of Maryland

(2013 Replacement Volume and 2020 Supplement)

21 BY adding to

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22 Article – Environment

23 Section 4–901 to be under the new subtitle "Subtitle 9. Miscellaneous"

24 Annotated Code of Maryland

25 (2013 Replacement Volume and 2020 Supplement)

26 Preamble

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

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

WHEREAS, The Watershed Implementation Plans (WIP) under the Bay TMDL are required to be submitted by Chesapeake Bay jurisdictions and play a critical role as part of the Chesapeake Bay accountability framework developed by the U.S. Environmental Protection Agency; and

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

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

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

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

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

33 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, 34 That the Laws of Maryland read as follows:

Article - Environment

- 1 The Department of the Environment shall implement the provisions of this 2 subtitle and shall consult the Department of Natural Resources from time to time. 3 including during the adoption of regulations, concerning the impact of stormwater on 4 waters of the State. 5 (b) **(1)** The Department shall adopt rules and regulations which establish 6 criteria and procedures for stormwater management in Maryland. 7 **(2)** The rules and regulations shall: 8 [(1)]**(I)** Indicate that the primary goal of the State and local programs 9 will be to maintain after development, as nearly as possible, the predevelopment runoff characteristics: 10 11 [(2)] (II) Make allowance for the difference in hydrologic characteristics 12 and stormwater management needs of different parts of the State; 13 [(3)] (III) Specify that watershed-wide analyses may be necessary to prevent undesirable downstream effects of increased stormwater runoff; 14 15 (4) (IV) Specify the exemptions a county or municipality may grant from the requirements of submitting a stormwater management plan; 16 17 [(5)](i) (V) 1. Specify the minimum content of the local 18 ordinances or the rules and regulations of the affected county governing body to be adopted which may be done by inclusion of a model ordinance or model rules and regulations; and 19 20 [(ii)] **2.** Establish regulations and a model ordinance that require: [1.] **A.** 21The implementation of environmental site design to 22the maximum extent practicable; 23[2.] **B.** The review and modification, if necessary, of planning and zoning or public works ordinances to remove impediments to environmental 2425site design implementation; and [3.] **C.** 26 A developer to demonstrate that [: 27 Environmental ENVIRONMENTAL site design has been Α. implemented to the maximum extent practicable[;] and 28
- [(6)] **(VI)** Indicate that water quality practices may be required for any redevelopment, even when predevelopment runoff characteristics are maintained;

Standard STANDARD best management practices have

[B.

been used only where absolutely necessary;

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storm events; and

- [(7)] (VII) Specify the minimum requirements for inspection and 1 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, physical, and biological integrity of the waters of the State; 13 14 [2.] **B.** Protect public health; [3.] C. 15 Safeguard fish and aquatic life and scenic and 16 ecological values; and [4.] **D**. 17 Enhance the domestic, municipal, recreational, 18 industrial, and other uses of water as specified by the Department; 19 Protect public safety through the proper design and $[(v)] \quad \mathbf{5}.$ 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
- 30 [(9) (i)] (IX) 1. Establish a comprehensive process for approving

increases in the frequency and magnitude of out-of-bank flooding from large, less frequent

1 grading and sediment control plans and stormwater management plans; and 2 [(ii)] **2.** Specify that the comprehensive process established under 3 item (i) of this item takes into account the cumulative impacts of both plans. THE DEPARTMENT SHALL: **(3)** (I)4 5 1. REVIEW AND UPDATE THE REGULATIONS ADOPTED 6 UNDER THIS SECTION AT LEAST ONCE EVERY 5 YEARS; AND 7 2. PROPOSE THE FIRST UPDATE TO THE REGULATIONS ON OR BEFORE JANUARY 1, 2022. 8 9 (II)IN REVIEWING AND UPDATING THE REGULATIONS ADOPTED 10 UNDER THIS SECTION, THE DEPARTMENT SHALL: 1. USE THE MOST RECENT PRECIPITATION DATA 11 12 AVAILABLE TO REVISE WATER QUALITY AND WATER QUANTITY CONTROL 13 STANDARDS; AND 2. UPDATE AND 14 REVISE THE REGULATIONS AS 15 NECESSARY TO MEET THE REQUIREMENTS OF THIS SUBTITLE. 16 (c) **(1)** AT LEAST 6 MONTHS BEFORE THE PROPOSAL OF REGULATIONS UNDER THIS SECTION, THE DEPARTMENT SHALL: 17 18 **(I)** POST THE REGULATORY PROCESS THAT THE DEPARTMENT FOLLOWS ON THE DEPARTMENT'S WEBSITE; AND 19 20 (II)CONSULT WITH THE FOLLOWING GROUPS AND 21STAKEHOLDERS ON THE IMPACT OF THE PROPOSED REGULATIONS: 22THE COMMISSION ON ENVIRONMENTAL JUSTICE 1. 23AND SUSTAINABLE COMMUNITIES; AND 242. STAKEHOLDERS WITH EXPERTISE ON STORMWATER DESIGN STANDARDS AND CLIMATE SCIENCE, INCLUDING STAKEHOLDERS FROM: 25 26 Α. AN ACADEMIC INSTITUTION; 27В. THE CHESAPEAKE BAY PROGRAM; AND

THE CHESAPEAKE BAY COMMISSION.

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- 1 (2) Before [the] ANY regulations required under this [subsection]
 2 SECTION are [final] ADOPTED, the Department shall hold at least one public hearing in
 3 the affected immediate geographic areas of the State and shall consult with the affected
 4 counties and municipalities.
- 5 (d) FOR A STORMWATER DISCHARGE PERMIT ISSUED UNDER § 9–323 OF
 6 THIS ARTICLE ON OR AFTER JANUARY 1, 2022, THE DEPARTMENT SHALL
 7 INCORPORATE ANY NEW REQUIREMENTS AND STANDARDS ESTABLISHED UNDER
 8 THE REGULATIONS ADOPTED UNDER SUBSECTION (B)(3)(I) OF THIS SECTION INTO
 9 THE PERMIT.
- 10 **(E)** The Department shall provide technical assistance, training, research, and coordination in stormwater management technology to the local governments consistent with the purposes of this subtitle.

SUBTITLE 9. MISCELLANEOUS.

14 **4–901.**

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- 15 (A) THE DEPARTMENT SHALL SUBMIT TO THE U.S. ENVIRONMENTAL 16 PROTECTION AGENCY A CHESAPEAKE BAY TOTAL MAXIMUM DAILY LOAD PHASE
- 17 III WATERSHED IMPLEMENTATION PLAN CLIMATE LOAD ALLOCATION ADDENDUM
- 18 AND UPDATED 2-YEAR MILESTONES THAT FULLY OFFSET ADDITIONAL NITROGEN,
- 19 PHOSPHORUS, AND SEDIMENT LOADS ATTRIBUTABLE TO THE IMPACTS OF CLIMATE
- 20 CHANGE AS DETERMINED AND ALLOCATED BY THE CHESAPEAKE BAY PROGRAM.
- 21 (B) THE DEPARTMENT SHALL FULLY IMPLEMENT THE ADDENDUM AND
- 22 UPDATED MILESTONES UNDER SUBSECTION (A) OF THIS SECTION ON OR BEFORE
- 23 **DECEMBER 31, 2025.**
- 24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
- 25 1, 2021.