

SENATE BILL 268

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(PRE-FILED)

4lr0315
CF 4lr0316

By: **Chair, Education, Energy, and the Environment Committee (By Request – Critical Area Commission)**

Requested: September 15, 2023

Introduced and read first time: January 10, 2024

Assigned to: Education, Energy, and the Environment

A BILL ENTITLED

1 AN ACT concerning

2 **Chesapeake and Atlantic Coastal Bays Critical Area Program – Enforcement**

3 FOR the purpose of altering the enforcement and after-the-fact application approval
4 procedures required as minimum elements of a local jurisdiction's Chesapeake and
5 Atlantic Coastal Bays Critical Area Program to apply to all critical area violations;
6 repealing a certain waiting period with which the Chair of the Critical Area
7 Commission for the Chesapeake and Atlantic Coastal Bays must comply before
8 referring certain enforcement matters to the Attorney General; expanding the
9 authority of the Attorney General to take certain equitable actions to include critical
10 area violations of an order, a permit, a plan, a local program, or the critical area law;
11 and generally relating to enforcement under the Chesapeake and Atlantic Coastal
12 Bays Critical Area Program.

13 BY repealing and reenacting, without amendments,
14 Article – Natural Resources
15 Section 8–1808(a)(1)
16 Annotated Code of Maryland
17 (2023 Replacement Volume and 2023 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Natural Resources
20 Section 8–1808(c)(1)(iii)15. and (4)(i) and (d)(7)(ii) and 8–1815(a)(2)(i) and (3), (b),
21 (d), and (e)
22 Annotated Code of Maryland
23 (2023 Replacement Volume and 2023 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Natural Resources

8–1808.

(a) (1) It is the intent of this subtitle that each local jurisdiction shall have primary responsibility for developing and implementing a program, subject to review and approval by the Commission.

(c) (1) (iii) At a minimum, a program shall contain all of the following elements, including:

15. [Administrative enforcement] **ENFORCEMENT** procedures in accordance with due process principles, including notice and an opportunity to be heard, and establishing that:

A. Each violation of this subtitle or of a regulation, rule, order, program, or other requirement adopted under the authority of this subtitle constitutes a separate offense;

B. Each calendar day that a violation continues constitutes a separate offense;

C. For each offense, a person shall be subject to separate fines, orders, sanctions, and other penalties;

D. [Civil penalties] **PENALTIES** for continuing violations shall accrue without a requirement for an additional assessment, notice, or opportunity for hearing for each separate offense;

E. On consideration of all the factors included under this subsection and any other factors in the local jurisdiction's approved program, the local jurisdiction shall impose the amount of the penalty;

F. Satisfaction of all conditions specified under paragraph (4) of this subsection shall be a condition precedent to the issuance of any permit, approval, variance, or special exception for the affected property; and

G. Unless an extension of time is appropriate because of adverse planting conditions, within 90 days of the issuance of a permit, approval, variance, or special exception for the affected property, any additional mitigation required as a condition of approval for the permit, approval, variance, or special exception shall be completed.

(4) A local jurisdiction may not issue a permit, approval, variance, or special exception unless the person seeking the permit, approval, variance, or special exception has:

1 (i) Fully paid all [administrative, civil, and criminal] penalties
2 imposed [under paragraph (1)(iii)15 of this subsection] **AS A RESULT OF THE CRITICAL**
3 **AREA VIOLATION;**

4 (d) (7) (ii) A local jurisdiction may not accept an application for a variance
5 to legalize a violation of this subtitle, including an unpermitted structure or development
6 activity, unless the local jurisdiction first issues a notice of violation, including assessment
7 of [an administrative or civil] A penalty, for the violation.

8 8-1815.

9 (a) (2) (i) A person who violates [a provision of] an order, permit, plan,
10 local program, this subtitle, or regulations adopted, approved, or issued under [the
11 authority of] this subtitle shall be:

12 1. Subject to prosecution or suit in circuit court or District
13 Court by the [chairman] **CHAIR** or local authorities, who may invoke the sanctions and
14 remedies afforded by State or local law;

15 2. Guilty of a misdemeanor; and

16 3. On conviction in a court of competent jurisdiction, subject
17 to a fine not exceeding \$10,000 or imprisonment not exceeding 90 days or both, with costs
18 imposed in the discretion of the court.

19 (3) A local authority may request:

20 (i) Assistance from the Commission in an enforcement action; or

21 (ii) That the [chairman] **CHAIR** refer an enforcement action to the
22 Attorney General.

23 (b) Whenever the [chairman] **CHAIR** has reason to believe that a local jurisdiction
24 is failing to enforce the requirements of a program applicable to a particular development,
25 the [chairman] **CHAIR** shall serve notice upon the local enforcement authorities[. If within
26 30 days after service of the notice, the local authorities have failed to initiate an action to
27 remedy or punish the violation, the chairman] **AND** may refer the matter to the Attorney
28 General.

29 (d) In addition to any other sanction or remedy available, the Attorney General
30 may bring an action in equity to compel compliance or restrain noncompliance with the
31 requirements of [approved project plans] **AN ORDER, A PERMIT, A PLAN, A LOCAL**
32 **PROGRAM, THIS SUBTITLE, OR REGULATIONS ADOPTED, APPROVED, OR ISSUED**
33 **UNDER THIS SUBTITLE**, and to compel restoration of lands or structures to their condition
34 prior to any modification which was done in violation of [approved project plans] **AN**
35 **ORDER, A PERMIT, A PLAN, A LOCAL PROGRAM, THIS SUBTITLE, OR REGULATIONS**

1 **ADOPTED, APPROVED, OR ISSUED UNDER THIS SUBTITLE.**

2 (e) Notwithstanding any other provision of this section, whenever a development
3 in the Critical Area is proceeding in violation of [approved project plans] **AN ORDER, A**
4 **PERMIT, A PLAN, A LOCAL PROGRAM, THIS SUBTITLE, OR REGULATIONS ADOPTED,**
5 **APPROVED, OR ISSUED UNDER THIS SUBTITLE** and threatens to immediately and
6 irreparably degrade the quality of tidal waters or fish, wildlife, or plant habitat, the
7 Attorney General, upon request of the [chairman] **CHAIR**, may bring an action to restrain
8 the violation and, as appropriate, to compel restoration of any land or water areas affected
9 by the development.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2024.