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3/27/24

**Testimony in SUPPORT of SB268–
Chesapeake and Atlantic Coastal Bays Critical Area Program - Enforcement**

To Chair Korman and Members of the Committee,

Thank you for this opportunity to submit testimony in **SUPPORT** of **SB268** on behalf of ShoreRivers. ShoreRivers is a river protection group on Maryland’s Eastern Shore with more than 2,500 members. Our mission is to protect and restore our Eastern Shore waterways through science-based advocacy, restoration, and education.

The Critical Area Program continues to be essential for protecting tidal waterways and wildlife habitat across Maryland. With no major update in more than 15 years and concerns over inadequate pollution control highlighted by the recent [CESR Report](#), released by the Bay Program’s Science and Technical Advisory Committee, **it is timely to improve the program’s ability to quickly respond to and address violations that threaten habitat and water quality in tidal waters of the Chesapeake.** Waterkeepers, through routine monitoring of the waterways we work to protect and restore, are often on the frontlines to witness Critical Area violations. When violations occur, it is essential that our Counties and our State Commission’s enforcement actions are as responsive as possible—to abate the impacts of pollution and/or loss of habitat, and enhance a culture of enforcement for the environmental sector. **SB268** will:

- Clarify that the Program’s 2008 enforcement provisions and procedures are not solely administrative;
- Clarify that Program’s penalties are not exclusively administrative, civil, or criminal;
- Eliminate the 30-day response period for enforcement;
- Clarify the conditions under which the Attorney General may bring an enforcement action to include all Critical Area law and regulations.

The state continues to recognize that the Critical Area has the highest potential for nutrient delivery¹: “In accordance with the Chesapeake Bay Watershed Implementation Plan, the standard nitrogen rate used to determine the nitrogen delivery rate to surface water is as follows: (1) An 80% delivery rate in Critical Area; (2) a 50% delivery rate within 1,000 feet from any perennial surface water; and (3) a 30% delivery rate from distances greater than 1,000 feet from any perennial surface.” It is fitting that our methods of enforcement and oversight be evaluated and improved to match the potential environmental impacts from violations in the Critical Area. **This General Assembly has worked to prioritize tree retention, buffers, and shoreline resiliency— enhancing protections for the Critical Area is at the heart of those efforts.** We commend the Critical Area Commission Staff for bringing this important update before you, and we look forward to this Committee giving **SB268 a favorable report.**

Sincerely,
Annie Richards, Chester Riverkeeper on behalf of:

¹ <https://mde.maryland.gov/programs/pressroom/pages/1243.aspx>

ShoreRivers

Isabel Hardesty, Executive Director

Annie Richards, Chester Riverkeeper | Matt Pluta, Choptank Riverkeeper

Ben Ford, Miles Wye Riverkeeper | Zack Kelleher, Sassafras Riverkeeper

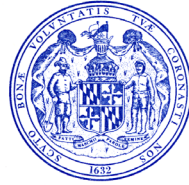
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Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

March 20, 2024

BILL NUMBER: Senate Bill 268

SHORT TITLE: Chesapeake and Atlantic Coastal Bays Critical Area Protection Program – Enforcement

DEPARTMENT’S POSITION: SUPPORT

EXPLANATION OF COMMISSION’S POSITION

The Commission supports SB 268. The Critical Area statute is implemented through local codes, subject to the oversight of the Critical Area Commission. This bill will modify existing statutory authority related to local enforcement procedures and enhance the Commission’s ability to assist with local enforcement actions when necessary.

BACKGROUND INFORMATION

The Critical Area law was last comprehensively updated by the General Assembly in 2008 and included additional enforcement procedures and authorities. Significant variety exists among Critical Area jurisdictions’ enforcement procedures and processes. The proposed technical amendments are necessary to accommodate all of the varied processes and procedures of the local Critical Area jurisdictions. Further, the proposed changes would clarify when and under what circumstances enforcement matters can be brought by the Office of the Attorney General, ensuring effective and consistent enforcement for all Critical Area violations.

BILL EXPLANATION

The proposed legislation will achieve the following:

1. Clarify the enforcement provisions, penalties, and after-the-fact variance procedures in a local jurisdictions’ Critical Area Program to ensure those authorities are consistent with a jurisdictions’ code or charter by eliminating the terms ‘administrative’, ‘civil’, and ‘criminal’;
2. Eliminate the 30-day waiting period after the Chair of the Commission notifies a local jurisdiction of its failure to enforce the requirements of a Critical Area Program; and

3. Clarify the conditions under which the Attorney General may bring an enforcement action for a violation of an order, permit, plan, local program, or Critical Area statute or regulation.