
By: **Delegate Frush (Chair, Joint Committee on the Chesapeake and Atlantic Coastal Bays Critical Area)**

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Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 2006

CHAPTER _____

1 AN ACT concerning

2 **Chesapeake and Atlantic Coastal Bays Critical Area Protection Program -**
3 **Critical Area Commission - Authority**

4 FOR the purpose of clarifying the authority of the Critical Area Commission and the
5 chairman regarding program amendments and program refinements; altering
6 the guidelines for local jurisdictions for the location of new intensely developed
7 and limited development areas; altering the Commission's approval process for
8 program amendments and program refinements; clarifying the procedures for
9 growth allocation requests by local jurisdictions; clarifying certain terms;
10 defining certain terms; and generally relating to the authority of the
11 Commission and the Chairman of the Chesapeake and Atlantic Coastal Bays
12 Critical Area Protection Program.

13 BY repealing and reenacting, with amendments,
14 Article - Natural Resources
15 Section 8-1802(a), 8-1808.1(c), and 8-1809(o), (p), and (q)
16 Annotated Code of Maryland
17 (2000 Replacement Volume and 2005 Supplement)

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

20 **Article - Natural Resources**

21 8-1802.

22 (a) (1) In this subtitle the following words have the meanings indicated.

1 (2) "Atlantic Coastal Bays" means the Assawoman, Isle of Wight,
2 Sinepuxent, Newport, and Chincoteague Bays.

3 (3) "Atlantic Coastal Bays Critical Area" means the initial planning area
4 identified under § 8-1807 of this subtitle.

5 (4) "Buffer" means an existing, naturally vegetated area, or an area
6 established in vegetation and managed to protect aquatic, wetlands, shoreline, and
7 terrestrial environments from man-made disturbances.

8 (5) "Chesapeake Bay Critical Area" means the initial planning area
9 identified under § 8-1807 of this subtitle.

10 (6) "Commission" means the Critical Area Commission for the
11 Chesapeake and Atlantic Coastal Bays established in this subtitle.

12 (7) "Critical Area" means the Chesapeake Bay Critical Area and the
13 Atlantic Coastal Bays Critical Area.

14 (8) "DEVELOPER" MEANS:

15 (I) A PERSON WHO UNDERTAKES DEVELOPMENT AS DEFINED IN
16 THIS SECTION; OR

17 (II) A PERSON WHO UNDERTAKES DEVELOPMENT ACTIVITIES AS
18 DEFINED IN THE CRITERIA OF THE COMMISSION.

19 (9) "Development" means any activity that materially affects the
20 condition or use of dry land, land under water, or any structure.

21 [(9)] (10) (i) "Dwelling unit" means a single unit providing complete,
22 independent living facilities for at least one person, including permanent provisions
23 for sanitation, cooking, eating, sleeping, and other activities routinely associated with
24 daily life.

25 (ii) "Dwelling unit" includes a living quarters for a domestic or
26 other employee or tenant, an in-law or accessory apartment, a guest house, or a
27 caretaker residence.

28 [(10)] (11) "Growth allocation" means the number of acres of land in the
29 Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area that a local
30 jurisdiction may use to create new intensely developed areas and new limited
31 development areas.

32 [(11)] (12) "Includes" means includes or including by way of illustration
33 and not by way of limitation.

34 [(12)] (13) "Land classification" means the designation of land in the
35 Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in accordance
36 with the criteria adopted by the Commission as an intensely developed area or

1 district, a limited development area or district, or a resource conservation area or
2 district.

3 [(13)] (14) "Local jurisdiction" means a county, or a municipal corporation
4 with planning and zoning powers, in which any part of the Chesapeake Bay Critical
5 Area or the Atlantic Coastal Bays Critical Area, as defined in this subtitle, is located.

6 [(14)] (15) (i) "Program" means the critical area protection program of a
7 local jurisdiction.

8 (ii) "Program" includes any amendments to the program.

9 [(15)] (16) (i) "Program amendment" means any change OR PROPOSED
10 CHANGE to an adopted program [that the Commission determines will result in a use
11 of land or water in the Chesapeake Bay Critical Area or the Atlantic Coastal Bays
12 Critical Area in a manner not provided for in the adopted program] THAT IS NOT
13 DETERMINED BY THE COMMISSION CHAIRMAN TO BE A PROGRAM REFINEMENT.

14 (ii) "Program amendment" includes a change to a zoning map that
15 is not consistent with the method for using the growth allocation contained in an
16 adopted program.

17 [(16)] (17) (i) "Program refinement" means any change OR PROPOSED
18 CHANGE to an adopted program that the Commission CHAIRMAN determines will
19 result in a use of land or water in the Chesapeake Bay Critical Area or the Atlantic
20 Coastal Bays Critical Area in a manner consistent with the adopted program, OR
21 THAT WILL NOT SIGNIFICANTLY AFFECT THE USE OF LAND OR WATER IN THE
22 CRITICAL AREA.

23 (ii) "Program refinement" [includes] MAY INCLUDE:

24 1. A change to [a zoning map that is consistent with the
25 development area designation of] an adopted program THAT RESULTS FROM STATE
26 LAW; [and]

27 2. [The use of the growth allocation in accordance with an
28 adopted program] A CHANGE TO AN ADOPTED PROGRAM THAT AFFECTS LOCAL
29 PROCESSES AND PROCEDURES;

30 3. A CHANGE TO A LOCAL ORDINANCE OR CODE THAT
31 CLARIFIES AN EXISTING PROVISION; AND

32 4. A MINOR CHANGE TO AN ELEMENT OF AN ADOPTED
33 PROGRAM THAT IS CLEARLY CONSISTENT WITH THE PROVISIONS OF THIS SUBTITLE
34 AND ALL OF THE CRITERIA OF THE COMMISSION.

35 [(17)] (18) (i) "Project approval" means the approval of development,
36 other than development by a State or local government agency, in the Chesapeake
37 Bay Critical Area or the Atlantic Coastal Bays Critical Area by the appropriate local
38 approval authority.

- 1 (ii) "Project approval" includes:
- 2 1. Approval of subdivision plats and site plans;
- 3 2. Inclusion of areas within floating zones;
- 4 3. Issuance of variances, special exceptions, and conditional
- 5 use permits; and
- 6 4. Approval of rezoning.

7 (iii) "Project approval" does not include building permits.

8 8-1808.1.

9 (c) (1) When locating new intensely developed or limited development areas,
 10 local jurisdictions {shall use the following guidelines:} ~~AND THE COMMISSION SHALL~~
 11 ~~ENSURE THAT THE GUIDELINES IN THIS SUBSECTION HAVE BEEN APPLIED IN A~~
 12 ~~MANNER THAT IS CONSISTENT WITH THE COMMISSION'S PURPOSE, POLICIES, GOALS,~~
 13 ~~ALL CRITERIA, AND THE PROVISIONS OF THIS SUBTITLE.~~

14 ~~(2) THE GUIDELINES FOR LOCATING NEW INTENSELY DEVELOPED OR~~
 15 ~~LIMITED DEVELOPMENT AREAS ARE AS FOLLOWS:~~

16 [(1) New intensely developed areas should be located in limited
 17 development areas or adjacent to existing intensely developed areas;

18 (2) New limited development areas should be located adjacent to existing
 19 limited development areas or intensely developed areas;]

20 (I) LOCATE A NEW INTENSELY DEVELOPED AREA ~~SHOULD BE~~
 21 ~~LOCATED~~ IN A LIMITED DEVELOPMENT AREA OR ADJACENT TO AN EXISTING
 22 INTENSELY DEVELOPED AREA;

23 (II) LOCATE A NEW LIMITED DEVELOPMENT AREA ~~SHOULD BE~~
 24 ~~LOCATED~~ ADJACENT TO AN EXISTING LIMITED DEVELOPMENT AREA OR AN
 25 INTENSELY DEVELOPED AREA;

26 (III) LOCATE A NEW LIMITED DEVELOPMENT AREA OR AN
 27 INTENSELY DEVELOPED AREA ~~SHOULD BE LOCATED~~ IN A MANNER THAT MINIMIZES
 28 IMPACTS TO A HABITAT PROTECTION AREA AS DEFINED IN COMAR 27.01.09, AND IN
 29 AN AREA AND MANNER THAT OPTIMIZES BENEFITS TO WATER QUALITY; AND

30 (IV) LOCATE A NEW INTENSELY DEVELOPED AREA OR A LIMITED
 31 DEVELOPMENT AREA ~~TO BE LOCATED~~ IN A RESOURCE CONSERVATION AREA
 32 ~~SHOULD BE LOCATED~~ AT LEAST 300 FEET BEYOND THE LANDWARD EDGE OF TIDAL
 33 WETLANDS OR TIDAL WATERS;

34 [(3)] (V) Except as provided in [paragraph (5)] ITEM (VII) of this
 35 [subsection] PARAGRAPH, no more than one-half of the expansion allocated in the
 36 criteria of the Commission may be located in resource conservation areas;

1 [(4)] (VI) New intensely developed or limited development areas to be
 2 located in the resource conservation area shall conform to all criteria of the
 3 Commission [for intensely developed or limited development areas] and shall be
 4 designated on the comprehensive zoning map submitted by the local jurisdiction as
 5 part of its application to the Commission for program approval or at a later date in
 6 compliance with § 8-1809(g) of this subtitle; and

7 [(5)] (VII) In Calvert, Caroline, Cecil, Charles, Dorchester, Kent, Queen
 8 Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester counties, if the county
 9 is unable to utilize a portion of the growth allocated to the county in [paragraphs (1)
 10 and (2)] ~~THIS PARAGRAPH OR PARAGRAPH (1) OF THIS SUBSECTION~~ ITEMS (I) AND (II) OF
 11 THIS PARAGRAPH within or adjacent to existing intensely developed or limited
 12 development areas as demonstrated in the local plan approved by the Commission,
 13 then that portion of the allocated expansion which cannot be so located may be
 14 located in the resource conservation area in addition to the expansion allocated in
 15 [paragraph (3) of this subsection] ~~ITEM (IV)~~ (V) OF THIS PARAGRAPH. A developer
 16 shall be required to cluster any development in an area of expansion authorized
 17 under this paragraph.

18 (2) THE COMMISSION SHALL ENSURE THAT THE GUIDELINES IN
 19 PARAGRAPH (1) OF THIS SUBSECTION HAVE BEEN APPLIED IN A MANNER THAT IS
 20 CONSISTENT WITH THE PURPOSES, POLICIES, GOALS, AND PROVISIONS OF THIS
 21 SUBTITLE, AND ALL CRITERIA OF THE COMMISSION.

22 8-1809.

23 (o) (1) For proposed program amendments, a Commission panel shall hold a
 24 public hearing in the local jurisdiction, and the Commission shall act on the proposed
 25 program amendment within 90 days of the Commission's acceptance of the proposal.
 26 If action by the Commission is not taken within 90 days, the proposed program
 27 amendment is deemed approved.

28 (2) THE COMMISSION SHALL DETERMINE IF THE PROPOSED
 29 AMENDMENT IS CONSISTENT WITH THE COMMISSION'S PURPOSE PURPOSES,
 30 POLICIES, GOALS, ~~ALL CRITERIA, AND~~ AND THE PROVISIONS OF THIS SUBTITLE, AND
 31 ALL CRITERIA OF THE COMMISSION.

32 (3) IN ACCORDANCE WITH THE COMMISSION'S DETERMINATION IN
 33 PARAGRAPH (2) OF THIS SUBSECTION, THE COMMISSION SHALL:

34 (I) APPROVE THE PROPOSED PROGRAM AMENDMENT AND NOTIFY
 35 THE LOCAL JURISDICTION;

36 (II) DENY THE PROPOSED PROGRAM AMENDMENT;

37 (III) APPROVE THE PROPOSED PROGRAM AMENDMENT SUBJECT TO
 38 ONE OR MORE CONDITIONS; OR

39 (IV) RETURN THE PROPOSED PROGRAM AMENDMENT TO THE
 40 LOCAL JURISDICTION WITH A LIST OF THE CHANGES TO BE MADE.

1 (4) IF THE COMMISSION APPROVES A PROPOSED PROGRAM
 2 AMENDMENT SUBJECT TO ONE OR MORE CONDITIONS UNDER ITEM (3)(III) OF THIS
 3 SUBSECTION, THE LOCAL JURISDICTION SHALL NOTIFY THE COMMISSION WITHIN ~~30~~
 4 60 DAYS OF ITS INTENT TO ~~COMPLY WITH~~ ADOPT THE CONDITIONS.

5 [(2)] (5) The local jurisdiction shall incorporate the approved program
 6 amendment AND ANY REQUIRED CONDITIONS into the adopted program within 120
 7 days of receiving notice from the Commission that the program amendment has been
 8 approved.

9 (p) (1) Proposed program refinements shall be determined as provided in
 10 this subsection.

11 (2) (i) Within 30 days of the Commission's acceptance of a proposal to
 12 change an adopted program, the chairman, on behalf of the Commission, may
 13 determine that the proposed change is a program refinement. Immediately upon
 14 making a determination under this paragraph, the chairman shall notify the
 15 Commission of that determination.

16 (ii) If a proposed change that was specifically submitted as a
 17 program refinement is not acted on by the chairman within the 30-day period, the
 18 Commission shall notify the appropriate local jurisdiction that the proposed change
 19 has been deemed to be a program amendment.

20 (3) (i) The Commission may vote to override the chairman's
 21 determination only at the first Commission meeting where a quorum is present
 22 following the chairman's determination.

23 (ii) If the chairman's determination is overridden, the proposed
 24 change is deemed a program amendment, which shall be decided by the Commission
 25 in accordance with the procedures for program amendments provided in this section,
 26 except that the Commission shall act on the program amendment within 60 days
 27 after a vote to override the chairman.

28 (iii) If the chairman's determination is not overridden, within 10
 29 working days after the opportunity to override the chairman's decision under item (i)
 30 of this paragraph, the chairman, on behalf of the Commission, shall:

31 1. DETERMINE IF THE PROGRAM REFINEMENT IS
 32 CONSISTENT WITH THE PURPOSES, POLICIES, GOALS, AND PROVISIONS OF THIS
 33 SUBTITLE, AND ALL CRITERIA OF THE COMMISSION; AND

34 ~~1.~~ 2. A. Approve the proposed program refinement and
 35 notify the local jurisdiction;

36 ~~2.~~ B. Deny the program refinement; [or]

37 ~~3.~~ C. [Send the proposed program refinement back to the
 38 local jurisdiction with a list of specific changes to be made] APPROVE THE PROPOSED
 39 PROGRAM REFINEMENT SUBJECT TO ONE OR MORE CONDITIONS; OR

1 4- D. RETURN THE PROPOSED PROGRAM REFINEMENT
2 BACK TO THE LOCAL JURISDICTION WITH A LIST OF THE CHANGES TO BE MADE.

3 (iv) [Within 10 working days of receiving a changed program
4 refinement changed in accordance with item (iii)3 of this paragraph, the chairman
5 shall approve or deny the program refinement.] IF THE COMMISSION APPROVES A
6 PROPOSED PROGRAM REFINEMENT SUBJECT TO ONE OR MORE CONDITIONS UNDER
7 ITEM (III)3 OF THIS PARAGRAPH, THE LOCAL JURISDICTION SHALL NOTIFY THE
8 COMMISSION WITHIN ~~30~~ 60 DAYS OF ITS INTENT TO ~~COMPLY WITH~~ ADOPT THE
9 CONDITIONS.

10 (4) A local jurisdiction shall incorporate an approved program
11 refinement AND ANY REQUIRED CONDITIONS into its adopted program within 120
12 days of receiving notice from the chairman that the program refinement has been
13 approved.

14 (q) (1) (I) As necessary, a local jurisdiction may combine any or all
15 proposed program amendments or program refinements required for a specific project
16 approval into a single request to the Commission for program amendment, program
17 refinement, or both.

18 (II) THE COMMISSION SHALL ENSURE THAT ANY REQUESTS
19 RECEIVED IN ACCORDANCE WITH THIS PARAGRAPH ARE CONSISTENT WITH THE
20 PURPOSES, POLICIES, GOALS, AND PROVISIONS OF THIS SUBTITLE, AND ALL
21 CRITERIA OF THE COMMISSION.

22 (2) A PROJECT FOR WHICH A LOCAL JURISDICTION REQUESTS GROWTH
23 ALLOCATION MAY BE SUBMITTED AS A PROPOSED PROGRAM AMENDMENT,
24 PROGRAM REFINEMENT, OR BOTH.

25 (3) Approval by the Commission of a program amendment, program
26 refinement, or both does not affect the Commission's authority to receive notice of or
27 intervene in a project approval that was not specifically approved by the Commission
28 as part of its approval of a program amendment or program refinement.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 June 1, 2006.