

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 1126 (Delegate Frush)
(Chair, Joint Committee on the Chesapeake and Atlantic Coastal Bays
Critical Area)

Environmental Matters

Education, Health, and Environmental Affairs

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

This bill makes various changes to the Chesapeake and Atlantic Coastal Bays Critical Area law. The bill: (1) modifies provisions relating to the review of a local jurisdiction's proposed use of growth allocation; (2) modifies provisions relating to the decision process for amendments and refinements of local programs; (3) establishes a definition for "developer" to provide that any person who undertakes development activities within the Critical Area is considered a developer; and (4) modifies the definitions of "program amendment" and "program refinement" to eliminate ambiguity in the current definitions and conform the definitions to the procedural requirements of the Critical Area law.

The bill takes effect June 1, 2006.

Fiscal Summary

State Effect: The bill would not materially affect State operations or finances.

Local Effect: The bill would not materially affect local government finances. In Talbot and Calvert counties, the bill re-establishes historical policies and procedures to be consistent with other local critical area programs. In other counties, the bill codifies current practice.

Small Business Effect: Minimal or none.

Analysis

Current Law/Background:

Growth Allocation Review

Under current law, a local jurisdiction's proposed use of growth allocation is subject to Critical Area Commission review and approval as a proposed change to the local critical area program. The commission is required to review program amendments and to approve those that meet specified standards and criteria. The Circuit Court for Talbot County held that the commission could not ensure that a proposed growth allocation in St. Michaels met the goals of the Critical Area law and the requirements of the commission's criteria. Accordingly, the court ruling created an inconsistency between the standards under which the commission reviews program amendments in Talbot County and the standards for all other local critical area jurisdictions. The bill's changes clarify the commission's role in reviewing growth allocation proposals and explain how the local jurisdictions and the commission apply the standards of review.

Decision Process for Amendments and Refinements

The bill provides that the commission may approve a proposed critical area program amendment or refinement subject to one or more conditions, and that the commission has the ability to inform local governments of the changes or conditions upon which a proposed amendment or refinement can be approved. The bill's changes are intended to ensure the continuation of the commission's practice of identifying conditions upon which a local program amendment can be approved. The Circuit Court for Talbot County ruled that the commission may not attach conditions to its approval of a local program amendment. This decision removes, for Talbot County only, the commission's flexibility to work with local governments and to ensure that changes to local critical area programs are enacted with a minimum of delay. Because of the court decision, the commission must now deny approval to any proposed amendment to the Talbot County critical area program if the proposed amendment has any defect, no matter how minor. This is inconsistent with the commission's ability to approve amendments from other local jurisdictions with conditions.

Definition of Developer

Under current law, "development" means any activity that materially affects the condition or use of dry land, land under water, or any structure. Under current regulations, "development activities" means the construction or substantial alteration of residential, commercial, industrial, institutional, or transportation facilities or structures.

The Circuit Court for Calvert County held that a property owner who authorized unlawful cutting of trees in the Critical Area was not a developer and that, accordingly, the tree cutting did not constitute “development activities” under the local critical area ordinance. The court stated that the ordinances covered “owners trading as developers.” Establishing a definition for “developer” will tie the three definitions together to make it clear that any person who undertakes specified activities falls within the purview of the statute.

Definitions of Program Amendment and Program Refinement

Under current law, the Critical Area Commission is directed to treat a local jurisdiction’s proposed program change as a program amendment unless the chairman determines that the proposed change is a program refinement. Current law gives the chairman, on behalf of the commission, 30 days from acceptance of a proposed program change to determine that the proposed change is a program refinement. The current definitions of “program amendment” and “program refinement” do not provide meaningful guidance to the public or to the local jurisdictions as to which proposed changes may be processed as program refinements. A recent Talbot County circuit court case questioned the commission’s processing of a local program change as an amendment rather than as a refinement, despite the fact that the decision on whether a change is a refinement is within the chairman’s authority. The court stated that, as it read the definitions under current law, the local jurisdiction’s request might have more properly been regarded as a program refinement. The bill’s changes intend to make the definitions consistent with the chairman’s authority.

Additional Information

Prior Introductions: None.

Cross File: SB 751 (Senator Dyson) – Education, Health, and Environmental Affairs.

Information Source(s): Department of Natural Resources (Critical Area Commission), Maryland Department of Planning, Maryland Department of the Environment, Talbot County, Charles County, Montgomery County, Frederick County, Department of Legislative Services

Fiscal Note History: First Reader - February 23, 2006
ncs/ljm

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