

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 58 (Delegate Haddaway-Riccio)
Environmental Matters

**Talbot County - Chesapeake Bay Critical Area - Prosecution or Civil Suit for
Certain Violations**

This bill requires a criminal prosecution or a suit for a civil penalty for an offense that occurs in the Chesapeake Bay Critical Area in Talbot County to be brought within three years if the criminal prosecution or civil penalty suit is for a violation of a local law that relates to environmental protection or natural resource conservation, including a local law regulating grading, sediment control, stormwater management, zoning, construction, or health and public safety. The three-year statute of limitations begins to run once the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays or the local authorities in fact knew or reasonably should have known of the violation.

The bill applies prospectively to offenses occurring on or after the bill's October 1, 2014 effective date.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues from fines imposed in District Court cases instituted under the bill's extended statute of limitations. The number of additional cases is not expected to be substantial.

Local Effect: Minimal increase in local revenues to the extent that additional civil fines/penalties for applicable violations are levied as a result of the bill. Potential minimal increase in local incarceration expenditures from sentences imposed in Talbot County criminal prosecutions instituted under the bill's extended statute of limitations. Despite the expected benefit to the county of being able to prosecute additional cases in specific situations, the number of additional cases is not expected to be substantial.

Small Business Effect: Potential meaningful impact on small businesses that are (1) contracted to mitigate violations or (2) issued substantial fines in cases brought under the bill's extended statute of limitations.

Analysis

Current Law: In general, State law specifies that the prosecution of a misdemeanor or a prosecution or suit for a fine, penalty, or forfeiture must be instituted within one year after the offense was committed.

However, there are several exceptions to these general rules, including an exception for the prosecution of the criminal offenses listed in the bill if the offenses occur in the Chesapeake Bay Critical Area in Anne Arundel County. Those prosecutions are subject to a three-year statute of limitations that begins to run with the commission of the offense. The exception does not apply to a suit for a civil penalty.

Also, a criminal prosecution or a suit for a civil penalty for violation of a provision of an order, permit, plan, local critical area program, laws governing the Critical Area program under the Natural Resources Article, or regulations adopted, approved, or issued under the authority of those laws must be instituted within three years after the Critical Area Commission or the local authorities in fact knew or reasonably should have known of the violation.

Under § 58-10.1 of the Talbot County Code, a violator of any provision of the Critical Area Program, including a contractor, property owner, or any other person who committed or helped facilitate the violation, is subject to a civil penalty not to exceed \$10,000 per violation, per day. This penalty is in addition to any other penalty applicable under State or local law. Each violation of the Critical Area Program or of any county ordinance, regulation, rule, administrative order, or other requirement concerning the Critical Area Program is considered a separate offense. Also, each day that a violation continues constitutes a separate offense. Civil penalties for continuing violations accrue for each day each violation continues.

Talbot County uses the following criteria to determine the amount of a civil penalty for a violation of the Critical Area Program: (1) the gravity of the violation; (2) the willfulness or negligence, if any, of the violation; (3) the environmental impact of the violation; and (4) the cost to restore the affected resource, mitigation for damage to that resource, and costs to the State and county for performing, supervising, or assisting with restoration and mitigation.

Offenses eligible for the bill's extended statute of limitations that are not considered violations of the Critical Area Program are punishable by a civil penalty of \$1,000 per day under § 58-5 of the Talbot County Code. The amount of the civil penalty for each violation, including each continuing violation, must be determined separately and the amount of the civil penalty must be determined for each day of the violation. The Chief Code Compliance Officer must consider the following factors when determining the amount of a civil penalty: (1) the severity of the violation; (2) the presence or absence of good faith of the violator; and (3) any history of prior violations.

In addition to civil penalties, some of the offenses subject to the bill may also carry criminal penalties under local laws. For example, a violation of the county's stormwater laws is a misdemeanor, punishable by imprisonment for up to one year and/or a fine of \$5,000 for each violation, with a maximum total fine of \$50,000.

Background: The Chesapeake Bay Critical Area Protection Program was established by Chapter 794 of 1984 to minimize damage to water quality and wildlife habitat by fostering more sensitive development activity along the shoreline of the Chesapeake Bay and its tributaries. The law identified the Critical Area as all land within 1,000 feet of the mean high water line of tidal waters or the landward edge of tidal wetlands and all waters of and lands under the Chesapeake Bay and its tributaries. In 2002, the program was expanded to include the Atlantic Coastal Bays. Under current law, the 1,000-foot wide Critical Area encompasses approximately 680,000 acres (or roughly 11% of the land area in the State) and spans 64 local jurisdictions (16 counties, Baltimore City, and 47 other municipalities).

The 1984 legislation also created a statewide Chesapeake Bay Critical Area Commission (now called the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays) that oversees the development and implementation of local land use programs dealing with the Critical Area. Each local jurisdiction is charged with the primary responsibility for development and implementation of its own local program; that local authority, however, is subject to commission review and approval.

According to the Department of Natural Resources (DNR), approximately 48% of the land area of Talbot County is located within the Critical Area. Examples of offenses covered by the bill that tend to occur in the Critical Area include tree clearing and building patios or driveways in excess of the lot coverage limits on paved surfaces within the Critical Area. DNR also reports that local authorities try to work with property owners to secure compliance with Critical Area laws through various avenues, such as the permitting process or mitigation.

Additional Information

Prior Introductions: None.

Cross File: SB 73 (Senator Colburn) - Education, Health, and Environmental Affairs.

Information Source(s): Talbot County, Department of Natural Resources, Maryland Department of Planning, Maryland Department of the Environment, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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