

HOUSE BILL 1259

M1

11r2794

By: **Delegate Frush**

Introduced and read first time: February 22, 2011

Assigned to: Rules and Executive Nominations

Re-referred to: Environmental Matters, March 7, 2011

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 24, 2011

CHAPTER _____

1 AN ACT concerning

2 **Chesapeake and Atlantic Coastal Bays Critical Area – ~~Junk or Scrap Storage~~**
3 **~~or Yards – Regulations~~ Prohibition – Junk and Scrap Metal Facilities**

4 FOR the purpose of ~~requiring regulations adopted by the Critical Area Commission for~~
5 ~~the Chesapeake and Atlantic Coastal Bays to prohibit, subject to a certain~~
6 ~~exception, the placement in the critical area of newly establish junk or scrap~~
7 ~~storage or yards; and generally relating to the regulation of junk or scrap~~
8 ~~storage or yards~~ requiring certain local critical area programs to, with a certain
9 exception, prohibit the location of junk yards, scrap storage yards, and other
10 scrap metal facilities in the Chesapeake and Atlantic Coastal Bays Critical
11 Area; and generally relating to a prohibition on the location of junk yards, scrap
12 storage yards, and other scrap metal facilities in the Chesapeake and Atlantic
13 Coastal Bays Critical Area.

14 BY repealing and reenacting, with amendments,
15 Article – Natural Resources
16 Section ~~8-1806(b)~~ 8-1808(c)(1)
17 Annotated Code of Maryland
18 (2007 Replacement Volume and 2010 Supplement)

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

21 **Article – Natural Resources**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 ~~§ 1806.~~

2 (b) ~~Regulations adopted or amended under subsection (a)(1) of this section~~
3 ~~shall:~~

4 (1) ~~Establish comprehensive standards and procedures for:~~

5 (i) ~~Buffer establishment, maintenance, measurement,~~
6 ~~mitigation, and enforcement;~~

7 (ii) ~~Buffer exemption areas;~~

8 (iii) ~~Impacts of shore erosion control activities on the buffer;~~

9 (iv) ~~Community piers;~~

10 (v) ~~Commercial marinas;~~

11 (vi) ~~Water dependent facilities;~~

12 (vii) ~~Public water access;~~

13 (viii) ~~The protection and conservation of the buffer as a State~~
14 ~~water quality and habitat resource essential to the restoration of the Chesapeake and~~
15 ~~Atlantic Coastal Bays;~~

16 (ix) ~~Mapping the critical area, with respect to revision of the~~
17 ~~1,000-foot boundary and voluntary additions of property to the critical area;~~

18 (x) ~~Development in the critical area, with respect to:~~

19 1. ~~Clearing, grading, and construction activity;~~

20 2. ~~Clustering to promote conservation of natural site~~
21 ~~features;~~

22 3. ~~Flexibility for redevelopment;~~

23 4. ~~Stormwater management;~~

24 5. ~~Application of the 10% pollutant reduction rule;~~

25 6. ~~Forest and developed woodlands protections;~~

26 7. ~~Clearing of natural vegetation;~~

- 1 ~~1. Notification of project applications;~~
- 2 ~~2. The 6-year comprehensive review of a local critical~~
3 ~~area program;~~
- 4 ~~3. For a State or local government development activity:~~
- 5 ~~A. Public notice, including notice to be published in a~~
6 ~~newspaper of general circulation in the area where the proposed development activity~~
7 ~~would occur; and~~
- 8 ~~B. An opportunity for public comment in the local~~
9 ~~jurisdiction in which the proposed development activity would be located;~~
- 10 ~~4. Reporting requirements;~~
- 11 ~~5. The submission and processing of a proposed program~~
12 ~~amendment or refinement; and~~
- 13 ~~6. Provisions applicable to areas requested for exclusion~~
14 ~~from the critical area;~~
- 15 ~~(xv) In consultation with the Department of the Environment,~~
16 ~~surface mining in the critical area; and~~
- 17 ~~(xvi) The application for and processing of a variance, with~~
18 ~~respect to:~~
- 19 ~~1. Amending a variance application;~~
- 20 ~~2. Advance notice to the Commission;~~
- 21 ~~3. The contents of a complete variance application;~~
- 22 ~~4. Ensuring that Commission recommendations are~~
23 ~~made part of the variance record;~~
- 24 ~~5. The use of variance standards; and~~
- 25 ~~6. Notice of a variance decision; [and]~~

26 ~~(2) EXCEPT FOR A CONTINUOUS PROCESS OF LOADING OR~~
27 ~~UNLOADING SHIPMENTS OF PROCESSED METAL DURING TRANSFER TO OR FROM~~
28 ~~A DOCKED VESSEL, PROHIBIT THE PLACEMENT IN THE CRITICAL AREA OF~~
29 ~~NEWLY ESTABLISHED JUNK OR SCRAP STORAGE OR YARDS; AND~~

1 ~~(3) Provide flexibility wherever possible in order to accommodate~~
2 ~~variations among local programs.~~

3 8-1808.

4 (c) (1) (i) Notwithstanding any provision in a local law or ordinance,
5 or the lack of a provision in a local law or ordinance, all of the requirements of this
6 subtitle shall apply to, and be applied by, a local jurisdiction as minimum standards
7 for a program sufficient to meet the goals of the Critical Area Program.

8 (ii) With the approval of the Commission, a local jurisdiction
9 may establish procedures for the granting of an administrative variance.

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

12 1. A map designating the critical area in a local
13 jurisdiction;

14 2. A comprehensive zoning map for the critical area;

15 3. As necessary, new or amended provisions of the
16 jurisdiction's:

17 A. Subdivision regulations;

18 B. Comprehensive or master plan;

19 C. Zoning ordinances or regulations;

20 D. Provisions relating to enforcement; and

21 E. Provisions as appropriate relating to grandfathering
22 of development at the time the program is adopted or approved by the Commission,
23 including provisions for bringing lands into conformance with the Program as required
24 under item 12 of this subparagraph;

25 4. Provisions requiring that:

26 A. Project approvals shall be based on findings that
27 projects are consistent with the standards stated in subsection (b) of this section; and

28 B. The Commission shall receive written notice of local
29 decisions regarding project approvals or denials in accordance with local procedures
30 approved by the Commission;

1 5. Provisions to limit lot coverage and to require or
2 encourage cluster development, where necessary or appropriate;

3 6. Establishment of buffer areas along shorelines within
4 which agriculture will be permitted only if best management practices are used,
5 provided that structures or any other use of land which is necessary for adjacent
6 agriculture shall also be permitted in any buffer area;

7 7. Requirements for minimum setbacks for structures
8 and septic fields along shorelines, including the establishment of a minimum buffer
9 landward from the mean high water line of tidal waters, tributary streams, and tidal
10 wetlands;

11 8. Designation of shoreline areas, if any, that are
12 suitable for parks, hiking, biking, wildlife refuges, scenic drives, public access or
13 assembly, and water-related recreation such as boat slips, piers, and beaches;

14 9. Designation of shoreline areas, if any, that are
15 suitable for ports, marinas, and industries that use water for transportation or derive
16 economic benefits from shore access;

17 10. Provisions requiring that all harvesting of timber in
18 the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area be in
19 accordance with plans approved by the district forestry board;

20 11. Provisions for reasonable accommodations in policies
21 or procedures when the accommodations are necessary to avoid discrimination on the
22 basis of physical disability, including provisions that authorize a local jurisdiction to
23 require removal of a structure that was installed or built to accommodate a physical
24 disability and require restoration when the accommodation permitted by this
25 paragraph is no longer necessary;

26 12. Procedures, including consolidation or reconfiguration
27 of lots, that shall be approved by the Commission and assure that the following lots
28 and lands are brought into conformance with the Program to the extent possible;

29 A. In the Chesapeake Bay Critical Area, any legal parcel
30 of land, not being part of a recorded or approved subdivision, that was recorded as of
31 December 1, 1985;

32 B. In the Chesapeake Bay Critical Area, land that was
33 subdivided into recorded legally buildable lots, where the subdivision received the
34 local jurisdiction's final approval before June 1, 1984;

35 C. In the Atlantic Coastal Bays Critical Area, any legal
36 parcel of land, not being part of a recorded or approved subdivision, that was recorded
37 as of June 1, 2002; and

1 D. In the Atlantic Coastal Bays Critical Area, land that
2 was subdivided into recorded legally buildable lots, where the subdivision received the
3 local jurisdiction's final approval before June 1, 2002;

4 13. Except as provided in subsection (d) of this section,
5 provisions for granting a variance to the local jurisdiction's critical area program, in
6 accordance with regulations adopted by the Commission concerning variances set forth
7 in COMAR 27.01.11;

8 14. Penalty provisions establishing that, in addition to
9 any other penalty applicable under State or local law, each person who violates a
10 provision of this subtitle or of a program, including a contractor, property owner, or
11 any other person who committed, assisted, authorized, or participated in the violation
12 is subject to a fine not exceeding \$10,000; [and]

13 15. Administrative enforcement procedures in accordance
14 with due process principles, including notice and an opportunity to be heard, and
15 establishing that:

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

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

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

23 D. Civil penalties for continuing violations shall accrue
24 without a requirement for an additional assessment, notice, or opportunity for hearing
25 for each separate offense;

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

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

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

1 **16. EXCEPT FOR THE TRANSFER OF PROCESSED**
 2 **METAL TO OR FROM A DOCKED VESSEL, A PROHIBITION ON THE LOCATION OF A**
 3 **JUNK YARD, SCRAP STORAGE YARD, OR OTHER SCRAP METAL FACILITY IN THE**
 4 **CRITICAL AREA.**

5 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
 6 effect October 1, 2011.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.