HOUSE BILL 295

M3 1lr1399
(PRE–FILED) CF SB 227

By: **Delegates Love and Henson**
Requested: October 30, 2020
Introduced and read first time: January 13, 2021
Assigned to: Environment and Transportation

A BILL ENTITLED

AN ACT concerning

Water Pollution – Stormwater Management Regulations and Watershed Implementation Plans – Review and Update

FOR the purpose of requiring the Department of the Environment to review and update certain regulations with a certain frequency; requiring the Department to propose the first update to certain regulations on or before a certain date; requiring the Department to review and update certain regulations in a certain manner; requiring the Department to take certain actions a certain amount of time before the proposal of regulations under this Act; altering the time by which the Department must hold a certain public hearing; requiring the Department to incorporate certain requirements and standards into certain permits; requiring the Department to submit a certain addendum and certain milestones to the U.S. Environmental Protection Agency; requiring the Department to fully implement the addendum and milestones on or before a certain date; making stylistic changes and a technical correction; and generally relating to water pollution in the State.

BY repealing and reenacting, with amendments,
Article – Environment
Section 4–203
Annotated Code of Maryland
(2013 Replacement Volume and 2020 Supplement)

BY adding to
Article – Environment
Section 4–901 to be under the new subtitle "Subtitle 9. Miscellaneous"
Annotated Code of Maryland
(2013 Replacement Volume and 2020 Supplement)

Preamble

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

WHEREAS, On December 29, 2010, the U.S. Environmental Protection Agency established the Chesapeake Bay Total Maximum Daily Load (Bay TMDL), requiring that Chesapeake Bay watershed jurisdictions take all actions necessary to meet the jurisdictions' water quality standards for dissolved oxygen, water clarity, underwater bay grasses, and chlorophyll a by December 31, 2025; and

WHEREAS, The Bay TMDL is a combination of 92 smaller TMDLs for individual Chesapeake Bay tidal segments, the restoration of which will deliver local water quality improvements to communities across Maryland; and

WHEREAS, The Watershed Implementation Plans (WIP) under the Bay TMDL are required to be submitted by Chesapeake Bay jurisdictions and play a critical role as part of the Chesapeake Bay accountability framework developed by the U.S. Environmental Protection Agency; and

WHEREAS, Maryland is a signatory to the 2014 Chesapeake Bay Watershed Agreement in which the State agreed to take actions to increase the Chesapeake Bay's resiliency to withstand the adverse impacts from changing environmental and climate conditions; and

WHEREAS, In December 2017, the Chesapeake Bay Program's Principals' Staff Committee agreed to include a narrative strategy in Phase III WIPs that describes the jurisdictions' current action plans and strategies to address climate change, as well as the jurisdiction–specific nutrient and sediment pollution loadings due to 2025 climate change conditions; and

WHEREAS, The Chesapeake Bay Program and the U.S. Environmental Protection Agency expect Chesapeake Bay jurisdictions to account for additional nutrient and sediment pollutant loads caused by climate change conditions in a Phase III WIP addendum or 2–year milestones beginning in 2022; and

WHEREAS, Maryland and local regulatory agencies rely on outdated precipitation estimates and storm design standards in developing water pollution control permits that must be updated in order to provide Chesapeake Bay and local water quality resiliency; and

WHEREAS, Outdated precipitation and storm design standards result in insufficient stormwater controls that fail to protect households and communities from precipitation–based flooding; now, therefore,

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

Article – Environment

4–203.

(a) The Department of the Environment shall implement the provisions of this subtitle and shall consult the Department of Natural Resources from time to time, including during the adoption of regulations, concerning the impact of stormwater on waters of the State.

(b) **(1)** The Department shall adopt rules and regulations which establish criteria and procedures for stormwater management in Maryland.

(2) The rules and regulations shall:

[(1)**]** **(I)** Indicate that the primary goal of the State and local programs will be to maintain after development, as nearly as possible, the predevelopment runoff characteristics;

[(2)**]** **(II)** Make allowance for the difference in hydrologic characteristics and stormwater management needs of different parts of the State;

[(3)**]** **(III)** Specify that watershed–wide analyses may be necessary to prevent undesirable downstream effects of increased stormwater runoff;

[(4)**]** **(IV)** Specify the exemptions a county or municipality may grant from the requirements of submitting a stormwater management plan;

[(5) (i)**]** **(V)** **1.** Specify the minimum content of the local ordinances or the rules and regulations of the affected county governing body to be adopted which may be done by inclusion of a model ordinance or model rules and regulations; and

[(ii)**]** **2.** Establish regulations and a model ordinance that require:

[1.**]** **A.** The implementation of environmental site design to the maximum extent practicable;

[2.**]** **B.** The review and modification, if necessary, of planning and zoning or public works ordinances to remove impediments to environmental site design implementation; and

[3.**]** **C.** A developer to demonstrate that**[**:

A. Environmental**]** **ENVIRONMENTAL** site design has been implemented to the maximum extent practicable**[**;**]** and

[B. Standard**]** **STANDARD** best management practices have been used only where absolutely necessary;

[(6)**]** **(VI)** Indicate that water quality practices may be required for any redevelopment, even when predevelopment runoff characteristics are maintained;

[(7)**]** **(VII)** Specify the minimum requirements for inspection and maintenance of stormwater practices;

[(8)**]** **(VIII)** Specify that all stormwater management plans shall be designed to:

[(i)**]** **1.** Prevent soil erosion from any development project;

[(ii)**]** **2.** Prevent, to the maximum extent practicable, an increase in nonpoint pollution;

[(iii)**]** **3.** Maintain the integrity of stream channels for their biological function, as well as for drainage;

[(iv)**]** **4.** Minimize pollutants in stormwater runoff from new development and redevelopment in order to:

[1.**]** **A.** Restore, enhance, and maintain the chemical, physical, and biological integrity of the waters of the State;

[2.**]** **B.** Protect public health;

[3.**]** **C.** Safeguard fish and aquatic life and scenic and ecological values; and

[4.**]** **D.** Enhance the domestic, municipal, recreational, industrial, and other uses of water as specified by the Department;

[(v)**]** **5.** Protect public safety through the proper design and operation of stormwater management facilities;

[(vi)**]** **6.** Maintain 100% of average annual predevelopment groundwater recharge volume for the site;

[(vii)**]** **7.** Capture and treat stormwater runoff to remove pollutants and enhance water quality;

[(viii)**]** **8.** Implement a channel protection strategy to reduce downstream erosion in receiving streams; and

[(ix)**]** **9.** Implement quantity control strategies to prevent increases in the frequency and magnitude of out–of–bank flooding from large, less frequent storm events; and

[(9) (i)**]** **(IX)** **1.** Establish a comprehensive process for approving

grading and sediment control plans and stormwater management plans; and

[(ii)**]** **2.** Specify that the comprehensive process established under item (i) of this item takes into account the cumulative impacts of both plans.

(3) (I) THE DEPARTMENT SHALL:

1. REVIEW AND UPDATE THE REGULATIONS ADOPTED UNDER THIS SECTION AT LEAST ONCE EVERY 5 YEARS; AND

2. PROPOSE THE FIRST UPDATE TO THE REGULATIONS ON OR BEFORE JANUARY 1, 2022.

(II) IN REVIEWING AND UPDATING THE REGULATIONS ADOPTED UNDER THIS SECTION, THE DEPARTMENT SHALL:

1. USE THE MOST RECENT PRECIPITATION DATA AVAILABLE TO REVISE WATER QUALITY AND WATER QUANTITY CONTROL STANDARDS; AND

2. UPDATE AND REVISE THE REGULATIONS AS NECESSARY TO MEET THE REQUIREMENTS OF THIS SUBTITLE.

(c) **(1) AT LEAST 6 MONTHS BEFORE THE PROPOSAL OF REGULATIONS UNDER THIS SECTION, THE DEPARTMENT SHALL:**

(I) POST THE REGULATORY PROCESS THAT THE DEPARTMENT FOLLOWS ON THE DEPARTMENT'S WEBSITE; AND

(II) CONSULT WITH THE FOLLOWING GROUPS AND STAKEHOLDERS ON THE IMPACT OF THE PROPOSED REGULATIONS:

1. THE COMMISSION ON ENVIRONMENTAL JUSTICE AND SUSTAINABLE COMMUNITIES; AND

2. STAKEHOLDERS WITH EXPERTISE ON STORMWATER DESIGN STANDARDS AND CLIMATE SCIENCE, INCLUDING STAKEHOLDERS FROM:

A. AN ACADEMIC INSTITUTION;

B. THE CHESAPEAKE BAY PROGRAM; AND

C. THE CHESAPEAKE BAY COMMISSION.

(2) Before **[**the**]** **ANY** regulations required under this **[**subsection**]** **SECTION** are **[**final**]** **ADOPTED**, the Department shall hold at least one public hearing in the affected immediate geographic areas of the State and shall consult with the affected counties and municipalities.

(d) **FOR A STORMWATER DISCHARGE PERMIT ISSUED UNDER § 9–323 OF THIS ARTICLE ON OR AFTER JANUARY 1, 2022, THE DEPARTMENT SHALL INCORPORATE ANY NEW REQUIREMENTS AND STANDARDS ESTABLISHED UNDER THE REGULATIONS ADOPTED UNDER SUBSECTION (B)(3)(I) OF THIS SECTION INTO THE PERMIT.**

(E) The Department shall provide technical assistance, training, research, and coordination in stormwater management technology to the local governments consistent with the purposes of this subtitle.

SUBTITLE 9. MISCELLANEOUS.

4–901.

(A) THE DEPARTMENT SHALL SUBMIT TO THE U.S. ENVIRONMENTAL PROTECTION AGENCY A CHESAPEAKE BAY TOTAL MAXIMUM DAILY LOAD PHASE III WATERSHED IMPLEMENTATION PLAN CLIMATE LOAD ALLOCATION ADDENDUM AND UPDATED 2–YEAR MILESTONES THAT FULLY OFFSET ADDITIONAL NITROGEN, PHOSPHORUS, AND SEDIMENT LOADS ATTRIBUTABLE TO THE IMPACTS OF CLIMATE CHANGE AS DETERMINED AND ALLOCATED BY THE CHESAPEAKE BAY PROGRAM.

(B) THE DEPARTMENT SHALL FULLY IMPLEMENT THE ADDENDUM AND UPDATED MILESTONES UNDER SUBSECTION (A) OF THIS SECTION ON OR BEFORE DECEMBER 31, 2025.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2021.