

UNOFFICIAL COPY OF SENATE BILL 257
EMERGENCY BILL

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6lr2085

By: **Senators Brochin, Conway, Dyson, Grosfeld, Klausmeier, Ruben, and Stone**

Introduced and read first time: January 25, 2006

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 23, 2006

CHAPTER _____

1 AN ACT concerning

2 **Critical Areas Program - Resource Conservation Areas - ~~National Wildlife~~**
3 **~~Refuges~~ Little Blackwater River**

4 FOR the purpose of prohibiting the ~~use of growth allocation for project approval of the~~
5 certain development of certain property that is located within a certain distance
6 of a certain ~~tributaries of national wildlife refuges~~ tributary; requiring certain
7 development to be in accordance with certain standards; establishing a certain
8 advisory committee to study and recommend certain reforms of a certain growth
9 allocation process; providing for the membership and staffing of the advisory
10 committee; requiring the advisory committee to report its findings and
11 recommendations to certain persons on or before a certain date; providing for
12 the application of this Act; making this Act an emergency measure; and
13 generally relating to development in resource conservation areas.

14 BY repealing and reenacting, with amendments,

15 Article - Natural Resources

16 Section 8-1808.1

17 Annotated Code of Maryland

18 (2000 Replacement Volume and 2005 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

20 MARYLAND, That the Laws of Maryland read as follows:

Article - Natural Resources

8-1808.1.

(a) This section is intended to establish conditions for development in the Chesapeake Bay Critical Area and the Atlantic Coastal Bays Critical Area in addition to those established in criteria of the Commission. However, in the event of any inconsistency between the criteria and the provisions of this section, this section shall control.

(b) The growth allocation for a local jurisdiction shall be calculated based on 5 percent of the total resource conservation area in a local jurisdiction:

(1) In the Chesapeake Bay Critical Area at the time of the original approval of the local jurisdiction's program by the Commission, not including tidal wetlands or land owned by the federal government; or

(2) In the Atlantic Coastal Bays Critical Area at the time of the original approval of the local jurisdiction's program by the Commission, not including tidal wetlands or land owned by the federal government.

(c) When locating new intensely developed or limited development areas, local jurisdictions shall use the following guidelines:

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

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

(3) Except as provided in paragraph (5) of this subsection, no more than one-half of the expansion allocated in the criteria of the Commission may be located in resource conservation areas;

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

(5) [In] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, IN Calvert, Caroline, Cecil, Charles, Dorchester, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester counties, if the county is unable to utilize a portion of the growth allocated to the county in paragraphs (1) and (2) of this subsection within or adjacent to existing intensely developed or limited development areas as demonstrated in the local plan approved by the Commission, then that portion of the allocated expansion which cannot be so located may be located in the resource conservation area in addition to the expansion allocated in paragraph (3) of

1 this subsection. A developer shall be required to cluster any development in an area of
2 expansion authorized under this paragraph.

3 ~~(D) (1) ANY PROPERTY THAT IS DESIGNATED AS A RESOURCE~~
4 ~~CONSERVATION AREA AND THAT IS LOCATED ADJACENT TO, OR WITHIN 1,000 FEET~~
5 ~~OF THE WATERS OF A MAJOR TIDAL TRIBUTARY OF A NATIONAL WILDLIFE REFUGE,~~
6 ~~AS DESIGNATED IN U.S.C. TITLE 16, CHAPTER 5A, SUBCHAPTER III, SECTION 668DD,~~
7 ~~MAY NOT BE DEVELOPED, FOR ANY REASON, USING GROWTH ALLOCATION.~~

8 ~~(2) THIS SUBSECTION APPLIES TO ALL DEVELOPMENTS THAT MEET THE~~
9 ~~CRITERIA OF PARAGRAPH (1) OF THIS SUBSECTION, INCLUDING THOSE~~
10 ~~DEVELOPMENTS PROPOSED BEFORE JANUARY 1, 2006.~~

11 (D) (1) THIS SUBSECTION APPLIES TO ANY PROPERTY THAT IS DESIGNATED
12 AS A RESOURCE CONSERVATION AREA AND THAT IS LOCATED ADJACENT TO, OR
13 WITHIN 1,000 FEET, OF THE LITTLE BLACKWATER RIVER.

14 (2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION,
15 PROJECT APPROVAL MAY NOT BE GRANTED FOR ANY DEVELOPMENT USING GROWTH
16 ALLOCATION.

17 (3) PROJECT APPROVAL MAY BE GRANTED FOR THE DEVELOPMENT OF A
18 GOLF COURSE IF:

19 (I) THE DEVELOPMENT IS IN ACCORDANCE WITH THE STANDARDS
20 AND RECOMMENDATIONS OF THE COMMISSION ON THE DEVELOPMENT OF GOLF
21 COURSES IN RESOURCE CONSERVATION AREAS, ADOPTED ON AUGUST 3, 2005; AND

22 (II) ALL ACCESS ROADS, CLUBHOUSES, MAINTENANCE BUILDINGS,
23 PRO SHOPS, RESTAURANTS, PARKING LOTS, AND ALL OTHER STRUCTURAL
24 ELEMENTS OF THE GOLF COURSE ARE LOCATED OUTSIDE THE RESOURCE
25 CONSERVATION AREA.

26 [(d)] (E) (1) Subject to the conditions under paragraphs (2) and (3) of this
27 subsection, if a jurisdiction has within its territorial limits an area that is subject to
28 the Chesapeake Bay Critical Area program and an area that is subject to the Atlantic
29 Coastal Bays Critical Area program, the growth allocation for that jurisdiction may be
30 utilized within either critical area, as the jurisdiction's local program considers
31 appropriate.

32 (2) A local jurisdiction's program may not utilize the growth allocation
33 from another critical area unless the growth allocation remaining in either critical
34 area is insufficient to allow approval of a growth allocation proposal associated with a
35 program amendment for which the local program seeks commission approval.

36 (3) A local jurisdiction's program may not transfer more than 150 acres
37 of growth allocation to another critical area.

1 [(e)] (F) (1) Except as authorized under paragraph (2) of this subsection, in
2 calculating the 1-in-20 acre density of development that is permitted on a parcel
3 located within the resource conservation area, a local jurisdiction:

4 (i) Shall count each dwelling unit; and

5 (ii) May permit the area of any private wetlands located on the
6 property to be included, under the following conditions:

7 1. The density of development on the upland portion of the
8 parcel may not exceed 1 dwelling unit per 8 acres; and

9 2. The area of private wetlands shall be estimated on the
10 basis of vegetative information as designated on the State wetlands maps.

11 (2) (i) Within a resource conservation area, a local jurisdiction may
12 consider one additional dwelling unit per lot or parcel as part of a primary dwelling
13 unit for the purpose of the density calculation under this subsection if the additional
14 dwelling unit:

15 1. A. Is located within the primary dwelling unit or its
16 entire perimeter is within 100 feet of the primary dwelling unit;

17 B. Does not exceed 900 square feet in total enclosed area; and

18 C. Is served by the same sewage disposal system as the
19 primary dwelling unit; or

20 2. A. Is located within the primary dwelling unit;

21 B. By its construction, does not increase the amount of
22 impervious surface already attributed to the primary dwelling unit; and

23 C. Is served by the same sewage disposal system as the
24 primary dwelling unit.

25 (ii) The provisions of this paragraph may not be construed to
26 require a local jurisdiction to consider an additional dwelling unit as part of a primary
27 dwelling unit for the purpose of the density calculation under this subsection.

28 (iii) An additional dwelling unit meeting all the criteria under
29 subparagraph (i) of this paragraph that is separate from the primary dwelling unit
30 may not be subdivided or conveyed separately from the primary dwelling unit.

31 (3) (i) Each local jurisdiction shall:

32 1. Maintain records of all building permits issued under this
33 subsection for additional dwelling units considered part of a primary dwelling unit;
34 and

1 (viii) one representative from the Maryland State Builders
2 Association.

3 (c) The Co-Chairs of the Joint Committee on the Chesapeake and Atlantic
4 Coastal Bays Critical Area shall serve as Co-Chairs of the Advisory Committee.

5 (d) The Department of Legislative Services shall provide staff for the Advisory
6 Committee.

7 (e) A member of the Advisory Committee:

8 (1) may not receive compensation as a member of the Committee; and

9 (2) is entitled for reimbursement for expenses under the Standard State
10 Travel Regulations, as provided in the State budget.

11 (f) The Advisory Committee shall:

12 (1) develop criteria and identify Resource Conservation Area lands in the
13 State that should not be subject to growth allocation because of their environmental
14 sensitivity and value;

15 (2) recommend legislation for the 2007 legislative session for improving
16 and strengthening growth allocation guidelines and requirements, which may
17 include:

18 (i) a prohibition on growth allocation awards for Resource
19 Conservation Area lands identified by the Advisory Committee as environmentally
20 sensitive and valuable; and

21 (ii) a required designation in a local comprehensive master plan of
22 lands planned for growth allocation.

23 (g) On or before December 1, 2007, the Advisory Committee shall report its
24 findings and recommendations, in accordance with § 2-1246 of the State Government
25 Article, to the President of the Senate, the Speaker of the House of Delegates, the
26 Senate Education, Health, and Environmental Affairs Committee, the House
27 Environmental Matters Committee, and the Governor.

28 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be
29 construed to apply retroactively and shall be applied to and interpreted to affect any
30 development on property that is designated as a resource conservation area and that
31 is located adjacent to, or within 1,000 feet of, the Little Blackwater River, regardless
32 of whether project approval has been granted before or after the effective date of this
33 Act.

34 SECTION 2. 4. AND BE IT FURTHER ENACTED, That this Act is an
35 emergency measure, is necessary for the immediate preservation of the public health
36 or safety, has been passed by a ye and nay vote supported by three-fifths of all the

1 members elected to each of the two Houses of the General Assembly, and shall take
2 effect from the date it is enacted.