

SENATE BILL 227

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(PRE-FILED)

1lr1753
CF HB 295

By: **Senators Elfreth, Hester, and Pinsky**

Requested: November 1, 2020

Introduced and read first time: January 13, 2021

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 9, 2021

CHAPTER _____

1 AN ACT concerning

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

4 FOR the purpose of requiring certain regulations to incorporate certain precipitation data;
5 requiring the Department of the Environment to review and update certain
6 regulations with a certain frequency; ~~requiring the Department to propose the first~~
7 ~~update to certain regulations on or before a certain date;~~ requiring the Department
8 to review and update certain regulations in a certain manner; requiring the
9 Department to report to the General Assembly on certain precipitation data and
10 plans for updating certain regulations on or before a certain date; requiring the
11 Department to report to the General Assembly on certain revisions to certain
12 regulations after a certain date; requiring the Department to take certain actions a
13 certain amount of time before the proposal of regulations under this Act; altering the
14 time by which the Department must hold a certain public hearing; ~~requiring the~~
15 ~~Department to incorporate certain requirements and standards into certain permits~~
16 prohibiting the Department from delaying the implementation of certain
17 requirements or standards; requiring the Department to submit a certain addendum
18 and certain milestones to the U.S. Environmental Protection Agency; requiring the
19 Department to fully implement the addendum and milestones on or before a certain
20 date; defining a certain term; making stylistic changes and a technical correction;
21 and generally relating to water pollution in the State.

22 BY repealing and reenacting, without amendments,

23 Article – Environment

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 Section 4-201.1(a)
2 Annotated Code of Maryland
3 (2013 Replacement Volume and 2020 Supplement)

4 BY adding to
5 Article – Environment
6 Section 4-201.1(e); and 4-901 to be under the new subtitle “Subtitle 9.
7 Miscellaneous”
8 Annotated Code of Maryland
9 (2013 Replacement Volume and 2020 Supplement)

10 BY repealing and reenacting, with amendments,
11 Article – Environment
12 Section 4-203
13 Annotated Code of Maryland
14 (2013 Replacement Volume and 2020 Supplement)

15 ~~BY adding to~~
16 ~~Article – Environment~~
17 ~~Section 4-901 to be under the new subtitle “Subtitle 9. Miscellaneous”~~
18 ~~Annotated Code of Maryland~~
19 ~~(2013 Replacement Volume and 2020 Supplement)~~

20 Preamble

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

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

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

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

37 WHEREAS, In December 2017, the Chesapeake Bay Program’s Principals’ Staff
38 Committee agreed to include a narrative strategy in Phase III WIPs that describes the

1 jurisdictions' current action plans and strategies to address climate change, as well as the
2 jurisdiction-specific nutrient and sediment pollution loadings due to 2025 climate change
3 conditions; and

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

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

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

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

17 **Article – Environment**

18 4-201.1.

19 (a) In this subtitle the following words have the meanings indicated.

20 (E) **“PRECIPITATION DATA” MEANS HISTORICAL DATA THAT DESCRIBES**
21 **THE RELATIONSHIP BETWEEN PRECIPITATION INTENSITY, DURATION, AND RETURN**
22 **PERIOD.**

23 4-203.

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

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

30 (2) The rules and regulations shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 [2.] B. Protect public health;

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

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

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

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

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

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

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

23 [(9) (i)] (IX) 1. Establish a comprehensive process for approving
24 grading and sediment control plans and stormwater management plans; and

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

27 **(X) INCORPORATE THE MOST RECENT PRECIPITATION DATA**
28 **AVAILABLE.**

29 **(3) (I) THE DEPARTMENT SHALL:**

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

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

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

7 1. ~~USE THE MOST RECENT PRECIPITATION DATA~~
8 ~~AVAILABLE TO~~ AT A MINIMUM, REVISE WATER QUALITY AND WATER QUANTITY
9 CONTROL STANDARDS USING THE MOST RECENT PRECIPITATION DATA AVAILABLE;
10 AND

11 2. ~~UPDATE AS NECESSARY,~~ UPDATE AND REVISE THE
12 ~~REGULATIONS AS NECESSARY~~ TO MEET THE REQUIREMENTS OF THIS SUBTITLE.

13 (4) (I) ON OR BEFORE NOVEMBER 1, 2021, THE DEPARTMENT
14 SHALL REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1257 OF
15 THE STATE GOVERNMENT ARTICLE, ON:

16 1. THE MOST RECENT PRECIPITATION DATA AVAILABLE;

17 2. THE DEPARTMENT'S PLANS FOR IMMEDIATELY
18 UPDATING WATER QUANTITY CONTROL STANDARDS FOR WATERSHEDS WHERE
19 FLOODING EVENTS OCCURRED ON OR AFTER JANUARY 1, 2000; AND

20 3. THE DEPARTMENT'S PLANS FOR UPDATING ALL
21 OTHER REGULATIONS ADOPTED UNDER THIS SECTION.

22 (II) AFTER NOVEMBER 1, 2021, THE DEPARTMENT SHALL
23 REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1257 OF THE
24 STATE GOVERNMENT ARTICLE, ON ANY REVISIONS THE DEPARTMENT INTENDS TO
25 MAKE TO THE REGULATIONS ADOPTED UNDER THIS SECTION BEFORE PUBLISHING
26 THE REGULATIONS.

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

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

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

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

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

5 **A. AN ACADEMIC INSTITUTION;**

6 **B. THE CHESAPEAKE BAY PROGRAM; ~~AND~~**

7 **C. THE CHESAPEAKE BAY COMMISSION;**

8 **D. THE MARYLAND EMERGENCY MANAGEMENT**
 9 **AGENCY;**

10 **E. LOCAL GOVERNMENT; AND**

11 **F. A PRIVATE SECTOR ENTITY WITH DESIGN AND**
 12 **CONSTRUCTION EXPERIENCE.**

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

17 (d) ~~FOR A STORMWATER DISCHARGE PERMIT ISSUED UNDER § 9-323 OF~~
 18 ~~THIS ARTICLE ON OR AFTER JANUARY 1, 2022, THE DEPARTMENT SHALL~~
 19 ~~INCORPORATE ANY NEW REQUIREMENTS AND STANDARDS ESTABLISHED UNDER~~
 20 ~~THE REGULATIONS ADOPTED UNDER SUBSECTION (B)(3)(I) OF THIS SECTION INTO~~
 21 ~~THE PERMIT. THE DEPARTMENT MAY NOT DELAY THE IMPLEMENTATION OF ANY~~
 22 ~~NEW REQUIREMENTS OR STANDARDS ESTABLISHED UNDER REGULATIONS ADOPTED~~
 23 ~~UNDER THIS SECTION.~~

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

27 **SUBTITLE 9. MISCELLANEOUS.**

28 **4-901.**

29 **(A) THE DEPARTMENT SHALL SUBMIT TO THE U.S. ENVIRONMENTAL**
 30 **PROTECTION AGENCY A CHESAPEAKE BAY TOTAL MAXIMUM DAILY LOAD PHASE**
 31 **III WATERSHED IMPLEMENTATION PLAN CLIMATE LOAD ALLOCATION ADDENDUM**

1 AND UPDATED 2-YEAR MILESTONES THAT FULLY OFFSET ADDITIONAL NITROGEN,
2 PHOSPHORUS, AND SEDIMENT LOADS ATTRIBUTABLE TO THE IMPACTS OF CLIMATE
3 CHANGE AS DETERMINED AND ALLOCATED BY THE CHESAPEAKE BAY PROGRAM.

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

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
8 1, 2021.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.