

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader - Revised

Senate Bill 775 (Senator Mautz)
Education, Energy, and the Environment

Private Wetlands - Structural Shoreline Stabilization Measures - Authorization

This bill alters the enumerated lawful uses of private wetlands to specify that the installation of a structural shoreline stabilization measure in conjunction with a nonstructural shoreline stabilization measure is a lawful use of private wetlands if the structural shoreline stabilization measure constitutes no more than 10% of the total linear footage that will be stabilized by the nonstructural shoreline stabilization measure. The bill also defines “nonstructural shoreline stabilization measure” and “structural shoreline stabilization measure” in statute.

Fiscal Summary

State Effect: General fund expenditures may increase beginning in FY 2024 for the Maryland Department of the Environment (MDE). Special fund revenues may increase beginning in FY 2024 from application fees for affected projects.

Local Effect: Local government operations and finances may be affected, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Shoreline Stabilization Measures

State tidal wetlands law authorizes riparian (waterfront) property owners to make improvements to protect the shoreline against erosion. After an improvement has been constructed, the attached improvement is considered part of the landowner’s property.

Generally, improvements to protect a person's property against erosion must consist of nonstructural shoreline stabilization methods that preserve the natural environment, such as marsh creation, except in areas designated by MDE mapping as appropriate for structural shoreline stabilization measures and in areas where a property owner can demonstrate to MDE that such measures are not feasible, including areas of excessive erosion, areas subject to heavy tides, and areas too narrow for effective use of nonstructural shoreline stabilization measures.

MDE is required to adopt regulations, in consultation with the Department of Natural Resources, to implement these provisions. The regulations must include a waiver process that exempts a person from the nonstructural shoreline stabilization methods requirements on a demonstration to MDE's satisfaction that nonstructural measures are not feasible for the person's property.

Regulations establish the criteria for obtaining a living shoreline waiver. When evaluating a request for a waiver, MDE must consider several listed factors to determine whether the site is suitable to support a nonstructural shoreline stabilization measure. A person may obtain a waiver from the nonstructural shoreline stabilization requirement if, to MDE's satisfaction, a structural shoreline stabilization measure is the only feasible alternative that will protect and maintain the person's shoreline.

Lawful Uses of Private Wetlands

Notwithstanding any regulation adopted by the Secretary of the Environment to protect private wetlands, the following uses are lawful on private wetlands: (1) conservation of soil, vegetation, water, fish, shellfish, and wildlife; (2) trapping, hunting, fishing, and catching shellfish if otherwise legally permitted; (3) exercise of riparian rights to improve land bounding on navigable water to preserve access to the navigable water, or to protect the shore against erosion; (4) reclamation of fast land owned by a natural person and lost during the person's ownership of the land after January 1, 1972, as specified; (5) routine maintenance and repair of existing bulkheads, provided that there is no addition or channelward encroachment; and (6) installing a pump, a pipe, or any other equipment attached to a pier that is associated with a permitted shellfish nursery operation if such a project does require increasing the length, width, or channelward encroachment of the pier.

Relevant Definitions

"Nonstructural shoreline stabilization measure" and "structural shoreline stabilization measure" are defined in the Code of Maryland Regulations 26.24.01.02. Nonstructural shoreline stabilization measure means an erosion control measure that is dominated by tidal wetland vegetation and is designed to preserve the natural shoreline, minimize erosion, and establish aquatic habitat. The term includes a living shoreline. "Structural shoreline

stabilization measure” means an erosion control measure that uses devices to armor and stabilize an area landward of the measure from further erosion. The term includes the use of a bulkhead, gabion, revetment, groin, breakwater, jetty, sand, beach nourishment, and any other similar structure, or any other device for erosion control or vessel protection.

Wetlands and Waterways Program Fees

Application fees for wetlands and waterways authorizations range from \$250 to \$7,500 (multiplied by the impact area in acres). However, there are several fee exemptions, including with respect to applications for (1) stream restoration, vegetative shoreline stabilization, wetland creation, or another project in which the primary effect is to enhance the State’s wetland or water resources; (2) performance of agricultural best management practices contained in an approved soil conservation and water quality plan; and (3) performance of forestry best management practices contained in an approved erosion and sediment control plan, as specified. Application fees are paid into the Wetlands and Waterways Program Fund.

State Revenues: Special fund revenues for the Wetlands and Waterways Program Fund may increase beginning in fiscal 2024 from application fees for projects that are not 100% living shoreline projects. Under current law, applications for living shoreline projects are exempt from application fees. Under the bill, the portions of a project that are not living shorelines are not exempt and as such, are subject to an application fee. The magnitude of any increase in application fee revenues cannot be reliably estimated at this time.

State Expenditures: MDE advises that general fund expenditures increase by \$408,076 in fiscal 2024 and by at least \$346,476 annually thereafter to hire four environmental compliance specialists to conduct additional tidal wetlands permit inspections and increase regulatory oversight to ensure compliance with the bill’s changes. The estimate also includes costs to purchase four vehicles. The Department of Legislative Services (DLS) advises, however, that without actual experience under the bill, the need for additional staff is unclear. While DLS concurs that MDE’s workload may increase, the number of staff that may need to be hired to handle the potential increase in workload is unknown. Therefore, general fund expenditures may increase beginning in fiscal 2024 to the extent MDE needs to hire staff to increase oversight of affected permits. For context, the cost to hire one environmental compliance specialist totals \$102,019 in fiscal 2024 (due to the bill’s October 1, 2023 effective date), with costs ranging from \$86,619 in fiscal 2025 to \$99,075 in fiscal 2028.

Local Fiscal Effect: MDE advises that the bill’s provisions may create inconsistency and unpredictability for the regulated community, which may include local governments, and may result in permit and/or license delays. On the other hand, DLS notes that local

governments may benefit from additional flexibility in options for shoreline stabilization projects.

Small Business Effect: Similar to the local government effect described above, MDE notes that the bill may create inconsistency and unpredictability for the regulated community, which may include small businesses. On the other hand, small businesses may benefit from additional flexibility in options for shoreline stabilization projects.

Further, the bill could have an impact on businesses that install structural and/or nonstructural shoreline stabilization measures. The bill's changes may have a positive effect on those businesses that focus only on structural shoreline stabilization measures and a negative effect on those businesses that focus only on nonstructural shoreline stabilization measures.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Maryland Association of Counties; Maryland Municipal League; Maryland Department of the Environment; Department of Legislative Services

Fiscal Note History: First Reader - February 21, 2023
rh/lgc Revised - Updated Information - February 23, 2023

Analysis by: Kathleen P. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510