

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 417 (Senator Elfreth, *et al.*)
Education, Energy, and the Environment

Environment – State Wetlands – Shoreline Restoration

This bill makes several changes to standards and requirements related to shoreline restoration projects and projects on a person’s property to protect the shoreline against erosion. Among other things, the bill changes the standard by which a person is eligible for a waiver from the requirements to use nonstructural shoreline stabilization methods for shoreline erosion projects. The bill also establishes the Coastal Resilience and Living Shoreline Restoration Account within the existing Tidal Wetlands Compensation Fund to provide grants for the replacement of structural shoreline stabilization measures with nonstructural shoreline stabilization measures, as specified.

Fiscal Summary

State Effect: General fund expenditures increase significantly (potentially by several million dollars annually beginning in FY 2024) for staff and contractual services and to capitalize the new account within the Tidal Wetlands Compensation Fund. Special fund revenues to the new account increase significantly (potentially by more than \$1.0 million annually beginning in FY 2024) due to the receipt of capitalization funds; special fund expenditures increase correspondingly to issue grants.

Local Effect: Local grant revenues and expenditures may increase beginning as early as FY 2024. Local government operations may also be affected, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law:

Property Owner Authorization to Make Improvements to Protect Against Erosion

Under current law and the bill, 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.

Under current law, 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 Maryland Department of the Environment (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. The bill alters these standards to instead require that improvements to protect a person's property against erosion must (1) be designed in a manner that increases the resilience of the land and the habitat connectivity between the land and water; (2) consist of nonstructural shoreline stabilization measures that *improve the quality of the natural environment*, such as marsh creation; and (3) incorporate the use of living features, including marsh grasses, submerged aquatic vegetation, and native oysters.

Waiver from Nonstructural Shoreline Stabilization Methods Requirements

Under current law and the bill, MDE is required to adopt regulations, in consultation with the Department of Natural Resources (DNR), to implement these provisions. Under current law, 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. The bill alters this provision. Under the bill, the waiver process must exempt a person from the nonstructural shoreline stabilization methods requirements if the person demonstrates to MDE's satisfaction that (1) the property is located in an area designated by MDE mapping as inappropriate for nonstructural shoreline stabilization methods or (2) nonstructural shoreline stabilization measures are not feasible to protect structures on the person's property from imminent risk of damage.

Under the bill, MDE, in coordination with DNR, must designate priority shoreline restoration zones where conditions exist that degrade the resilience of the land and the habitat connectivity between the land and water.

Coastal Resilience and Living Shoreline Restoration Account

Under current law and the bill, the Tidal Wetlands Compensation Fund is a special fund that consists of penalty revenues imposed under Title 16 of the Environment Article and any monetary payments made in lieu of creating, restoring, or enhancing tidal wetlands as a condition of a permit or license. Funds from the Tidal Wetlands Compensation Fund may only be used for the creation, restoration, or enhancement of tidal wetlands.

The bill establishes a Coastal Resilience and Living Shoreline Restoration Account within the Tidal Wetlands Compensation Fund. The separate account consists of money appropriated in the State budget to the account and any other money from any other source accepted for the benefit of the account. The separate account must be used only to provide grants for the replacement of structural shoreline stabilization measures with nonstructural shoreline stabilization measures. Funding priority must be given to projects located in priority shoreline restoration zones, as identified in accordance with the bill.

State Fiscal Effect: General fund expenditures for MDE increase significantly (potentially by several million dollars annually beginning in fiscal 2024) for staff, contractual services, and capitalization of the Coastal Resilience and Living Shoreline Restoration Account. Beginning in fiscal 2024, special fund revenues to the new account increase significantly (potentially by more than \$1.0 million annually) due to the receipt of the capitalization funds; special fund expenditures from the new account increase correspondingly to provide grants.

Maryland Department of the Environment Administrative Costs

MDE advises that general fund administrative expenditures increase by \$1.5 million in fiscal 2024, and by at least \$1.1 million annually thereafter, to hire 12 full-time employees (6 natural resource planners, 1 administrative specialist, 1 budget specialist, 1 accountant, 2 regulatory and compliance engineers, and 1 regulatory and compliance engineer supervisor) to (1) establish and administer the new grant program; (2) identify and develop a method to designate priority shoreline restoration zones in coordination with DNR; (3) review certain structural integrity reports to determine if a structure is in threat of imminent danger if the shoreline is not protected in a structural manner; and (4) generally implement the new standards for evaluating shoreline stabilization and restoration projects. MDE notes that not only is its Wetlands and Waterways Program Division understaffed, but existing staff also do not have the experience or knowledge to administer a grant program.

MDE advises that expenditures increase significantly further (by millions of dollars) for extensive data analysis, the development of priority layers, and a platform to source required information in order to identify projects that increase the resiliency of land.

The Department of Legislative Services (DLS) concurs that the bill (1) significantly changes the considerations that MDE must take into account when evaluating shoreline stabilization measures and (2) establishes substantial new responsibilities for MDE. However, without actual experience under the bill, a reliable estimate of the increase in MDE's administrative costs – including costs for staff and contractual services – cannot be made at this time. However, DLS anticipates that general fund expenditures for staffing and contractual services increase significantly, potentially by several million dollars in fiscal 2024, with significant ongoing costs in the out-years.

Costs to Capitalize the Coastal Resilience and Living Shoreline Restoration Account

Beginning in fiscal 2024, general fund expenditures increase significantly further to capitalize the Coastal Resilience and Living Shoreline Restoration Account within the Tidal Wetlands Compensation Fund. Special fund revenues to and expenditures from the account increase correspondingly, as the account receives the capitalization funds and as MDE provides grants from the account as required by the bill. The bill does not identify a specific funding level for the new account, and there are no similar existing State-level grant programs. Thus, a reliable estimate of the amount of capitalization funds needed to support the grant program cannot be made at this time. Even so, given the complexity and nature of these projects, it is likely that at least \$1.0 million in general funds – and potentially significantly more – is needed each year to capitalize the account.

Department of Natural Resources

DNR can coordinate with MDE to designate priority shoreline restoration zones and consult with MDE to update related regulations using existing budgeted resources.

State Agencies as Grant Recipients

To the extent that any State agencies receive grant funding from the new account to replace structural shoreline stabilization measure with nonstructural shoreline stabilization measures, State grant revenues and expenditures (multiple fund types) increase correspondingly. See the Additional Comments section for an additional discussion of potential effects on the regulated community.

Local Fiscal Effect: In some cases, local governments are owners of riparian properties in need of shoreline protection. To the extent that a local government receives grant funding under the bill, local grant revenues and expenditures increase correspondingly. See the Additional Comments section for an additional discussion of potential effects on the regulated community.

Small Business Effect: Small businesses (for example, agricultural operations or marinas) may be owners of riparian properties in need of shoreline protection. The availability of grant funding for the replacement of structural shoreline stabilization measures may benefit small businesses that wish to implement such projects or those that build, engineer, supply materials, or generally support these types of projects. See the Additional Comments section for an additional discussion of potential effects on the regulated community.

Additional Comments: MDE notes that shoreline protection measures are also federally regulated by the U.S. Army Corps of Engineers. MDE advises that the changes to the considerations that must be taken into effect when evaluating if a location is suitable for nonstructural practices are inconsistent with federal standards and that implementing the new evaluation requirements likely results in delays for related permit review and increased unpredictability for the regulated community. This may affect State agencies, local governments, and small businesses attempting to conduct shoreline stabilization and/or restoration projects.

Additional Information

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

Designated Cross File: HB 602 (Delegate Stein) - Environment and Transportation.

Information Source(s): Maryland Association of Counties; Maryland Municipal League; Maryland Department of the Environment; Department of Natural Resources; Board of Public Works; Department of Legislative Services

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