

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 752 (Delegate Hutchinson)
Environment and Transportation

Environment - Tidal Wetland Permit - Ownership of Land

This bill requires the Maryland Department of the Environment (MDE) to transfer, in fee simple, the interest in land that is landward of the mean high tide up to the portion of the land that is stabilized under a tidal wetland permit if a riparian landowner obtains a tidal wetland permit for the purpose of creating a living shoreline or other shoreline stabilization measure. The bill also repeals an existing provision that specifies that the provisions of Title 16 of the Environment Article (Wetlands and Riparian Rights) do not transfer the title or ownership of any land or interest in land.

Fiscal Summary

State Effect: None. As currently drafted, the bill does not affect State operations or finances, as discussed below.

Local Effect: None. As currently drafted, the bill does not affect local government operations or finances.

Small Business Effect: None.

Analysis

Current Law:

Wetlands Management

Wetlands in the State are protected, and the Wetlands and Waterways Program within MDE administers a statewide program for the management, conservation, and protection

of Maryland's tidal wetlands and nontidal wetlands and waterways. Pursuant to statute and MDE regulations, and subject to certain exceptions, a person may not dredge, fill, or construct or reconstruct structures in:

- State wetlands, without a *license* issued by the Board of Public Works (BPW) (or MDE, as MDE is delegated authority to authorize certain activities in State wetlands); or
- private wetlands, without a *permit* issued by MDE.

Riparian Owner's Rights

In general, except as specifically provided, a riparian owner may not be deprived of any right, privilege, or enjoyment of riparian ownership that the riparian owner had prior to July 1, 1970. Further, provisions of Title 16 of the Environment Article, which address wetlands and riparian rights, do not transfer the title or ownership of any land or interest in land. The Court of Special Appeals has noted "The term 'riparian rights' indicates a bundle of rights that turn on the physical relationship of a body of water to the land abutting it. These rights are significantly different from each other in many respects, and yet they share a common name just as riparian landowners attempt to share the common benefits that arise from adjacency to defined bodies of water," *Gunby v. Old Severna Park Improvement Ass'n*, 174 Md.App. 189, 239 (2007).

A person who is the owner of land bounding on navigable water is entitled to any natural accretion to the person's land, to reclaim fast land lost by erosion or avulsion during the person's ownership of the land to the extent of provable existing boundaries. The person may make improvements into the water in front of the land to preserve that person's access to the navigable water or protect the shore of that person against erosion, as specified. After an improvement has been constructed, the improvement is the property of the owner of the land to which the improvement is attached. A right covered in Subtitle 2 of Title 16 of the Environment Article (which addresses State wetlands) does not preclude the owner from developing any other use approved by BPW. The right to reclaim lost fast land relates only to fast land lost after January 1, 1972, and the burden of proof that the loss occurred after this date is on the owner of the land.

Shoreline Stabilization

Generally, improvements to protect a person's property against erosion must consist of nonstructural shoreline stabilization methods (also known as living shorelines) 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.

State Fiscal Effect: As noted above, tidal wetlands *licenses* are issued for projects in State wetlands, and tidal wetlands *permits* are issued for projects in private wetlands. Although the intent of the bill may be to require the transfer in fee simple to the riparian landowner the State's ownership interest in submerged land beneath *State wetlands* when a riparian landowner constructs a living shoreline or other shoreline stabilization measure, because the bill refers to tidal wetlands *permits*, and not tidal wetlands *licenses*, the bill only applies to *private wetlands*, not *State wetlands*. Title to private wetlands, unlike State wetlands, is not held by the State; these wetlands are already owned by the riparian landowner. Because the State does not own any interest in submerged land beneath private wetlands, there is no ownership interest for the State to transfer under the bill. Accordingly, as currently drafted, the bill does not affect State operations or finances.

Nevertheless, if the bill were to apply to tidal wetlands *licenses* (and, therefore, *State wetlands*), State operations and finances would likely be significantly affected. MDE advises that it does not have statutory authority to hold any property on behalf of the State. Thus, while title to State wetlands is held by the State, it is not MDE that holds such title, and MDE cannot legally transfer that title in fee simple or otherwise to private entities. Accordingly, MDE advises that it would need delegated authority from BPW to process any transfer of ownership interest. Likewise, BPW advises that the current framework for the transfer of property interests in State-owned tidal wetlands is addressed in the State Finance and Procurement Article and that MDE does not have the authority to process such transfers. Even so, assuming MDE were able to be delegated the authority to do so, MDE would need to establish an Office of Real Estate within its Wetlands and Waterways Protection Program to manage the transfers. (Although the number of land transfer transactions that would occur is unknown, MDE advises that it processes, on average, 625 shoreline stabilization applications annually and anticipates that it would receive additional applications by landowners wanting to take advantage of the land ownership opportunity.) The new office would require additional staff with expertise in real estate, real property, and land issues (including managers, analysts, surveyors, inspectors, attorneys, and administrative assistants), field equipment, and vehicles. A preliminary evaluation by MDE estimates that costs for the office could total more than \$3.0 million annually.

To the extent the authority to transfer ownership were not able to be delegated to MDE, BPW would likely incur costs to hire staff to handle the anticipated increase in workload.

Additionally, if the bill were to apply to State wetlands, special fund revenues for MDE's Wetlands and Waterways Program Fund would likely increase if the bill were to result in an increase in applications for tidal wetlands licenses for shoreline stabilization measures.

Additional Information

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

Designated Cross File: SB 1048 (Senator Mautz) - Education, Energy, and the Environment.

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

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km/lgc

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