

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 893

(Delegate Eckardt, *et al.*)

Environmental Matters

Environment - Portable Floating Docks - Exemptions

This bill exempts the installation or repair of portable floating docks from application fees associated with Maryland Department of the Environment (MDE) Wetlands and Waterways Program authorizations and Board of Public Works (BPW) wetlands licenses. The bill also modifies the definition of “marine contractor services” to exclude the installation or repair of portable floating docks, effectively exempting portable floating docks contractors from marine contractor licensing requirements.

The bill takes effect June 1, 2011.

Fiscal Summary

State Effect: Potential decrease in MDE special fund revenues in FY 2011 and future years due to fewer marine contractor licenses being issued and/or wetlands project application fee exemptions. Potential increase in general fund and nonbudgeted revenues in FY 2012 and future years as marine contractors must secure Maryland Home Improvement Commission (MHIC) contractor licenses instead. Potential minimal decrease in MDE special fund expenditures.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Wetlands and Waterways Program

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, including the 100-year floodplain. Permits granted for work in privately owned wetlands are issued by MDE; licenses granted for work in State-owned wetlands are issued by BPW.

In general, a person may not dredge; fill; construct, reconstruct, or repair structures; conduct certain other activities over, on, in, or under State tidal wetlands; or alter State tidal wetlands without a license issued by BPW. MDE is required to forward a report of its recommendations to BPW on each tidal wetlands license application; the report must state whether a license should be granted and any terms or conditions that should be attached to a license. Current MDE regulations describe numerous criteria MDE must use in evaluating tidal wetlands license applications.

With specified exceptions, applications for MDE wetlands and waterways authorizations and BPW tidal wetlands licenses must be accompanied by a \$750 application fee; however, certain major projects are charged an application fee that ranges from \$1,500 to an amount equal to the impact area in acres multiplied by \$7,500 when the proposed permanent impact is one acre or more. The fee depends on the interagency coordination efforts required to process the application and the impact the proposed project may have on the environment. The fee revenue is used by MDE for the issuance of authorizations; the management, conservation, protection and the preservation of the State's wetlands and waterway resources; and program development. Some activities are exempt from the fees, including stream restoration, vegetative shoreline stabilization, wetlands creation, aquaculture, or other projects in which the primary effect is to enhance the State's wetlands or water resources. Application fees are paid into MDE's Wetlands and Waterways Program Fund.

Marine Contractor Services

"Marine contractor services" means construction, demolition, installation, alteration, repair, or salvage activities located in, on, over, or under State or private tidal wetlands. Furthermore, "marine contractor services" includes (1) dredging and filling; (2) the construction, demolition, installation, alteration, repair, or salvage of structures, including boathouses, boat or other personal watercraft lifts or ramps, slips, docks, floating platforms, moorings, piers, pier access structures, pilings, wetland observation platforms,

wetland walkways, and wharfs; and (3) the construction, demolition, installation, alteration, repair, or salvage of stabilization and erosion control measures, including revetments, breakwaters, bulkheads, groins, jetties, stone sills, marsh establishments, and beach nourishment or other similar projects.

Individuals who undertake or authorize an activity that requires a license or permit in accordance with Wetlands and Riparian Rights provisions of the Environment Article must either hire a licensed marine contractor to do the work or be a licensed marine contractor. To qualify for a license, applicants must meet specified requirements, including having at least two years of experience as a full-time marine contractor or demonstrating similar contractor experience, having a federal tax identification number, passing a written marine contractor test, and having specified insurance. Applicants must provide specified information, complete a specified application form, and pay a license application fee set by the Marine Contractors Licensing Board within MDE. The license is valid for two years. Licensed marine contractors are exempt from MHIC contractor licensing requirements.

Generally, a person must have a contractor license before acting as a contractor in the State. MHIC – housed within the Department of Labor, Licensing, and Regulation (DLLR) – licenses and regulates home improvement contractors, subcontractors, and salespersons in Maryland who perform services at residential properties with fewer than four dwelling units. An individual must pass an examination prior to submitting an application for licensure. In addition to the required application and fee, applicants must meet experience requirements, submit proof of compliance with insurance requirements, submit a credit report, and contribute to the Home Improvement Guaranty Fund, which reimburses homeowners for losses that result from an act or omission by a licensed contractor or that licensee’s subcontractor, salesperson, or employee.

Background:

Floating Docks

A floating dock is a pier and/or platform supported by flotation devices and usually joined to the shore with a ramp that rests upon the dock on rollers, to adjust for the vertical movement of the dock. The dock is usually held in place by vertical poles embedded in the soil under the water or by anchored cables. A floating dock maintains a fixed vertical relationship to watercraft secured to it, independent of tidal, river, or lake elevation. A floating dock is used most frequently for a small boat.

MDE’s regulations do not discriminate between floating and fixed docks/piers. A “pier” is any fixed or floating pier, wharf, dock, walkway, or other similar water-dependent

structure constructed on or over State or private tidal wetlands for the purpose of gaining access to the navigable waters of the State. Like any structure over the water, a floating dock has the potential to adversely impact aquatic resources, add to waterway congestion, and lead to safety issues.

Marine Contractor Licensing

The marine contractor licensing program was established by MDE in 2010 in response to Chapter 286 of 2010. Initially, MDE is issuing registration cards to applicants that will expire on December 31, 2011, unless extended by an action of the Marine Contractors Licensing Board. Governor O'Malley has not yet appointed members to the board; however, MDE anticipates the board will be operational and issuing marine contractor licenses by December 31, 2011.

Marine contractors were required to pay an initial \$300 registration fee by December 31, 2010, and renewal license fees are required every two years in subsequent years. The board is authorized to set reasonable licensing fees that generate revenue to approximate the cost of maintaining the board. As of February 7, 2011, 130 marine contractors were registered, 6 of whom limited their scope of services to piers, boat lifts, and associated structures. It is unknown how many limit their services to portable floating docks.

State Revenues: All marine contractors are currently required to be in compliance with licensing registration requirements and MDE does not anticipate issuing marine contractor licenses until fiscal 2012. Thus, this estimate assumes MDE special fund licensing revenues decrease in fiscal 2012 and future years to the extent fewer marine contractor licenses are renewed or issued due to the exemption. License and renewal fees will be set by the board when it becomes operational.

Also, MDE special fund revenues decrease in fiscal 2011 and future years to the extent individuals are no longer required to pay wetlands and waterways and tidal wetlands application fees. Developing a precise estimate of the fiscal impact is difficult due to the inherent variability in the application stream for any fiscal year and the fact that MDE does not discriminate between fixed-pile and floating docks in its database. However, *for illustrative purposes*, assuming that (1) the number of annual dock applications remains approximately level with the current average; and (2) 10% of the applications are for portable floating docks, MDE special fund revenues decrease by \$27,900 annually. **Exhibit 1** illustrates the bill's potential impact when different assumptions are made about the number of portable floating dock applications.

Exhibit 1
MDE Application Fee Revenue: Potential Impact

Application Type	Number of Dock Applications	Application Fee	Percentage of Portable Floating Dock Applications				
			100%	75%	50%	25%	10%
Minor	228	\$750	\$171,000	\$128,250	\$85,500	\$42,750	\$17,100
Major	72	\$1,500	\$108,000	\$81,000	\$54,000	\$27,000	\$10,800
Total	300		\$279,000	\$209,250	\$139,500	\$69,750	\$27,900

Source: Maryland Department of the Environment

Also, general fund and nonbudgeted revenues increase in fiscal 2012 and future years as portable floating dock contractors must secure MHIC licenses instead. The fee for an original MHIC contractor license is \$325 per individual, of which \$225 goes to the general fund and \$100 is allocated to the Home Improvement Guaranty Fund.

State Expenditures: To the extent fewer marine contractors are licensed by the Marine Contractors Licensing Board within MDE, special fund expenditures associated with licensure may decrease minimally.

Also, although the bill does not directly affect MDE's Wetlands and Waterway Program expenditures, MDE uses wetlands and waterways and tidal wetlands application fee revenue to, among other things, fund staff responsible for reviewing these applications. Thus, to the extent the bill results in a decrease in fee revenue in fiscal 2011 and future years, inadequate revenue may be available to administer the program.

Small Business Effect: Marine contractors that exclusively perform portable floating dock services are required to once again be licensed by MHIC, rather than as marine contractors. Thus, they may be subject to lower costs associated with that oversight – including no need to meet continuing education requirements. Also, marine contractors that exclusively perform portable floating dock services are relieved from paying wetlands and waterways and tidal wetlands application fees.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Cities of Bowie and Takoma Park; Baltimore City; Montgomery County; Board of Public Works; Department of Natural Resources; Maryland Department of the Environment; Department of Legislative Services

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