

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

House Bill 1266 (Delegate Kipke)  
Environmental Matters

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**Environment - Construction on Piers - Exception for Solar Panels**

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This bill authorizes the issuance of a wetlands license, wetlands permit, or building permit for the construction of a solar panel on a pier located on State or private wetlands if the solar panel does not extend more than four feet above or one foot below the deck of the pier, or increase the existing dimensions of the pier by more than 10% to allow for structures necessary for the installation of the solar panel. The bill's authorization includes issuance of a building permit for the construction of a solar panel on a pier on State or private wetlands within the Chesapeake and Atlantic Coastal Bays Critical Area.

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**Fiscal Summary**

**State Effect:** Special fund revenues increase minimally for the Maryland Department of the Environment (MDE) beginning in FY 2012 due to the collection of additional wetlands license and permit fees for construction of solar panels on piers under the bill's authorization. The bill can be implemented with existing budgeted resources.

**Local Effect:** Local revenues increase negligibly in some jurisdictions due to the collection of additional building permit fees for construction of solar panels on piers. The bill can likely be implemented with existing budgeted resources.

**Small Business Effect:** Minimal beneficial impact on solar panel vendors and installers, which may include marine contractors.

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**Analysis**

**Current Law:** In general, the Board of Public Works (BPW) and MDE may not issue a tidal wetlands license or a wetlands permit for any project involving the construction of a

dwelling unit or other nonwater-dependent structure on a pier located on State or private wetlands, except under specified conditions. Among other things, the project must be constructed on a pier in existence as of December 1, 1985, located in an Intensely Developed Area under the Critical Area Law, and approved by local planning and zoning authorities. State regulations define a “nonwater-dependent structure or activity” as a temporary or permanent structure or activity, which by reason of its intrinsic nature or operation does not require location in or over State or private tidal wetlands.

Projects on State or private wetlands within the Chesapeake Bay Critical Area must also meet other specified requirements. Specifically, the applicant must (1) demonstrate that the construction and operation of the project will not have a long-term adverse effect on the water quality of the adjacent body of water; (2) improve the water quality of existing stormwater runoff from the project site into adjacent waters; and (3) demonstrate that any sewer lines or other utility lines extended for the pier will not adversely affect the water quality of adjacent waters.

These provisions do not apply in Prince George’s County. In addition, current law does not prohibit or restrict BPW from issuing a license for a project on a pier located within the Critical Area that was issued a permit prior to January 1, 1989.

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 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.

State law also generally prohibits a local jurisdiction from issuing a building permit for any project involving the construction of a dwelling unit or other nonwater-dependent structure on a pier located on State or private wetlands in the Critical Area, with specified exceptions.

**Background:** The General Assembly finds that the benefits of electricity from renewable sources, including long-term decreased emissions, a healthier environment, increased energy security, and decreased reliance on and vulnerability from imported

energy sources, accrue to the public at large. Additionally, electricity suppliers and consumers share an obligation to develop a minimum level of these resources in the electricity portfolio of the State. Maryland established a renewable energy portfolio standard (RPS) in 2004 in order to recognize the economic, environmental, fuel diversity, and security benefits of renewable energy resources; establish a market for electricity from those resources in Maryland; and lower consumers' cost for electricity generated from renewable sources.

Maryland's RPS requires that renewable sources generate specified percentages of the State's electricity supply each year, increasing to 20%, including 2% from solar power, by 2022. Electricity suppliers must accumulate "renewable energy credits" (RECs) equal to the percentage mandated by statute each year, or pay an alternative compliance payment (ACP) equivalent to the supplier's shortfall. RECs are classified as Tier 1, Tier 2, or solar RECs.

Chapter 120 of 2007 revised Maryland's RPS to include a solar carve-out, requiring that at least 0.005% of electricity in 2008 be from solar generation increasing to at least 2.0% in 2022. Chapter 494 of 2010 increased the solar RPS percentages through 2016. To meet the 2% solar obligation in 2022 with solar RECs (SRECs), the installed solar capacity in the State will need to increase from roughly 5 megawatts or less at the end of 2009 to an estimated 1,300 megawatts in 2022.

In order to preserve tidal wetlands, the State requires an applicant for a tidal wetlands project license or permit to design the project to first avoid and then minimize the loss of tidal wetlands. To this end, BPW has delegated to MDE the authority to reject, authorize, modify, condition, or deny applications for construction or replacement of pilings, fixed or floating piers, decks, walkways, boathouses, and related structures on piers.

The Chesapeake Bay Critical Area Protection Program was established by Chapter 794 of 1984 in order to minimize damage to water quality and wildlife habitat by fostering more sensitive development activity along the shoreline of the Chesapeake Bay and its tributaries. The law identified the Critical Area as all land within 1,000 feet of the mean high water line of tidal waters or the landward edge of tidal wetlands and all waters of and lands under the Chesapeake Bay and its tributaries. In 2002, the program was expanded to include the Atlantic Coastal Bays.

In September 2010, MDE convened a meeting of various State agencies to study the issue of constructing solar panels on piers within tidal wetlands. The workgroup, including the departments of Planning, Natural Resources, and Business and Economic Development, as well as the Maryland Energy Administration, Maryland Historical Trust, and the Critical Area Commission, plans to invite industry representatives to its next meeting and to invite property owners to future meetings.

**State Fiscal Effect:** MDE advises that it cannot estimate the number of pier owners that may install solar panels under the bill's authorization but assumes that it will be minimal. To the extent the bill results in an increase in the number of applications for wetlands licenses and permits, special fund revenues to MDE's Wetlands and Waterways Program Fund increase by at least \$750 per project due to the application of existing fees. MDE can handle any increase in applications with existing resources. The Department of Natural Resources and the Critical Area Commission advise that, although they are consulted for recommendations regarding tidal wetlands license and permit applications, any increase in applications under the bill can likely be handled with existing resources.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore, Cecil, Harford, Montgomery, and St. Mary's counties; Board of Public Works; Department of Natural Resources; Maryland Department of the Environment; Maryland Energy Administration; Critical Area Commission; Department of Legislative Services

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