

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 1043 (Senator Colburn)
Education, Health, and Environmental Affairs

**Environment - Construction on Piers - Non-Water Dependent Structures at
Commercial Marinas**

This bill exempts certain projects involving the construction of a non-water dependent structure on a pier located on State or private wetlands from an existing prohibition from obtaining a State wetlands license or permit and authorizes local jurisdictions to issue building permits for such projects. The exemption and authorization apply only if (1) the project is located in a commercial marina containing at least 75 wet slips; (2) the marina owner has a current license or permit to dredge in the area where the structural support for the non-water dependent structure is located; and (3) the non-water dependent structure is approved by the relevant local jurisdiction and is used seasonally, but not for residential, retail, or commercial purposes.

Fiscal Summary

State Effect: Special fund revenues may increase minimally for the Maryland Department of the Environment (MDE) beginning in FY 2013 due to the collection of additional wetlands license and permit application fees for construction on piers under the bill's authorization. The bill can be implemented with existing budgeted resources. This analysis assumes a limited number of marinas may qualify for the exemption.

Local Effect: Local revenues increase negligibly in some jurisdictions due to the collection of additional building permit fees for construction on piers. The bill can likely be implemented with existing budgeted resources. This analysis assumes a limited number of marinas may qualify for the exemption.

Small Business Effect: Minimal beneficial impact on construction and marine contractors.

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 non-water dependent structure on a pier located on State or private wetlands, except under specified conditions. Among other things, exceptions to this requirement include projects that (1) are located in a marina owned by the State, a county, or a municipal corporation; (2) enhance maritime transportation, the preservation of historic lighthouses, or the construction of historically accurate replicas; and (3) are located in a specified priority funding area. Also exempted from this requirement are projects that, among other things, are 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 “non-water 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 non-water dependent structure on a pier located on State or private wetlands in the Critical Area, with specified exceptions.

Background: 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 generally 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.

State Fiscal Effect: MDE advises that it cannot estimate the number of pier owners that may install projects 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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Carroll, Cecil, and Montgomery counties; Department of Natural Resources; Maryland Department of the Environment; Department of Legislative Services

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