

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1135 (Delegate Chisholm)
Environment and Transportation

Environment – State Wetlands – Piers and Other Improvements

This bill prohibits a community association from preventing a riparian property owner from constructing a pier or making any other improvement into the waters of the State if the riparian property owner has received the appropriate federal, State, and county approvals to construct the pier or make the improvement.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations. The bill does not require the Maryland Department of the Environment (MDE) or the Board of Public Works (BPW) to alter the process for issuing wetlands licenses and permits.

Local Effect: The bill is not anticipated to materially affect local finances or operations.

Small Business Effect: Minimal.

Analysis

Current Law:

Relevant Definitions

A “pier” is any pier, wharf, dock, walkway, bulkhead, breakwater, piles, or other similar structure. A “pier” does not include any structure on pilings or stilts that was originally constructed beyond the landward boundaries of State or private wetlands. “State tidal wetlands” means any land under the navigable waters of the State below the mean high tide, affected by the regular rise and fall of the tide and not otherwise transferred by

the State. “Private tidal wetlands” means any land not considered State wetland bordering on or lying beneath tidal waters, which is subject to regular or periodic tidal action and supports aquatic growth; tidal wetlands transferred by the State by a valid lease, patent, or grant confirmed by Article 5 of the Maryland Declaration of Rights, to the extent of the interest transferred; and tidal water created by the excavation of upland unless conveyed to the State. Regulations define a “riparian landowner” to mean a property owner whose land borders on tidal wetlands or waters of the State and “riparian rights” to mean the rights of an owner of land bordering on tidal wetlands or waters of the State as recognized by Title 16 of the Environment Article.

Approval Generally Required to Build a Pier on Wetlands

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. Generally, a person must obtain a permit or license before working in wetlands in the State. BPW has the authority to determine whether to issue a license to dredge, fill, or alter State wetlands; MDE must assist BPW in making such a determination and, in some cases, BPW delegates the authority to issue such a license to MDE. Authorizations granted to work in privately owned wetlands are 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. According to BPW, 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.

MDE and BPW consider all of these factors and rights when reviewing applications and making determinations on whether to issue licenses or permits and whether to impose any conditions on such approvals.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Kent, St. Mary's, and Worcester counties; Maryland Department of the Environment; Board of Public Works; Department of Legislative Services

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rh/lgc

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