

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 444 (Delegate Otto)
Environment and Transportation

Environment - Duck Nest Boxes - Wetlands License Requirements

This bill authorizes the installation and maintenance of duck nest boxes on State wetlands without a license, specifies that a duck nest box is not considered a nonwater-dependent project for the purposes of wetlands licensing by the Board of Public Works (BPW), and establishes that the installation and maintenance of duck nest boxes is a lawful use of private wetlands. “Duck nest box” means a nesting structure located on or over water that is provided for the purpose of sheltering domesticated ducks.

Fiscal Summary

State Effect: Special fund revenues may increase minimally, as discussed below. Expenditures are not materially affected.

Local Effect: The bill does not directly affect local government operations or finances.

Small Business Effect: Minimal or none.

Analysis

Current Law:

Wetlands Management – Generally

Wetlands in the State are protected, and the Wetlands and Waterways Program within the Maryland Department of the Environment (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 BPW (or MDE, as MDE is delegated authority to authorize certain activities in State wetlands); or
- private wetlands, without a permit issued by MDE.

Statute generally prohibits BPW and MDE from issuing a license or permit to authorize a nonwater-dependent project located on State or private wetlands. A “nonwater-dependent project” is a temporary or permanent structure that, by reason of its intrinsic nature, use, or operation, does not require location in, on, or over State or private wetlands. Statute does authorize BPW (for State wetlands) and the Secretary of the Environment (for private wetlands) to issue such a license or permit under specified conditions.

Authorized Activities on State and Private Wetlands

MDE advises that duck nest boxes are not authorized to be installed or maintained in any State or private wetland under current law.

For State wetlands, statute specifies the activities and operations that may be undertaken *without a license*, including (1) specified dredging and filling activities; (2) activities approved by the Maryland Department of Agriculture; (3) approved improvements to wildlife habitats or agricultural drainage ditches; (4) routine maintenance or repair of existing bulkheads, as specified; (5) certain aquaculture activities occurring under a lease issued by the Department of Natural Resources; and (6) the installation of specified equipment related to the cultivation of shellfish.

For private wetlands, statute specifies the activities that are *expressly authorized* to be undertaken, including (1) the conservation of soil, vegetation, water, fish, shellfish, and wildlife; (2) trapping, hunting, fishing, and catching shellfish, if otherwise legally permitted; (3) the exercise of riparian rights to improve land bounding on navigable water, as specified; (4) the reclamation of land, under specified circumstances; (5) the routine maintenance or repair of existing bulkheads, as specified; and (6) the installation of specified equipment related to the cultivation of shellfish. Although statute does not specify if these activities require a permit, MDE [regulations on wetlands licensing and permitting](#) specify that these activities, as well as certain other activities, may be undertaken *without a permit*.

State Revenues: As noted above, MDE issues permits for specified projects in private wetlands. Although it is unclear if, under the bill, a permit is required for the installation and maintenance of duck nest boxes in private wetlands, for purposes of this analysis, it is assumed that duck nest boxes may need to be permitted to be installed in private wetlands.

Thus, special fund revenues for the Wetlands and Waterways Program Fund may increase minimally beginning in fiscal 2025. Application fees for wetlands and waterways authorizations are set in statute and range from \$250 (for certain shoreline stabilization projects) to \$7,500 multiplied by the impact area in acres (for major projects with an impact of one acre or more). The application fee for minor projects is \$750.

Additional Comments: MDE advises that all work in tidal wetlands requires authorization by the U.S. Army Corps of Engineers (USACE) and that, even under the bill, it is unclear at this time whether USACE would authorize duck nest boxes.

Additional Information

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

Designated Cross File: SB 339 (Senator Carozza) - Education, Energy, and the Environment.

Information Source(s): Maryland Department of the Environment; Board of Public Works; Department of Legislative Services

Fiscal Note History: First Reader - February 2, 2024
an/lgc

Analysis by: Richard L. Duncan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510