



The Maryland Department of the Environment
Secretary Serena McIlwain
Senate Bill 1048
Environment - Tidal Wetland Permit - Ownership of Land

Position: Oppose
Committee: Education, Energy, and the Environment
Date: February 20, 2024
From: Jeremy D. Baker

The Maryland Department of the Environment (MDE) **OPPOSES** SB 1048. The bill changes the current law regarding ownership of tidal wetlands in connection with the construction of shoreline stabilization measures. The bill requires MDE to transfer in fee simple to the riparian landowner the interest in the land that is landward of the new mean high water line.

Bill Summary

As written, SB 1048 is limited to instances in which a shoreline stabilization measure is constructed pursuant to a tidal wetland permit. Currently, in Title 16 of the Environment Article, permits are only issued for activities occurring in private wetlands, which are already privately owned by the riparian owner. As there is no State-owned submerged land at issue, there is no interest for the Department to transfer interest in real property. Should the language and intent of the bill be updated to reflect State tidal wetlands and the State tidal wetlands licensing procedures and not private tidal wetlands and the private tidal wetlands permit, the proposed bill would have a significant fiscal and operational impact on the Department.

Position Rationale

Maryland does not merely regulate state tidal wetlands, or hold them in public trust as many other states do. Instead, the State has a direct property interest in those lands as successor to the Lords Baltimore. Under Title 16, a person who is the owner of land bounding on navigable water 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. The State has no property claim, rights, or interests on or in the improvement. However, § 16-103(b) of the Environment Article provides that, "[t]he provisions of this title do not transfer the title of ownership of any land or interest in land". This system of the State holding a property interest and a riparian owner holding a right of access has been in place for hundreds of years.

Further, if SB 1048 were to become law, it could have negative impacts on state mapping and planning efforts, including 1) increasing density in the Resource Conservation Area; 2) altering the 100-foot shoreline buffer; and 3) negating the accuracy of updated Critical Area mapping and the 1,000-foot Critical Area boundary.

Finally, the Bill directs MDE to transfer in fee simple such land to the riparian owner. MDE does not have the statutory authority to hold any property on behalf of the State. The title to State wetlands is held by the State, not MDE. Thus, MDE cannot legally transfer that title in fee simple or otherwise to private entities.

For the reasons detailed above, MDE urges an **UNFAVORABLE** report for Senate Bill 1048.

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