

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE
Revised

House Bill 69

(Delegate Weir)

Environmental Matters

Education, Health, and Environmental Affairs

Riparian Property - Potomac River - Stationary Blind and Blind Site Licensing

This bill allows persons owning riparian property in Virginia that is adjacent to the tidal waters of the Potomac River to license their shoreline to establish offshore stationary blinds or blind sites for hunting wild waterfowl and to prevent other people from licensing the riparian shoreline for the purpose of hunting wild waterfowl offshore. Persons owning riparian property in Maryland that is adjacent to the nontidal waters of the Potomac River are prohibited from licensing mainland shoreline.

The bill takes effect June 1, 2002.

Fiscal Summary

State Effect: Potential minimal increase in special fund revenues beginning in FY 2002 related to any increase in the number of licenses issued. The Department of Natural Resources (DNR) could handle the bill's changes with existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: The State of Maryland includes the entire Potomac River. Persons owning riparian property in Virginia or West Virginia that is adjacent to the Potomac River may not license their shoreline. Owners of riparian property in Maryland may license their riparian shoreline to establish offshore stationary blinds or blind sites for

hunting wild waterfowl and to prevent other people from licensing the riparian shoreline for the purpose of hunting wild waterfowl offshore.

An applicant for a license must submit an application, a map, the written permission of adjacent landowners, if necessary, and the written lease or assignment of the riparian landowner, if necessary, to DNR. The application fee is \$20. Funds collected must be used to administer the licensing program. Any funds not expended in a fiscal year for administering the licensing program revert to the general fund.

Background: According to the Attorney General, prior to 1999 Maryland law allowed riparian property owners in Virginia adjacent to the Potomac River to license their shoreline and establish duck blinds. The Attorney General reports that from 1943 to 1970, Maryland's law was rather straightforward on the rights of nonresident riparian property owners to obtain a Maryland license to erect duckblinds in the Potomac River. In 1970, legislation was enacted that provided that nonresidents may only hunt from a floating or boat blind if the legal owner or resident co-owner accompanies the nonresident. In 1973, a nonsubstantive code revision included a sentence stating that a nonresident may not obtain a license. Although the Court of Appeals held that the 1973 legislation worked no substantive changes in the law [*Bureau of Mines v. George's Creek*, 272 Md. 143, 155(1974)], the Attorney General advises that the language used could be read to cast doubt about the rights of out-of-State riparian owners or their lessees, licensees, or assignees to obtain a license.

In 1999, legislation was enacted to transfer licensing authority from the clerks of the court to DNR. In addition, the legislation expressly prohibited the licensing of out-of-State riparian owners adjacent to the Potomac River. The Attorney General believes that portions of the 1999 law are unconstitutional and should be amended. Specifically, the Attorney General notes that because Virginia and West Virginia riparian landowners are expressly denied the right to lease or assign their right to license their riparian shoreline, the 1999 statute affects commercial rights and triggers scrutiny under the Privileges and Immunities Clause of the U.S. Constitution. According to the Attorney General, Section 10-607(a)(2) of the Natural Resources Article unconstitutionally discriminates against nonresidents in a commercial setting and is in violation of the Privileges and Immunities Clause.

This bill would amend the 1999 law to provide Virginia and West Virginia landowners with the same rights Maryland residents have with respect to licensing their riparian shoreline.

Currently, about 30 Marylanders license shoreline on the Virginia side of the tidal Potomac. DNR has received requests from Virginia riparian landowners to license their shoreline on the tidal Potomac and those requests have been denied.

State Revenues: By allowing Virginia landowners to license their riparian shoreline adjacent to the tidal waters of the Potomac River, the bill could result in an increase in the number of shoreline licenses issued. For each additional license sold, special fund revenues would increase by \$20; however, the number of additional licenses issued is not anticipated to be significant.

Some Virginia landowners who choose to license their shoreline on the tidal Potomac may preempt Maryland residents who currently license that shoreline from doing so. To the extent that the number of new licenses issued to Virginia landowners is the same as the number of licenses that would no longer be issued to Maryland residents, revenue from the sale of shoreline licenses would not be affected. Special fund revenues could increase to the extent that Maryland residents preempted by Virginia landowners license additional sites. Because the bill would only affect a maximum of 30 Maryland residents who currently license riparian shoreline on the Virginia side of the Potomac, any such increase is not anticipated to be significant.

It is assumed that any increase in the number of hunting licenses and wild waterfowl stamps issued as a result of this bill would not be significant.

The bill's provisions relating to the nontidal Potomac would have no fiscal impact. DNR advises that it does not currently issue any shoreline licenses to Maryland landowners along the nontidal Potomac, in large part because most of this land is owned by the federal government.

Additional Information

Prior Introductions: None.

Cross File: SB 18 (Senator Miller) – Education, Health, and Environmental Affairs.

Information Source(s): Department of Natural Resources, Department of Legislative Services

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