

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1266

(Delegate Cane, *et al.*)

Environmental Matters

Education, Health, and Environmental Affairs

Wetlands - Construction of Structure on Pier - Exception

This bill authorizes the Board of Public Works to issue a wetlands license for a project involving the construction of a nonwater dependent structure on a pier located on State wetlands under specified conditions. The same authority is provided to the Maryland Department of the Environment with respect to permits for projects on private wetlands.

The bill takes effect June 1, 2008.

Fiscal Summary

State Effect: Due to its limited application, the bill would not materially affect State operations or finances.

Local Effect: Based on one of the bill's specified conditions, only three areas (the City of Cambridge, the City of Crisfield, and the City of Pocomoke City) could be eligible for a license or permit under the bill. Although the overall future impact of this bill on local finances in affected areas is unknown, based on one proposed project, the bill could have a positive impact on the City of Cambridge.

Small Business Effect: Minimal overall, but potentially meaningful impact on small businesses in affected areas.

Analysis

Bill Summary: The project must • be located in a marina owned by the State, a county, or a municipal corporation; • enhance maritime transportation, the preservation of historic lighthouses, or the construction of historically accurate replicas; • be approved by

local planning and zoning authorities; • be located in a priority funding area; and • be located in an area that has been excluded from a local critical area program under a specified provision of the Critical Area law. The project must also meet any other applicable requirements specified under current law.

Current Law: In general, 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 nonwater dependent structure on a pier located on State or private wetlands, except under specified conditions. Among other things, the project must be • 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.

Projects on State or private wetlands within the Chesapeake Bay Critical Area must also meet other specified requirements. Specifically, the applicant must • 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; • improve the water quality of existing stormwater runoff from the project site into adjacent waters; and • 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.

In determining the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area within its boundaries, a local jurisdiction may exclude certain developed areas from its critical area program. In order to do so, a local jurisdiction must demonstrate that the imposition of a program would not substantially improve protection of tidal water quality or conservation of fish, wildlife, or plant habitats, considering the availability of public facilities and applicable laws and restrictions. According to MDE, to date, the Critical Area Commission has only approved three exclusion areas – the City of Cambridge, the City of Crisfield, and the City of Pocomoke City.

Background: MDE is currently reviewing an application for a wetlands license submitted by the City of Cambridge for the construction of a replica of the Choptank River Lighthouse. This building is based on a historic replica of a lighthouse originally located in the Choptank River between Castle Haven and Benoni Points near the mouth of the Tred Avon River.

If constructed, the replica lighthouse building would serve multiple purposes, including • accommodations for a dockmaster's office; • restrooms; and • a museum that would be

open to the public to educate school groups and visitors about the rich history of the Cambridge area and the history of the lighthouse.

According to MDE, both State and federal resource agencies are willing to authorize the project from an environmental perspective. However, § 16-104 of the Environment Article prohibits the construction of nonwater dependent structures on piers unless the pier was in existence prior to 1985. Because the project does not comply with this provision, it is difficult for MDE to submit a favorable report and recommendation to BPW regarding the issuance of a wetlands license.

Local Fiscal Effect: Because the bill would likely enable the proposed replica lighthouse to be constructed, the bill could have a positive impact on the City of Cambridge. First, the city advises that if the lighthouse is constructed, the city's dockmaster would likely relocate to that facility. Second, the lighthouse is anticipated to result in increased tourism activity, which could have a positive impact on the city's economy.

Although the bill could also apply in the City of Crisfield and the City of Pocomoke City, Legislative Services is not aware of any projects currently proposed in those areas that would be affected by the bill.

Additional Information

Prior Introductions: None.

Cross File: SB 757 (Senator Colburn) – Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of the Environment, Board of Public Works, Maryland Department of Planning, Department of Natural Resources, Dorchester County, City of Cambridge, Department of Legislative Services

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