

# HOUSE BILL 1368

M3

9lr3129

---

By: **Delegates Beidle and V. Clagett**

Introduced and read first time: February 20, 2009

Assigned to: Rules and Executive Nominations

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Environment – State and Private Wetlands – Improvements**

3 FOR the purpose of prohibiting a certain person exercising a certain right to make  
4 certain improvements into the water for certain purposes from extending  
5 certain improvements over certain vegetated wetlands; and generally relating to  
6 improvements over State and private wetlands.

7 BY repealing and reenacting, with amendments,  
8 Article – Environment  
9 Section 16–201 and 16–304  
10 Annotated Code of Maryland  
11 (2007 Replacement Volume and 2008 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
13 MARYLAND, That the Laws of Maryland read as follows:

14 **Article – Environment**

15 16–201.

16 (a) (1) **[A] EXCEPT AS PROHIBITED UNDER PARAGRAPH (2) OF THIS**  
17 **SUBSECTION, A** person who is the owner of land bounding on navigable water is  
18 entitled to any natural accretion to the person's land, to reclaim fast land lost by  
19 erosion or avulsion during the person's ownership of the land to the extent of provable  
20 existing boundaries. The person may make improvements into the water in front of the  
21 land to preserve that person's access to the navigable water or, subject to subsection  
22 (c), protect the shore of that person against erosion. After an improvement has been  
23 constructed, the improvement is the property of the owner of the land to which the  
24 improvement is attached. A right covered in this subtitle does not preclude the owner  
25 from developing any other use approved by the Board. The right to reclaim lost fast

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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.

**(2) A PERSON EXERCISING A RIGHT TO MAKE IMPROVEMENTS INTO THE WATER IN FRONT OF THE LAND TO PRESERVE THAT PERSON'S ACCESS TO THE NAVIGABLE WATER UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY NOT EXTEND THE IMPROVEMENTS OVER VEGETATED STATE WETLANDS.**

(b) The rights of any person, as defined in this subtitle, which existed prior to July 1, 1973 in relation to natural accretion of land are deemed to have continued to be in existence subsequent to July 1, 1973 to July 1, 1978.

(c) (1) Improvements to protect a person's property against erosion shall consist of nonstructural shoreline stabilization measures that preserve the natural environment, such as marsh creation, except:

(i) In areas designated by Department mapping as appropriate for structural shoreline stabilization measures; and

(ii) In areas where the person can demonstrate to the Department's satisfaction that such measures are not feasible, including areas of excessive erosion, areas subject to heavy tides, and areas too narrow for effective use of nonstructural shoreline stabilization measures.

(2) (i) Subject to subparagraph (ii) of this paragraph, in consultation with the Department of Natural Resources, the Department shall adopt regulations to implement the provisions of this subsection.

(ii) Regulations adopted by the Department under subparagraph (i) of this paragraph shall include a waiver process that exempts a person from the requirements of paragraph (1) of this subsection on a demonstration to the Department's satisfaction that nonstructural shoreline stabilization measures are not feasible for the person's property.

16-304.

**(A)** Notwithstanding any regulation adopted by the Secretary to protect private wetlands, the following uses are lawful on private wetlands:

(1) Conservation of soil, vegetation, water, fish, shellfish, and wildlife;

(2) Trapping, hunting, fishing, and catching shellfish, if otherwise legally permitted;

(3) [Exercise] **EXCEPT AS PROHIBITED UNDER SUBSECTION (B) OF THIS SECTION, EXERCISE** of riparian rights to improve land bounding on navigable

1 water, to preserve access to the navigable water, or to protect the shore against  
2 erosion;

3 (4) Reclamation of fast land owned by a natural person and lost during  
4 the person's ownership of the land by erosion or avulsion to the extent of provable  
5 preexisting boundaries. The right to reclaim lost fast land relates only to fast land lost  
6 after January 1, 1972. The burden of proof that the loss occurred after this date is on  
7 the owner of the land; and

8 (5) Routine maintenance and repair of existing bulkheads, provided  
9 that there is no addition or channelward encroachment.

10 (B) **A PERSON EXERCISING A RIGHT TO MAKE IMPROVEMENTS INTO THE**  
11 **WATER IN FRONT OF THE LAND TO PRESERVE THAT PERSON'S ACCESS TO THE**  
12 **NAVIGABLE WATER UNDER SUBSECTION (A)(3) OF THIS SECTION MAY NOT**  
13 **EXTEND THE IMPROVEMENTS OVER VEGETATED PRIVATE WETLANDS.**

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
15 October 1, 2009.