

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

Re-referred to: Environmental Matters, March 2, 2009

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 25, 2009

CHAPTER _____

1 AN ACT concerning

2 ~~Environment—State and Private Wetlands—Improvements~~
3 Task Force on Residential Pier Construction

4 FOR the purpose of ~~prohibiting a certain person exercising a certain right to make~~
5 ~~certain improvements into the water for certain purposes from extending~~
6 ~~certain improvements over certain vegetated wetlands; and generally relating to~~
7 ~~improvements over State and private wetlands; establishing a Task Force on~~
8 Residential Pier Construction; establishing the membership of the Task Force;
9 requiring the Secretary of the Environment to request the participation of
10 certain parties in the Task Force; providing for the designation of a chair of the
11 Task Force; requiring the Department of the Environment to provide staff for
12 the Task Force; prohibiting a member of the Task Force from receiving certain
13 compensation; providing that a member of the Task Force may receive
14 reimbursement of certain expenses; requiring the Task Force to study certain
15 matters and make certain findings and recommendations; requiring the Task
16 Force to report its findings and recommendations to the Governor and the
17 General Assembly on or by a certain date; and generally relating to the Task
18 Force on Residential Pier Construction.

19 ~~BY repealing and reenacting, with amendments,~~
20 ~~Article—Environment~~
21 ~~Section 16-201 and 16-304~~
22 ~~Annotated Code of Maryland~~
23 ~~(2007 Replacement Volume and 2008 Supplement)~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

~~**Article Environment**~~

~~16-201.~~

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

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

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

~~(B) 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 SUBSECTION (A)(3) OF THIS SECTION MAY NOT EXTEND THE IMPROVEMENTS OVER VEGETATED PRIVATE WETLANDS.~~

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

(a) There is a Task Force on Residential Pier Construction.

(b) The Task Force consists of the following members:

(1) one member of the Senate of Maryland, appointed by the President of the Senate;

(2) one member of the House of Delegates, appointed by the Speaker of the House;

(3) the Secretary of the Environment, or the Secretary's designee; and

1 (4) the following seven members, appointed by the Secretary of the
2 Environment:

3 (i) one representative of a Western Shore county bordering the
4 Chesapeake Bay;

5 (ii) one representative of an Eastern Shore county bordering the
6 Chesapeake or Atlantic Coastal Bays;

7 (iii) one representative of the Marine Trades Association of
8 Maryland;

9 (iv) one representative of the Maryland Marine Contractors
10 Association;

11 (v) one representative of the Maryland Association of Realtors;

12 (vi) one representative of the Chesapeake Bay Foundation; and

13 (vii) one representative of a Maryland Riverkeeper Program.

14 (c) The Secretary of the Environment shall invite the following parties to
15 participate in the Task Force:

16 (1) the Secretary of Natural Resources, or the Secretary's designee;

17 (2) the Secretary of Business and Economic Development, or the
18 Secretary's designee; and

19 (3) the Executive Secretary of the Board of Public Works, or the
20 Executive Secretary's designee.

21 (d) The Secretary of the Environment shall designate the chair of the Task
22 Force.

23 (e) The Department of the Environment shall provide staff for the Task
24 Force.

25 (f) A member of the Task Force:

26 (1) may not receive compensation as a member of the Task Force; but

27 (2) is entitled to reimbursement for expenses under the Standard
28 State Travel Regulations, as provided in the State budget.

29 (g) The Task Force shall:

(1) study and make findings regarding:

(i) existing laws, regulations, and policies related to residential pier construction and how the laws, regulations, and policies balance the needs of riparian property owners, the general public, and the environment;

(ii) the approach taken by other states regarding riparian access to navigable waters;

(iii) scientific research about environmental impacts associated with the construction of piers;

(iv) issues associated with the construction of residential piers, including:

1. the length and height of piers over marsh and the associated ecological impact;

2. the length of piers over open water, and the associated ecological impacts, including impacts on submerged aquatic vegetation and dredging;

3. construction methodologies; and

4. competing uses of the waterway, including fishing, crabbing, and recreational uses; and

(2) make recommendations regarding necessary legislation.

(h) On or before January 1, 2010, the Task Force shall report its findings and recommendations to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2009. It shall remain effective for a period of 1 year and, at the end of May 31, 2010, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.