

**Department of Legislative Services**  
2010 Session**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 987

(Delegate George, *et al.*)

Environmental Matters

Education, Health, and Environmental Affairs

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**Marine Contractors - Licensure and Regulation - Tidal Wetlands Licenses**

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This bill provides for the licensure and regulation of marine contractors in the State. It establishes a Marine Contractors Licensing Board within the Maryland Department of the Environment (MDE) and provides for the membership, duties, and powers of the board. The bill establishes requirements for licensure and license renewal, and exempts licensed marine contractors from also having to be licensed by the Maryland Home Improvement Commission (MHIC). The board is authorized to set licensing fees in an amount so as to approximate the costs of maintaining the board. The bill also establishes specified violations and corresponding penalties. All fees and penalties must be paid into the Wetlands and Waterways Program Fund for administration of the board. By December 31, 2010, all marine contractors must register with MDE and pay a \$300 registration fee. The registration term must expire on December 31, 2011, unless extended by the board. Marine contractors who fail to register are subject to specified penalties after December 31, 2010. Finally, the bill establishes new requirements related to tidal wetlands licenses or permits issued under the Wetlands and Riparian Rights provisions of the Environment Article.

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**Fiscal Summary**

**State Effect:** MDE special fund revenues increase by \$60,000 in FY 2011 due to marine contractor registration fees. Future year special fund revenues reflect biennial licensure. General fund revenues decrease in 2011 and future years to the extent marine contractors no longer secure MHIC contractor licenses. MDE's special fund expenditures increase by \$60,000 in FY 2011 to establish the board. Future year special fund expenditures reflect elimination of one-time and short-term costs, hiring an administrator, and adjustments for inflation.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	(-)	(-)	(-)	(-)	(-)
SF Revenue	\$60,000	\$204,000	\$136,000	\$68,000	\$75,000
SF Expenditure	\$60,000	\$136,700	\$152,800	\$86,500	\$90,300
Net Effect	\$0	\$67,300	(\$16,800)	(\$18,500)	(\$15,300)

*Note: (-) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** Potential minimal increase in expenditures due to the bill's penalty provisions.

**Small Business Effect:** Meaningful.

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## Analysis

### Bill Summary:

#### *Tidal Wetlands License Requirements*

The bill requires individuals who undertake or authorize an activity that requires a license or permit in accordance with Wetlands and Riparian Rights provisions of the Environment Article to (1) hire a licensed marine contractor to do the work; or (2) be a licensed marine contractor. The bill exempts residential or commercial property owners who perform marine contractor services on their own property and obtain the necessary tidal wetlands licenses or permits. The bill establishes criminal and civil penalties for violations of those requirements. Individuals who violate a specified Wetlands and Riparian Rights provision in the Environment Article, or a related regulation, are guilty of a misdemeanor and, upon conviction, subject to a fine of up to \$10,000, imprisonment for up to one year, or both. Each day is a separate offense. In addition, individuals may be liable for a civil penalty of up to \$10,000 per violation. Penalty revenue must be allocated to MDE's Wetlands and Waterways Program Fund for the administration of the Marine Contractors Licensing Board. MDE is required to adopt implementing regulations.

The bill establishes new application submission and review requirements for MDE licenses to dredge or fill on State tidal wetlands. Among other requirements, MDE must (1) notify applicants about whether their application is complete and correct within 45 days of receiving the application; and (2) grant, deny, or condition a license within 45 days of the application being complete, if specified conditions are met. MDE is authorized to provide deadline extensions, upon written notice to an applicant, in specified circumstances. MDE is required to issue public notice of an opportunity to submit written comments or to request a hearing and must hold a hearing, if requested, within 45 days of being requested unless extenuating circumstances justify an extension.

### *Marine Contractors Licensing Board*

The board is responsible for the licensing and regulation of individuals and entities that provide marine contractor services in the State. The bill establishes the board's membership, board member terms, and other board member requirements. The Governor is authorized to remove board members. The board must elect officers and meet at least twice annually and is authorized to employ staff. Members of the board may not receive compensation but are entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget.

The board is authorized to (1) recommend regulations for adoption by the Secretary of the Environment to carry out marine contractor licensing; and (2) make inquiries and conduct investigations of license applicants. The board must (1) carry out marine contractor licensing provisions of the Environment Article established by the bill; (2) collect and account for specified fees; and (3) keep a current record of all licensed marine contractors, including specified information.

The board is required to set reasonable fees for the issuance and renewal of licenses and other services that it provides. The fees must be set so as to produce funds to approximate the costs of maintaining the board. All funds collected under marine contractor licensing provisions of the Environment Article must be allocated to the Wetlands and Waterways Program Fund for administration of the board.

### *Marine Contractor Licenses*

“Marine contractor services” means construction, demolition, installation, alteration, repair, or salvage activities located in, on, over, or under State or private tidal wetlands. Furthermore, “marine contractor services” includes (1) dredging and filling; (2) the construction, demolition, installation, alteration, repair, or salvage of structures, including boathouses, boat or other personal watercraft lifts or ramps, slips, docks, floating platforms, moorings, piers, pier access structures, pilings, wetland observation platforms, wetland walkways, and wharfs; and (3) the construction, demolition, installation, alteration, repair, or salvage of stabilization and erosion control measures, including revetments, breakwaters, bulkheads, groins, jetties, stone sills, marsh establishments, and beach nourishment or other similar projects.

Individuals, or the entities they work for, must have a license prior to performing or soliciting marine contractor services in the State. State and federal government employees are exempt from this requirement while performing their government duties. A residential or commercial property owner may perform marine contractor services on the property owner's own property without obtaining a license from the board. To qualify for a license, applicants must meet specified requirements, including having at

least two years of experience as a full-time marine contractor or demonstrating similar contractor experience, having a federal tax identification number, passing a written marine contractor test, and having specified insurance. Applicants must provide specified information, complete a specified application form, and pay a license application fee set by the board. The license is valid for two years, and each license must include specified information. Marine contractor's license numbers must be displayed on their advertising materials and large equipment. The board may not issue a marine contractor license to an applicant whose trade or fictitious name or trademark is so similar to another licensee that it may cause confusion. Licensed marine contractors are exempt from MHIC contractor licensing requirements.

A marine contractor license authorizes an entity to (1) employ individuals who are not licensed marine contractors to provide marine contractor services on behalf of the licensee; and (2) represent itself to the public as a licensed marine contractor entity. The terms of licenses must be staggered and expire on a date established by the Secretary of the Environment via the regulatory process. The board is required to send specified information to a licensee, at least two months before a license expires, at the last known address of the licensee. Licenses may be renewed, before they expire, for two additional years if the licensee meets specified requirements, including paying a renewal fee and any outstanding fees and completing at least 12 hours of continuing education. The board must renew a license if specified requirements are met.

Except as otherwise specified and subject to other requirements, the board may deny, refuse to renew, suspend, or revoke a marine contractor license if the applicant or licensee conducts specified acts. The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays is required to notify the board if a marine contractor licensee or applicant fails to comply with specified requirements in the critical area. Alleged violators must be given specified notice and a hearing must be held in accordance with the Administrative Procedure Act. A person aggrieved by a final decision of the board is authorized to appeal the decision. Unless licensed and authorized, an individual or entity may not (1) conduct, attempt to conduct, or offer to conduct marine contractor services; or (2) represent to the public by title, by description of services, methods, or procedures, or otherwise, that they are authorized to perform marine contractor services in the State.

Persons that violate any marine contractor provision in the Environment Article or associated regulations are guilty of a misdemeanor and, upon conviction, subject to a fine of up to \$10,000, imprisonment for up to one year, or both. Each day is a separate offense. In addition, such persons may be liable for a civil penalty of up to \$10,000 per violation. Penalty revenue must be allocated to the Wetlands and Waterways Program Fund for the administration of the board.

**Current Law:** The Wetlands and Waterways Program within MDE administers a statewide program for the management, conservation, and protection of Maryland's tidal wetlands and nontidal wetlands and waterways, including the 100-year floodplain. Permits granted for work in privately owned wetlands are issued by MDE; licenses granted for work in State-owned wetlands are issued by the Board of Public Works (BPW).

Chapter 142 of 2008 established a Wetlands and Waterways Program Fund within MDE. As the primary revenue source, Chapter 142 established application fees for various wetlands and waterways permits and licenses. Fees range from a flat fee of \$500 for a minor modification project to a fee equal to the impact area in acres multiplied by \$7,500 for a major project. MDE does not process applications until the application fee is submitted, and will not issue a permit until all fees are paid. The Wetlands and Waterways Program Fund also consists of other revenues, including compensation payments assessed by BPW and collected by MDE that were previously deposited into the Tidal Wetlands Compensation Fund.

MDE is directed to use the Wetlands and Waterways Program Fund for activities related to the issuance of permits and licenses; the management, conservation, protection, and preservation of the State's wetlands and waterways; and program development. MDE must prioritize the use of the fund to improve the level of service to the regulated community. In addition, MDE must identify and implement measures that will reduce delays and duplication in the permit process. MDE is also required to prepare an annual report on the fund.

Generally, for a first offense, a person that violates Wetlands and Riparian Rights provisions of the Environment Article is guilty of a misdemeanor and, upon conviction, is subject to a fine of up to \$10,000, with costs imposed in the discretion of the court. For a second or subsequent offense, a person is subject to a fine of up to \$25,000 or imprisonment for up to one year, or both, with costs imposed in the discretion of the court. A person that knowingly violates any provision is liable to the State for restoration of the affected wetland to its condition prior to the violation, if possible. A person that violates any Wetlands and Riparian Rights provision of the Environment Article, or any related regulation, permit, license, or order, is liable for a penalty up to \$10,000, which may be recovered in a civil action.

As amended by Chapter 142, the Tidal Wetlands Compensation Fund now consists of specified penalties and any monetary payment by a licensee in lieu of creating, restoring, or enhancing tidal wetlands that is required by MDE or BPW as a condition of a permit or license. Funds may only be appropriated for the creation, restoration, or enhancement of tidal wetlands.

Generally, a person must have a contractor license before acting as a contractor in the State. MHIC – housed within the Department of Labor, Licensing, and Regulation (DLLR) – licenses and regulates home improvement contractors, subcontractors, and salespersons in Maryland who perform services at residential properties with fewer than four dwelling units. An individual must pass an examination prior to submitting an application for licensure. In addition to the required application and fee, applicants must meet experience requirements, submit proof of compliance with insurance requirements, submit a credit report, and contribute to the Home Improvement Guaranty Fund, which reimburses homeowners for losses that result from an act or omission by a licensed contractor or that licensee’s subcontractor, salesperson, or employee. Most marine contractors are currently required to be licensed and regulated by MHIC.

## **Background:**

### *Marine Contractors*

The Maryland Marine Contractors Association advises approximately 200 marine contractor companies are working in the State. These contractors have expressed concern about the time it takes MDE to process wetlands and waterways permit applications as well as the overall effect of Chapter 142 of 2008 on the marine contractor industry. In addition, there is concern about unqualified marine contractors doing substandard work in the State.

### *Wetlands and Waterways*

Regulation of wetlands plays a vital role in maintaining the health and function of the Chesapeake and coastal bays. The functions and values of the natural resources protected under existing wetlands laws include fish and wildlife habitat and migration, water quality enhancement, natural shoreline protection, flood protection, and recreational opportunities and aesthetics. According to MDE, the goal of the Wetlands and Waterways Program is to avoid and minimize impacts associated with development and to mitigate impacts that are determined to be necessary and unavoidable. The regulation of tidal wetlands affects waterfront property owners and the boating public (construction of piers, shoreline protection structures, and marinas); regulated activities in these areas generally affect submerged lands owned by the State and held in trust for the benefit of the public.

Current shore protection practices range from “hard” techniques, such as bulkheads, retaining walls, and riprap, to more “soft” alternatives such as living shorelines that combine marsh plantings with sills, groin fields, or breakwaters. Where site conditions are appropriate, living shorelines are the preferred method of shore protection because in

addition to protecting the shoreline, they also trap sediment, filter pollution, and provide important habitats for both aquatic and terrestrial wildlife.

**State Expenditures:**

*Maryland Department of the Environment*

MDE special fund expenditures increase by \$60,000 in fiscal 2011 for contractual costs associated with developing the Marine Contractor Licensing Board.

However, the Department of Legislative Services advises that a significant portion of the costs associated with this bill will be incurred in later fiscal years. Special fund expenditures increase by \$136,696 in fiscal 2012 for a new administrator position and contractual costs associated with creating a database, online tracking system, and testing protocol. This estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate include:

- the board collects and accounts for marine contractor license fees;
- the board investigates marine contractors that submit license applications;
- the board issues marine contractor licenses and license renewals; and
- the board maintains a roster of all licensed marine contractors.

	<u>FY 2011</u>	<u>FY 2012</u>
Position	0	1
Salary and Fringe Benefits	0	\$55,005
Contractual Services	\$60,000	75,000
Start-up Costs/Operating Expenses	<u>0</u>	<u>6,691</u>
<b>Total MDE Expenditures</b>	<b>\$60,000</b>	<b>\$136,696</b>

Future year expenditures reflect elimination of most contractual costs in fiscal 2014, 4.4% annual salary increases, 3% employee turnover, and 1% annual increases in ongoing operating expenses. MDE expenditures may increase in the future to take disciplinary action concerning licensing violations.

*District Court*

To the extent the bill results in an increase in the District Court’s caseload, expenditures may increase for additional clerical services and court time necessary for the trial of those

cases. However, the bill is not anticipated to have a significant fiscal or operational impact on the District Court.

#### *Other State Agencies*

The bill is not expected to have a significant impact on BPW or the Department of Public Safety and Correctional Services.

#### **State Revenues:**

##### *Marine Contractor License Fees Paid to Board*

The bill requires (1) marine contractors to pay an initial \$300 registration fee by December 31, 2010, and renewal license fees every two years in subsequent years; and (2) the board to set reasonable fees that generate revenue to approximate the costs of maintaining the board.

Special fund revenues increase by \$60,000 in fiscal 2011 as all known marine contractors come into compliance with the new licensing requirement – initially by registering with the board. This estimate assumes 200 marine contractors submit applications and MDE collects only one application fee per business.

The bill requires license fee revenues to approximate the board's costs and license terms to be staggered. Because the board is expected to have higher start-up expenditures in fiscal 2012 and 2013, and reduced and more predictable expenditures in fiscal 2014 and future years, this analysis assumes marine contractor licensing fees must be adjusted to pay for the board's start-up costs in fiscal 2012 and 2013 as well as for ongoing operating costs. In fiscal 2012, this estimate assumes: (1) 100 marine contractors pay \$680 each to extend their marine contractor license for one year; and (2) the other 100 marine contractors pay \$1,360 each to renew their license for two years. In fiscal 2013, this estimate assumes the 100 contractors who renewed their license for one year in fiscal 2012 pay \$1,360 each to renew their license for two additional years. This estimate assumes 100 marine contractors pay \$680 each in fiscal 2014 to renew their licenses for two years and 100 marine contractors pay \$750 each in fiscal 2015 to renew their licenses for two years. The board will be required to increase licensing fees in fiscal 2015 and future years to ensure the board's operating costs are shared equitably among licensed marine contractors.

Because licensing must occur on a biennial basis and to ensure adequate revenue is available to cover board expenditures, this estimate assumes licensing revenues exceed expenditures in fiscal 2012 and remain available as a fund balance to cover anticipated expenditures in fiscal 2013 through 2015.

### *MHIC License Fees*

The bill exempts marine contractors from securing an MHIC contractor license to perform marine contractor work. At this time, all 200 marine contractors are required to secure an MHIC contractor license. The fee to renew an MHIC contractor license is \$380 per individual, of which \$230 goes to the general fund and \$150 is allocated to the Home Improvement Guaranty Fund. However, some marine contractors may still renew their MHIC license to do related work outside of the scope of the marine contractor license or maintain an MHIC license on inactive status, which costs \$50, to avoid being required to retake a contractor exam in the future to practice as a contractor. General and special funds decrease in fiscal 2011 and future years to the extent the bill prompts marine contractors to forgo a MHIC license altogether or maintain an MHIC license on inactive status.

### *Penalty and Fine Revenues*

To the extent marine contractors are fined for license violations, special fund revenues increase. Special fund revenues also increase to the extent individuals are fined for failing to hire or become a licensed marine contractor.

**Local Expenditures:** Expenditures may increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

**Small Business Effect:** Expenditures increase by at least \$300 in fiscal 2011 for each of the estimated 200 marine contractor businesses in the State, due to initial registration fees. Future year licensing expenditures increase, particularly in fiscal 2012 and 2013 to fund the board's start-up costs. Also, expenditures may increase to comply with testing and continuing education requirements for licensing.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 382 (Senator Conway, *et al.*) - Education, Health, and Environmental Affairs.

**Information Source(s):** Caroline, Harford, Montgomery, and Prince George's counties; Department of Natural Resources; Department of Labor, Licensing, and Regulation; Maryland Department of the Environment; Judiciary (Administrative Office of the

Courts); Maryland Marine Contractors Association; Office of Administrative Hearings;  
Department of Legislative Services

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