

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1313
(Delegate Mautz, *et al.*)
Environment and Transportation

Environment - Exception to Nonstructural Shoreline Stabilization Requirements

This emergency bill establishes that if a licensed marine contractor determines that an area (in tidal wetlands) is unsuitable for nonstructural shoreline stabilization measures, the area is exempt from (1) the requirement that improvements to protect a person's property against erosion must consist of nonstructural shoreline stabilization measures that preserve the natural environment, such as marsh creation and (2) the waiver process that exempts a person from that requirement upon demonstrating to the Maryland Department of the Environment's (MDE) satisfaction that nonstructural shoreline stabilization measures are not feasible for the person's property. The bill also makes conforming and stylistic changes.

Fiscal Summary

State Effect: The bill has an operational impact on MDE and may result in an increase in general fund expenditures, as discussed below. State revenues are not affected.

Local Effect: Potential decrease in local expenditures for shore erosion control projects. Local revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Current Law: State tidal wetlands law authorizes waterfront property owners to make improvements to protect the shoreline against erosion. Generally, nonstructural shoreline stabilization methods must be used in tidal wetlands except in areas designated by MDE mapping as appropriate for structural shoreline stabilization measures and in areas where

a property owner can demonstrate to MDE 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. MDE is required to adopt regulations, in consultation with the Department of Natural Resources, to implement these provisions. The regulations must include a waiver process that exempts a person from the nonstructural shoreline stabilization methods requirements on a demonstration to MDE's satisfaction that nonstructural measures are not feasible for the person's property.

The Marine Contractors Licensing Board within MDE is responsible for the licensing and regulation of individuals and entities that provide marine contractor services in the State. "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. However, an individual who is employed by an agency of the federal government or the State is not required to obtain a license. Additionally, a residential or commercial property owner may perform marine contractor services on their own property without having to obtain a license. 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.

State Expenditures: The bill shifts the authority for deciding whether or not to waive/exempt nonstructural shoreline stabilization requirements from MDE to marine contractors under certain circumstances. MDE advises that it is unclear whether the department would be responsible for defending decisions made by a marine contractor under the bill and whether MDE or the marine contractor would be responsible for any follow-up actions that may occur (for example, public notice and hearing requirements and responding to any public comments). Ultimately, MDE anticipates that the bill likely results in enforcement and permit/licensing decision challenges and may result in inconsistent implementation of State tidal wetlands law.

MDE advises that it may need to hire an assistant Attorney General to handle the anticipated increase in legal challenges resulting from the bill. Estimated costs associated with that position total approximately \$78,600 in fiscal 2023 (assuming an October 1, 2022 hiring date), increasing to approximately \$101,600 by fiscal 2027. The Department of Legislative Services concurs that the bill may affect MDE's workload. Without actual experience under the bill, however, it is unclear if the increase in workload justifies the need for additional staff.

Local Expenditures: Nonstructural shoreline projects are typically more expensive than structural projects. Thus, to the extent that local governments are exempted from having to construct nonstructural shoreline erosion control projects, local expenditures may decrease.

Small Business Effect: Similar to the local impact above, to the extent that small businesses are able to construct structural shoreline erosion control measures as opposed to nonstructural measures, costs for small businesses may decrease. Additionally, small businesses that specialize in or otherwise construct structural shoreline stabilization measures may see an increase in the demand for their services. On the other hand, small businesses that are involved with nonstructural shoreline stabilization measures may see a decrease in the demand for their services.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Kent and Worcester counties; Town of Leonardtown; Maryland Department of the Environment; Department of Natural Resources; Board of Public Works; Department of Legislative Services

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Analysis by: Kathleen P. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510