

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 122 (Delegate Bagnall)
 Environment and Transportation

Wetlands and Waterways - Riparian Rights - Voluntary Registry and Notice

This bill requires the Maryland Department of the Environment (MDE) to establish and maintain a publicly available voluntary registry on its website of property owners who have registered a claim of riparian rights with MDE. MDE must determine the information that a property owner must submit to be included in the registry. The bill specifies that the holder of a covenant for riparian rights (including a community association) must be provided notice of a proposed project in the immediate area of the property that is subject to the covenant at the beginning of the State or local permitting or other approval process for the project. The bill also states that the Governor must appropriate funds to MDE to cover the cost of establishing and maintaining the registry.

Fiscal Summary

State Effect: General fund expenditures increase by \$421,300 in FY 2024; future year expenditures reflect annualization, inflation, and ongoing costs. Reimbursable fund expenditures for the Department of Information Technology (DoIT) increase by \$150,000 in FY 2024 to assist with the registry development; reimbursable fund revenues increase correspondingly. Future year reimbursable fund finances reflect registry maintenance.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
ReimB. Rev.	\$150,000	\$25,000	\$25,000	\$25,000	\$25,000
GF Expenditure	\$421,300	\$289,000	\$300,400	\$312,500	\$327,400
ReimB. Exp.	\$150,000	\$25,000	\$25,000	\$25,000	\$25,000
Net Effect	(\$421,300)	(\$289,000)	(\$300,400)	(\$312,500)	(\$327,400)

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

Local Effect: Local finances and operations are not anticipated to be materially affected.

Small Business Effect: Minimal.

Analysis

Current Law:

Relevant Definitions

“State tidal wetlands” means any land under the navigable waters of the State below the mean high tide, affected by the regular rise and fall of the tide and not otherwise transferred by the State. “Private tidal wetlands” means any land not considered State wetland bordering on or lying beneath tidal waters, which is subject to regular or periodic tidal action and supports aquatic growth; tidal wetlands transferred by the State by a valid lease, patent, or grant confirmed by Article 5 of the Maryland Declaration of Rights, to the extent of the interest transferred; and tidal water created by the excavation of upland unless conveyed to the State. Regulations define a “riparian landowner” to mean a property owner whose land borders on tidal wetlands or waters of the State and “riparian rights” to mean the rights of an owner of land bordering on tidal wetlands or waters of the State as recognized by Title 16 of the Environment Article.

Approvals Generally Required for Projects in Wetlands

Wetlands in the State are protected, and 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. Generally, a person must obtain a permit or license before working in wetlands in the State. Regulations define the criteria for evaluating tidal wetlands licenses and permits, as well as the property information that permit and license applicants must provide as part of the application process. The Board of Public Works (BPW) has the authority to determine whether to issue a license to dredge, fill, or alter State wetlands; MDE must assist BPW in making such a determination and, in some cases, BPW delegates the authority to issue such a license to MDE. Authorizations granted to work in privately owned wetlands are issued by MDE.

Required Review of Applications and Required Public Notice

Public notice may be required as part of the application process for a permit or license to conduct construction on State or private tidal wetlands. All pier projects require adjoining riparian property owner notification, which requires the applicant to determine the names and addresses of all current owners of property contiguous to the parcel where the proposed activity will occur and serve notice to each owner either personally or by certified mail. Applicants must also serve notice either personally or by certified mail to appropriate local officials. After serving this required notice, applicants must provide MDE with certification that notice has been served as required. Projects that do not qualify for a general wetlands license and are not pier-only projects require public notice, which includes adjoining

riparian owner notification as well as publication in a daily newspaper and on MDE's website.

After an application is submitted, MDE must make an initial determination that an application to dredge or fill on State wetlands is complete within 45 days. If the application is determined to be complete, and a project (which is not a pier-only project) requires public notice, MDE must draft a public notice that includes specified information, including public notice of an opportunity to submit written comments or to request a hearing in accordance with § 5-204(b) through (e) of the Environment Article. Pursuant to § 5-204 of the Environment Article, the names of all contiguous property owners, appropriate local officials, and individuals that comment on, request hearings, or make inquiries about any application during any phase of MDE review must be included on a list of interested parties. MDE must provide notice of various proceedings to this list of interested parties, including notice of any public informational hearing and a notice of a decision to issue, modify, or deny a permit or license.

Riparian Owner's Rights

In general, except as specifically provided, a riparian owner may not be deprived of any right, privilege, or enjoyment of riparian ownership that the riparian owner had prior to July 1, 1970. Further, provisions of Title 16 of the Environment Article, which address wetlands and riparian rights, do not transfer the title or ownership of any land or interest in land. The Court of Special Appeals has noted "The term 'riparian rights' indicates a bundle of rights that turn on the physical relationship of a body of water to the land abutting it. These rights are significantly different from each other in many respects, and yet they share a common name just as riparian landowners attempt to share the common benefits that arise from adjacency to defined bodies of water," *Gunby v. Old Severna Park Improvement Ass'n*, 174 Md.App. 189, 239 (2007).

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 protect the shore of that person against erosion, as specified. 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 Subtitle 2 of Title 16 of the Environment Article (which addresses State wetlands) does not preclude the owner from developing any other use approved by BPW. 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.

State Fiscal Effect: General fund expenditures for MDE increase by \$421,323 in fiscal 2024, which accounts for the bill’s October 1, 2023 effective date. This estimate reflects the cost of hiring three permanent, full-time staff (one natural resources planner, one assistant Attorney General, and one administrative assistant) to (1) establish and maintain a publicly accessible voluntary repository on MDE’s website to keep a record of property owners who have registered a claim of riparian rights with the department; (2) determine information that property owners must submit to be included in the registry; and (3) conduct required research and provide notice to affected holders of a covenant for riparian rights. It includes salaries, fringe benefits, one-time start-up costs (including contractual costs to create the required public-facing registry and the purchase of a vehicle), and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- MDE does not currently hold or retain any data or records on claims of riparian rights, and according to MDE, there are more than 7,000 miles of shoreline in the State, which means there is a large number of potentially affected property owners and holders of a covenant of rights;
- MDE will need to conduct some level of verification activities to ensure that records submitted are accurate and not contradictory;
- MDE processes, on average, more than 1,500 wetlands applications annually;
- under the bill, MDE must provide notice of a proposed project to the holder of a covenant for riparian rights in the immediate area of the property subject to the covenant, but does not require the holder of the covenant to register or notify MDE of any such agreement;
- in order to comply with the notice requirement under the bill, additional legal analysis and research must be conducted when reviewing applications;
- MDE is required to issue permit decisions within 45 days, pursuant to current law and regulations; and
- existing MDE staff are fully subscribed and do not have sufficient expertise to handle the additional responsibilities stemming from the bill’s changes.

Positions	3.0
Salaries and Fringe Benefits	\$194,660
Contractual Costs for Registry	150,000
Purchase New Vehicle	49,186
Other Operating Expenses	<u>27,477</u>
Total MDE FY 2024 Expenditures	\$421,323

Future year expenditures reflect full salaries with annual increases and employee turnover as well as (1) annual increases in ongoing operating expenses and (2) \$25,000 annually in ongoing contractual costs to maintain the registry.

MDE advises that it needs four additional positions (rather than the three estimated above) to implement the bill, which reflects the need for two natural resource planners (instead of one). Without actual experience under the bill, however, the need for four additional positions is unclear. To the extent MDE is unable to implement the bill with the three positions assumed in this estimate, MDE may request additional resources through the annual budget process.

Based on an analysis of similar legislation introduced in a prior session, it is anticipated that DoIT will be involved in helping MDE create the required web-based registry; specifically, it is anticipated that DoIT will assist MDE with undertaking an outside solicitation of proposals for the web design and implementation. However, DoIT operates largely as a fee-for-service agency, meaning that it charges State agencies for the services it provides to them. As such, it is assumed that reimbursable fund revenues and expenditures for DoIT increase corresponding to MDE's contractual costs.

BPW advises that current BPW staff can implement the bill's changes with existing resources. However, MDE anticipates that both BPW and MDE may be at risk for increased litigation from registry and/or notification disputes under the bill.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 149 of 2022 and HB 160 of 2021.

Designated Cross File: None.

Information Source(s): Baltimore, Carroll, Harford, and Queen Anne's counties; Department of Budget and Management; Maryland Department of the Environment; Board of Public Works; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - January 30, 2023
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