

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 546 (Senator Elfreth, *et al.*)
Education, Energy, and the Environment

Environment - State Wetlands - Shoreline Stabilization Measures

This bill prohibits the Maryland Department of the Environment (MDE) from exempting a person from the general requirement to use *nonstructural* shoreline stabilization methods when protecting property from erosion solely on the basis that the person is replacing an existing *structural* shoreline stabilization measure with the same or similar type of *structural* shoreline stabilization measure. The bill also explicitly authorizes the Tidal Wetlands Compensation Fund to be used to provide grant funding for the replacement of structural shoreline stabilization measures with nonstructural shoreline stabilization measures.

Fiscal Summary

State Effect: General fund expenditures for MDE increase to the extent that additional staff are needed to review and approve shoreline stabilization project applications and to the extent that MDE establishes a new grant program, as discussed below; the total cost could exceed \$100,000 annually. Transportation Trust Fund (TTF) expenditures increase to the extent that the bill results in more complex and costly shoreline stabilization applications and projects for the Maryland Port Administration (MPA), as discussed below. Revenues are not affected.

Local Effect: Local expenditures may increase to the extent that the bill results in more complex and costly shoreline stabilization applications and projects, as discussed below. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Shoreline Stabilization Measures

State tidal wetlands law authorizes riparian (waterfront) property owners to make improvements to protect the shoreline against erosion. After an improvement has been constructed, the attached improvement is considered part of the landowner's property.

Generally, improvements to protect a person's property against erosion must consist of *nonstructural* shoreline stabilization methods (also known as living shorelines) that preserve the natural environment, such as marsh creation, 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 (DNR), to implement these provisions. The regulations must include a waiver process that exempts a person from the requirement to use nonstructural shoreline stabilization methods on a demonstration to MDE's satisfaction that nonstructural measures are not feasible for the person's property.

Regulations establish the criteria for obtaining a living shoreline waiver. When evaluating a request for a waiver, MDE must consider several listed factors to determine whether the site is suitable to support a nonstructural shoreline stabilization measure. A person may obtain a waiver from the nonstructural shoreline stabilization requirement if, to MDE's satisfaction, a structural shoreline stabilization measure is the only feasible alternative that will protect and maintain the person's shoreline.

Tidal Wetlands Compensation Fund

The Tidal Wetlands Compensation Fund is a special fund that consists of penalty revenues imposed under Title 16 of the Environment Article (Wetlands and Riparian Rights) and any monetary payments made in lieu of creating, restoring, or enhancing tidal wetlands as a condition of a permit or license. Funds from the Tidal Wetlands Compensation Fund may only be used for the creation, restoration, or enhancement of tidal wetlands, including (1) acquisition of land or easements; (2) maintenance of mitigation sites; (3) purchase of credits in mitigation banks; (4) management of invasive or nuisance species identified by MDE; (5) cost sharing assistance to landowners in the management and control of

phragmites, as specified; and (6) contractual services necessary to accomplish the intent of these provisions.

State Expenditures:

Maryland Department of the Environment

Review of Applications: Under current practice, MDE advises that projects to replace existing structural shoreline stabilization measures with other similar or identical structural shoreline stabilization measures receive automatic waivers from the living shoreline requirement and are generally handled by a single reviewer that ensures that the proper criteria for the waivers are met.

Under the bill, however, this automatic waiver process is no longer feasible, and MDE advises that the bill will, over time, likely result in the replacement of several existing structural shoreline stabilization measures with living shorelines as existing structural shoreline stabilization infrastructure begins to degrade and new projects are needed. MDE advises that for decades, nonstructural shoreline stabilization feasibility was not evaluated, and structural shoreline stabilization measures were the default option for these types of projects. In fact, the law discussed above that generally requires the use of nonstructural shoreline stabilization measures for erosion control was only enacted in 2008.

Consequently, under the bill, the application process for affected shoreline stabilization projects will require more detailed review by MDE, potentially resulting in the need for additional staff to handle the anticipated increase in workload. If more than one additional staff is required, which is possible given the number of potentially affected projects, the increase in general fund expenditures would exceed \$100,000 annually. The impact in any given year depends on how many affected project applications MDE receives, which cannot be reliably predicted in advance.

Use of Tidal Wetlands Compensation Fund to Provide Grants: MDE advises that it already has the ability to provide funding from the Tidal Wetlands Compensation Fund to *existing grant programs* to create, restore, or enhance tidal wetlands, which could include funding for the replacement of structural shoreline stabilization measures with nonstructural shoreline stabilization measures as appropriate. For example, MDE advises that it recently decided to enter into a memorandum of understanding with DNR that encumbered funds from the Tidal Wetlands Compensation Fund to fund publicly accessible living shoreline projects through grant awards from DNR's Chesapeake and Coastal Service Program. Thus, while the bill *explicitly authorizes* the fund to be used to provide grants for the replacement of structural shoreline stabilization measures with nonstructural shoreline stabilization measures, to the extent MDE continues to use the fund as it currently does, this change does not affect State finances. While the bill does not *require* MDE to establish

a new grant program, MDE advises that its Wetlands and Waterways Protection Program staff do not have the expertise to administer a grant program directly. Accordingly, should MDE choose to establish a new grant program in response to the bill's changes, at least two additional staff (one grant manager and one administrative assistant) would be required to administer the grant program, increasing general fund expenditures by more than \$100,000 annually.

Even if a new grant program is established, overall spending from the Tidal Wetlands Compensation Fund is not affected; any grants provided from the fund pursuant to the bill reduces funding available for other authorized projects.

Maryland Port Administration and Other State Agencies

MPA advises that it currently uses a wide variety of structural and nonstructural shoreline stabilization measures for its properties, and as a result, may be affected by the bill. Indeed, according to MDE's online [Structural Shoreline Stabilization Map](#), there is a significant amount of structural shoreline stabilization in and around the Helen Delich Bentley Port of Baltimore.

As MPA's structural shoreline measures degrade over time and new projects are required, TTF expenditures increase for additional complex analyses to determine if nonstructural shorelines measures are feasible, since MPA can no longer receive an automatic waiver for these measures under the bill. MPA advises that the cost of these analyses range from \$20,000 to \$100,000 depending on numerous factors associated with the project, including the length of shoreline affected. TTF expenditures may increase further to the extent that MPA is required to replace structural measures with nonstructural measures. However, a reliable estimate of any impact on TTF expenditures – and when it might occur – cannot be made at this time.

Any other State agencies that own riparian property and use structural shoreline stabilization measures may be similarly affected; however, the Department of Legislative Services is not aware of any other potentially affected State agencies at this time.

Local Expenditures: Similar to the effect discussed above for MPA, local government entities that own riparian property and use structural shoreline stabilization measures are likely – at some point – to incur costs related to more complex permit applications and, potentially, the replacement of structural shoreline stabilization measures with living shorelines. However, none of the local governments that responded to a request for information regarding the fiscal effect of the bill indicate the potential for significant effects on local government finances.

Small Business Effect: Some small businesses (for example, agricultural operations and marinas) that own or operate on riparian property in need of shoreline protection may incur additional costs in a manner similar to that discussed above for MPA and local governments. However, small businesses involved in the permitting process for such projects, such as marine contractors and environmental consultants, may be positively affected due to an increase in the demand for their services.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 655 (Delegate Stein) - Environment and Transportation.

Information Source(s): Maryland Department of the Environment; Maryland Department of Transportation; Board of Public Works; Department of Natural Resources; Department of General Services; University System of Maryland; Anne Arundel, Prince George's, Queen Anne's, St. Mary's, and Worcester counties; cities of Annapolis and Havre de Grace; Department of Legislative Services

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