

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 613

(Delegate T. Morgan, *et al.*)

Environment and Transportation

Education, Energy, and the Environment

Department of the Environment - Waivers for Living Shorelines and
Nonstructural Shoreline Stabilization Measures - Regulations and Scoring
System

This bill makes existing provisions – requiring improvements to protect the shoreline against erosion to generally consist of nonstructural shoreline stabilization measures – to also expressly apply to “living shorelines,” which, as defined by the bill, include the use of natural elements and, where appropriate, certain *structural* elements, as specified. Existing provisions related to the adoption of regulations by the Maryland Department of the Environment (MDE) – regarding the waiver process that exempts a person from those requirements – are altered. In addition, MDE must (1) develop a scoring system to evaluate waiver requests, as specified, and publish the scoring system on its website; (2) work with stakeholders on further alterations to the waiver process; and (3) by December 1, 2026, report to specified committees of the General Assembly on the progress of the required stakeholder engagement. Finally, the bill standardizes provisions related to the approval of erosion control measures that apply statewide. **The bill takes effect July 1, 2026.**

Fiscal Summary

State Effect: MDE can implement the bill with existing budgeted resources, as discussed below. State expenditures (multiple fund types) for State agencies that undertake shoreline stabilization projects may increase beginning in FY 2027, as discussed below. Special fund revenues for MDE may increase beginning in FY 2027, as discussed below.

Local Effect: Local government expenditures may increase beginning in FY 2027, as discussed below. Local revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Definitions

“Living shoreline” means a project to mitigate the effects of erosion caused by shoreline flooding or inundation, currents, and wave energy through project design that:

- stabilizes a shoreline by using natural materials to create buffers to absorb the impact of coastal storms, flooding, and wave energy and to prevent or minimize shoreline erosion;
- incorporates as many natural elements as possible to ensure a substantial biological component, as specified;
- utilizes techniques that incorporate ecological and coastal engineering principles in shoreline stabilization; and
- to the extent possible, maintains or restores existing natural slopes and connections between uplands and adjacent wetlands or surface waters.

“Living shoreline” includes the use of natural elements (such as sand, wetland plants, woody debris, oysters or other shellfish, submerged aquatic vegetation, native grasses, shrubs, trees, or other biodegradable materials as approved by MDE) and, where appropriate, *structural* elements channelward of the mean high water line, such as stone, concrete, oyster domes, or other approved engineered structure. “Living shoreline” may include nonstructural stabilization measures.

“Nonstructural shoreline stabilization measure” means an erosion control measure that is dominated by tidal wetland vegetation and designed to preserve the natural shoreline, minimize erosion, and establish aquatic habitat. It includes marsh or other tidal wetland construction.

Waivers from the General Requirement to Use a Living Shoreline or Nonstructural Shoreline Stabilization Measures

The regulations adopted by MDE that establish a waiver process that exempts a person from the general requirement to use a living shoreline or nonstructural shoreline stabilization measures to protect a person’s property against erosion must require MDE, as part of its evaluation of waiver requests, to (1) on request of the property owner and unless another amount of time is agreed to with the property owner, visit the site of the proposed project within 45 days after the date of the waiver request and (2) provide the local soil conservation district (SCD) with written notice of the waiver request and provide the

district the opportunity to make recommendations within 15 days after receipt of the written notice on the acceptance of or modifications to the waiver request.

Additionally, MDE must, in consultation with a licensed marine contractor, develop a scoring system to evaluate waiver requests; the scoring system must include (1) the factors MDE will consider in evaluating a request; (2) the relative weight of each factor; and (3) the minimum score that a project must receive to demonstrate to MDE's satisfaction that a living shoreline or nonstructural shoreline stabilization measure is not feasible on the person's property. MDE must publish the scoring system on its website. These requirements may not be construed to limit the discretion of MDE to grant a waiver to a project that does not receive a minimum score.

MDE must work with stakeholders on further alterations to the waiver process. In doing so, MDE must (1) discuss how to address the specific challenges with constructing shoreline stabilization projects in medium- and high-energy environments and provide greater transparency and certainty to the waiver process and (2) review existing time-of-year and mitigation requirements.

Alterations to Statewide Erosion Control Measures

The bill repeals existing provisions under the Natural Resources Article that (1) establish standards for the construction of erosion control measures and (2) require the Department of Natural Resources (DNR) to adopt regulations to implement those measures in consultation with MDE. Instead, under the bill, erosion control measures must be conducted in accordance with § 16-201 of the Environment Article, as amended by the bill.

Current Law:

Wetlands Regulation

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. Pursuant to current law and MDE regulations, and subject to certain exceptions, a person may not dredge, fill, or construct or reconstruct structures in:

- State wetlands, without a license issued by the Board of Public Works (or MDE, as MDE is delegated authority to authorize certain activities in State wetlands); or
- private wetlands, without a permit issued by MDE.

Application fees for wetlands and waterways authorizations are set in statute and range from \$290 (for certain shoreline stabilization projects) to \$9,720 multiplied by the impact

area in acres (for major projects with an impact of one acre or more). The application fee for minor projects is \$980. Certain projects and activities are exempt from the requirement to pay the application fees, including, among others, stream restoration, vegetative shoreline stabilization, wetland creation, or other projects in which the primary effect is to enhance the State's wetland or water resources. Revenues from application fees accrue to the Wetlands and Waterways Program Fund within MDE.

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 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 DNR, 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.

Regulations establish the criteria for obtaining a 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.

Lawful Uses of Private Wetlands

Notwithstanding any regulation adopted by the Secretary of the Environment 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 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 after January 1, 1972, as specified; (5) routine

maintenance and repair of existing bulkheads, provided that there is no addition or channelward encroachment; and (6) installing a pump, a pipe, or any other equipment attached to a pier that is associated with a permitted shellfish nursery operation if such a project does require increasing the length, width, or channelward encroachment of the pier.

Relevant Definitions

“Nonstructural shoreline stabilization measure” is defined under COMAR 26.24.01.02 to mean an erosion control measure that is dominated by tidal wetland vegetation and is designed to preserve the natural shoreline, minimize erosion, and establish aquatic habitat. The term includes a living shoreline. “Living shoreline” is not defined in statute or regulations.

State Revenues: Although it is unclear, special fund revenues for the Wetlands and Waterways Program Fund from application fees may increase beginning in fiscal 2027. MDE anticipates that the definitions established by the bill for living shorelines and nonstructural shoreline stabilization measures may limit the applicability of such projects in certain areas and potentially result in more structural shoreline stabilization measure projects being undertaken. To the extent that the bill results in more structural projects instead of nonstructural projects, special fund revenues increase, as MDE advises that nonstructural shoreline stabilization measures are exempt from wetlands and waterways application fees.

State Expenditures: While the bill has an operational impact on MDE, MDE anticipates that it can update its regulations, evaluate waiver requests under the altered process, develop a scoring system, work with stakeholders, and report to the General Assembly using existing staff (by redirecting their priorities).

Although the overall effect of the bill’s changes on project costs for shoreline stabilization projects is unknown, the bill may increase expenditures for entities – including State agencies – that undertake shoreline stabilization projects beginning in fiscal 2027. In addition to the potential that the bill’s definitions may limit the applicability of living shorelines and nonstructural shoreline stabilization measures in certain areas (as discussed above), MDE advises that defining nonstructural shoreline stabilization measures separately from living shorelines may introduce conflicting standards and stabilization practices, which may lead to inconsistent interpretation between applicants and regulators, resulting in project delays and cost increases. MDE also notes that the bill’s provisions requiring MDE to provide notice of waiver requests to local SCDs and provide them with an opportunity to make recommendations regarding such requests may increase permit turnaround times.

Local Expenditures: Similar to the effect discussed above for State agencies that undertake shoreline stabilization measures, expenditures for local governments that undertake shoreline stabilization projects may increase. Additionally, the bill's changes may result in an increase in workload for local SCDs throughout the State; the extent to which this increases county expenditures is unknown.

Small Business Effect: Similar to the effect discussed above for State agencies and local governments, expenditures for small businesses that undertake shoreline stabilization projects may increase. Small businesses that plan, design, install, and/or provide materials for shoreline stabilization projects may also be affected. Some small businesses may be positively affected, while others may be negatively affected.

Additional Information

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

Designated Cross File: SB 368 (Senators Bailey and Harris) - Education, Energy, and the Environment.

Information Source(s): Anne Arundel, Calvert, St. Mary's, and Somerset counties; Board of Public Works; Maryland Department of Agriculture; Maryland Department of the Environment; Department of Natural Resources; Department of Legislative Services

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