

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 368
(Senators Bailey and Harris)
Education, Energy, and the Environment

Calvert and St. Mary's Counties - Living Shorelines and Nonstructural Shoreline Stabilization Measures

This bill establishes a new process for the evaluation and approval of living shorelines and nonstructural shoreline stabilization measures in Calvert and St. Mary's counties. Generally, living shorelines or nonstructural shoreline stabilization measures must be used to protect property against erosion except in areas where it can be demonstrated to the local soil conservation district's (SCD) satisfaction that the projects and measures are not feasible, as specified. A local SCD may (1) waive or reduce certain mitigation requirements under specified conditions and (2) impose restrictions on the time of year when living shorelines or nonstructural shoreline stabilization measures may be constructed in the affected counties. The affected local SCDs must adopt implementing regulations, as specified. The bill also codifies a definition of "nonstructural shoreline stabilization measure" and standardizes provisions related to the approval of erosion control measures that apply statewide.

Fiscal Summary

State Effect: General fund expenditures increase by approximately \$175,000 in FY 2027 only. Potential operational effects are discussed below. The bill is not anticipated to materially affect State revenues.

(in dollars)	FY 2027	FY 2028	FY 2029	FY 2030	FY 2031
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	175,000	0	0	0	0
Net Effect	(\$175,000)	\$0	\$0	\$0	\$0

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

Local Effect: Local expenditures may increase in St. Mary's and Calvert counties. Local revenues are not affected. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Minimal overall, but potential meaningful impact on certain small businesses in St. Mary's and Calvert counties.

Analysis

Bill Summary:

Erosion Control Measures in St. Mary's and Calvert Counties

The existing statewide standards related to erosion control measures do not apply in Calvert and St. Mary's counties. Instead, in these counties, generally, erosion control measures must consist of living shorelines or nonstructural shoreline stabilization measures, except in areas where it can be demonstrated to the local SCD's satisfaction that these projects and measures are infeasible, including areas of excessive erosion, areas subject to heavy tides, and areas that are too narrow for effective use of a living shoreline or nonstructural shoreline stabilization measures.

An SCD may waive or reduce mitigation requirements for living shorelines or nonstructural shoreline stabilization measures in medium- and high-energy environments (as defined) if, to the SCD's satisfaction, the land-water interface is maintained. Only an SCD may impose restrictions on the time of year when a living shoreline or nonstructural shoreline stabilization measure may be constructed.

The Calvert and St. Mary's SCDs must adopt implementing regulations that (1) include a waiver process that exempts a person from the requirement to demonstrate to the SCD's satisfaction that the use of a living shoreline or nonstructural shoreline stabilization measures is not feasible and (2) require a living shoreline or nonstructural stabilization measure to be designed to withstand at least a 10-year storm event.

A person may not begin construction of a shoreline stabilization project for which either the Calvert or St. Mary's SCD, as applicable, has provided design services unless the other SCD has reviewed the project and certifies that it complies with the bill's requirements.

The bill establishes related definitions, including a definition of "living shoreline."

Alterations to Statewide Erosion Control Measures

The bill defines "nonstructural shoreline stabilization measure" to mean an erosion control measure that is (1) dominated by tidal wetland vegetation and (2) designed to preserve the

natural shoreline, minimize erosion, and establish aquatic habitat. The term includes marsh or other tidal wetland construction.

The bill also 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 the Maryland Department of the Environment (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 (BPW) (or MDE, as MDE is delegated authority to authorize certain activities in State wetlands); or
- private wetlands, without a permit issued by 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 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.

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 Expenditures:

Maryland Department of the Environment

Although the bill exempts St. Mary's and Calvert counties from the requirements under § 16-201(d) (as renumbered by the bill), which requires MDE to designate areas appropriate for structural shoreline stabilization measures through mapping, MDE advises that it needs to update its wetlands maps for St. Mary's and Calvert counties to reflect the bill's changes because MDE must (1) provide tools to the local SCDs to verify if an applicant meets the exemption requirements established under the bill and (2) maintain regulatory consistency for the multiple uses that the maps serve beyond simple determinations of eligibility for structural shoreline stabilization measures. Accordingly, general fund expenditures increase by approximately \$175,000 in fiscal 2027 for MDE to update its wetlands maps.

Potential Operational Effects

The bill shifts approval authority related to determinations of whether structural shoreline stabilization measures may be used as an erosion control practice, and time-of-year limitations for living shoreline or nonstructural shoreline stabilization measures, from various State agencies to the two affected SCDs. While the bill is not expected to materially affect State workloads, it likely has an operational effect on several State agencies, including MDE, BPW, and DNR.

First, in order to reflect the bill's changes, MDE anticipates that it needs to update regulations, and DNR may also need to update its regulations.

Second, both MDE and DNR anticipate that operational effects may arise from the potential inconsistent application of standards for shoreline erosion control projects. MDE notes that projects on federal and State land located in Calvert and St. Mary's counties will be required to obtain waivers from local SCDs, while other approvals for work on federal and State land (such as erosion and sediment control and stormwater plan approvals) will still be overseen at the State level. This is likely to result in conflicting requirements for plans and processes for federal shoreline projects and may result in work delays.

Third, BPW notes that it still retains authority to issue licenses for work in State wetlands (including erosion control measures) with terms and conditions as determined by the board under § 16-202(g) of the Environment Article. Because the bill does not amend that statutory provision, it is somewhat unclear whether local SCDs in St. Mary's and Calvert counties have jurisdiction to make these determinations for all property, including for State tidal wetlands, or just private property.

Finally, MDE and DNR note that it is unclear what mitigation requirements are authorized to be waived or reduced by the affected SCDs under the bill. While the Department of Legislative Services concurs that it is somewhat unclear what mitigation requirements the bill is referring to, this fiscal and policy note assumes that the waiver authority and discretion granted to the two SCDs under the bill do *not* affect the applicability of other existing provisions of State and federal law.

Local Expenditures: The bill's changes result in an increase in workload for the two affected SCDs and, therefore, may result in an increase in local expenditures. St. Mary's County advises that without actual experience under the bill, the extent to which the St. Mary's SCD's workload increases is unclear. The county advises that the St. Mary's SCD currently has one staff person with sufficient experience in shoreline projects to administer the bill's provisions. To the extent the SCD must hire additional staff to handle the anticipated increase in workload, county expenditures increase accordingly.

Even though the bill arguably also increases the workload of the Calvert SCD, Calvert County advises that the bill is not anticipated to affect the county's finances.

Small Business Effect: The bill likely affects the types of projects that are approved for shoreline stabilization control measures in St. Mary's and Calvert counties. For small businesses that plan, design, install, and/or provide materials for living shorelines and nonstructural shoreline stabilization projects, the bill may have a negative impact. On the other hand, small businesses that plan, design, install, and/or provide materials for structural erosion control projects may benefit.

Additional Information

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

Designated Cross File: HB 613 (Delegate T. Morgan, *et al.*) - Environment and Transportation.

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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