



**The Maryland Department of the Environment**  
**Secretary Serena McIlwain**

***SB0775***

***Private Wetlands - Structural Shoreline Stabilization Measures - Authorization***

**Position:** OPPOSE

**Committee:** Education, Energy, and the Environment Committee

**Date:** February 23, 2023

**From:** Gabrielle Leach

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The Maryland Department of the Environment (MDE) **OPPOSES** Senate Bill 775. The bill would make substantive changes to the 2008 Living Shorelines Act, codified at § 16-201(c) of the Environment Article, which governs the approval process for riparian landowners to construct improvements along their shoreline for protection against erosion. The right to protect the shore against erosion is extended to private tidal wetlands under § 16-304(3) of the Environment Article.

We wanted to make the committee aware that the Department met with the sponsor to discuss this bill, and has heard the concern from the sponsor that obtaining a waiver from the Department to construct a nonstructural shore erosion control at a site that qualifies for a living shoreline as mandated by the 2008 Living Shoreline Act (Act) is difficult. The Act prioritizes the use of “nonstructural shoreline stabilization measures” such as marsh creation which “preserve the natural environment,” over structural improvements like bulkheads or revetments, which result in a hardened shoreline that have potential harmful environmental impacts and provide minimal ecological value. MDE has received conflicting feedback regarding the issuance of waivers from living shoreline requirements. The Department has been studying this issue regarding waivers and making improvements to the waiver process and has been evaluating the success of implementing the Living Shorelines Act in Maryland over the last several years by analyzing data compiled by staff, field studies of living shoreline success, creation of an interagency workgroup and acquiring U.S. Environmental Protection Agency (EPA) grants funding to improve the living shoreline suitability maps (Maryland Structural Stabilization Mapper, or MSSM).

**Bill Analysis**

The bill proposes to allow a structural shoreline stabilization measure in conjunction with a nonstructural shoreline stabilization measure if the structural shoreline stabilization measure constitutes no more than 10% of the total linear footage that will be stabilized by the nonstructural shoreline stabilization measure even where the site does not meet the criteria under COMAR 26.24.04.01-2 for obtaining a living shoreline waiver. A recent evaluation of approximately 1,700 shoreline activities authorized by MDE on undeveloped shorelines (i.e., with no previously existing shoreline measure) between January 2015 and August 2020 concluded approximately 32% of projects authorized were living shorelines and approximately 68% were structural shoreline controls. If this bill passes the number of living shorelines

would decrease as an additional and automatic waiver criteria is created by this bill, which appears to undermine the intent of the Act.

An unintended consequence of the bill is that applicants may apply for this waived hybrid shoreline project (non-structural and structural) but only complete the structural component of the project, resulting in more hardened shorelines. Additionally, vegetated wetlands, including those above the mean high water line, are also considered private wetlands. Vegetated wetlands are considered a highly valuable resource as they assist with combating climate change. Impacts to this resource should continue to be avoided and minimized to the maximum extent possible, however more impacts to vegetated tidal wetlands may occur as a result of this new waiver to allow the construction of a structural measure.

For the reasons detailed above, MDE urges a **UNFAVORABLE** report for Senate Bill 775.