

CHAPTER 304

(House Bill 973)

AN ACT concerning

Water Management Administration – Living Shoreline Protection Act of 2008

FOR the purpose of requiring certain erosion protection projects to include certain nonstructural shoreline stabilization measures, with ~~a certain exception~~ certain exceptions; requiring the Department of the Environment, in consultation with the Department of Natural Resources, to adopt certain regulations; requiring certain regulations to include a certain waiver process; and generally relating to the regulation of shore erosion control projects.

BY repealing and reenacting, with amendments,
Article – Environment
Section 16–201
Annotated Code of Maryland
(2007 Replacement Volume and 2007 Supplement)

Preamble

WHEREAS, The State of Maryland and its people, property, natural resources, and public investments will be significantly impacted by climate change and sea level rise; and

WHEREAS, Sea level rise contributes to the erosion of approximately 580 acres of shoreline per year along Maryland’s Chesapeake Bay, Atlantic coastal bays, and Atlantic Ocean coast; and

WHEREAS, The Maryland Commission on Climate Change has recommended that the State begin to actively address the impacts on the natural environment of shore erosion induced by sea level rise; and

WHEREAS, Current shore protection practices used to control shore erosion and protect upland properties range from “hard” techniques such as bulkheads, retaining walls, and riprap, to more “soft” alternatives such as “living shorelines” that combine marsh plantings with sills, groin fields, or breakwaters; and

WHEREAS, “Living shorelines” are the preferred method of shore protection as they trap sediment, filter pollution, and provide important aquatic and terrestrial habitat; and

WHEREAS, It is the public policy of the State to protect natural habitat and that shoreline protection practices, where necessary, consist of nonstructural "living shoreline" erosion control measures wherever technologically and ecologically appropriate; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Environment

16-201.

(a) 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, **SUBJECT TO SUBSECTION (C)**, protect the shore of that person against erosion. 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 this subtitle does not preclude the owner from developing any other use approved by the Board. 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.

(b) The rights of any person, as defined in this subtitle, which existed prior to July 1, 1973 in relation to natural accretion of land are deemed to have continued to be in existence subsequent to July 1, 1973 to July 1, 1978.

(C) (1) IMPROVEMENTS TO PROTECT A PERSON'S PROPERTY AGAINST EROSION SHALL CONSIST OF NONSTRUCTURAL SHORELINE STABILIZATION MEASURES THAT PRESERVE THE NATURAL ENVIRONMENT, SUCH AS MARSH CREATION, EXCEPT ~~IN~~:

(I) IN AREAS DESIGNATED BY DEPARTMENT MAPPING AS APPROPRIATE FOR STRUCTURAL SHORELINE STABILIZATION MEASURES; AND

(II) IN AREAS WHERE THE PERSON CAN DEMONSTRATE TO THE DEPARTMENT'S SATISFACTION 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.

(2) (I) ~~IN~~ SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, IN CONSULTATION WITH THE DEPARTMENT OF NATURAL

RESOURCES, THE DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SUBSECTION.

(II) REGULATIONS ADOPTED BY THE DEPARTMENT UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL INCLUDE A WAIVER PROCESS THAT EXEMPTS A PERSON FROM THE REQUIREMENTS OF PARAGRAPH (1) OF THIS SUBSECTION ON A DEMONSTRATION TO THE DEPARTMENT'S SATISFACTION THAT NONSTRUCTURAL SHORELINE STABILIZATION MEASURES ARE NOT FEASIBLE FOR THE PERSON'S PROPERTY.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2008.

Approved by the Governor, April 24, 2008.