

Department of Legislative Services
 Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 1017 (Senator Colburn)
 Education, Health, and Environmental Affairs

Marine Contractors - Licensure and Regulation - Wetland Permits and Authorizations

This bill requires a person or firm providing or soliciting marine contractor services to be licensed and requires the Secretary of the Environment to license and regulate marine contractor services in the State. Licensed marine contractors are immune from civil liability arising from natural shoreline stabilization projects that are issued a specified permit. The bill establishes amended and new requirements for marine contractors under the Maryland Department of the Environment’s (MDE) wetlands and waterway regulatory program. MDE is required to adopt implementing regulations.

Fiscal Summary

State Effect: General fund revenues increase by \$100,000 in FY 2010 and \$64,000 in FY 2014, due to marine contractor application fees. MDE special fund revenues decrease by \$1.0 million in FY 2010, due to revised project fees. Future year project fee revenues are annualized. MDE’s general fund expenditures increase by \$238,300 in FY 2010, to implement licensing. Future year general fund expenditures are annualized and adjusted for inflation. Department of Natural Resources (DNR) special fund expenditures increase in FY 2010, 2012, and 2014 for marine contractor licensing fees.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	\$100,000	\$10,000	\$64,000	\$16,000	\$64,000
SF Revenue	(\$1,049,700)	(\$1,399,500)	(\$1,399,500)	(\$1,399,500)	(\$1,399,500)
GF Expenditure	\$238,300	\$107,500	\$76,500	\$80,100	\$83,900
SF Expenditure	\$3,500	\$0	\$2,100	\$0	\$2,100
Net Effect	(\$1,191,400)	(\$1,497,000)	(\$1,414,100)	(\$1,463,600)	(\$1,421,600)

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

Local Effect: The bill does not materially affect local operations or finances.

Small Business Effect: Meaningful.

Analysis

Bill Summary: “Marine contractor services” means the construction, demolition, design, installation, repair, sale, or salvage of structures located in the State’s tidal and nontidal wetlands, including boathouses, boat or other personal watercraft lifts or ramps, docks, floating platforms, moorings, piers, pier access steps, pilings, wetland observation platforms, wetland walkways, and wharfs. Furthermore, “marine contractor services” includes the construction, demolition, design, installation, repair, sale, or salvage of stabilization and erosion control mechanisms, including breakwaters, bulkheads, groins, jetties, and stone sills.

The Secretary of the Environment:

- is required to adopt regulations establishing standards for the licensing of marine contractors and keep a roster of licensed marine contractors that includes specified information;
- is authorized to adopt specified regulations, use existing MDE staff to implement the bill, and make inquiries and conduct investigations of license applicants; and
- may not issue a marine contractor license to an applicant whose trade or fictitious name or trademark is so similar to another licensee that it may cause confusion.

Marine Contractor Licenses

Individuals, or the firms they work for, must have a license prior to providing or soliciting marine contractor services in the State. To qualify for a license, applicants must meet specified requirements, including having at least two years of experience as a full-time marine contractor, passing a written marine contractor test, being registered and in good standing with the Maryland Home Improvement Commission (MHIC), and having specified insurance. Applicants must provide specified information, complete a specified application form, and pay a \$500 license application fee. The license is valid for two years and each license must include specified information. A license becomes void if specified insurance lapses or if the licensee is issued three MDE violation notices.

Marine contractor licenses authorize firms to (1) employ individuals who are not licensed marine contractors to provide marine contractor services on behalf of the licensee; and (2) represent itself to the public as a licensed marine contractor firm. The terms of

licenses must be staggered and expire on a date established by the Secretary of the Environment. The Secretary of the Environment is required to mail specified information to a licensee, at least one month before a license expires, at the last known address of the licensee. Licenses may be renewed for two additional years if the licensee meets specified requirements, including paying a \$300 renewal fee and completing at least 20 hours of continuing education. The Secretary of the Environment must renew a license if specified requirements are met.

Except as otherwise specified and subject to other requirements, the Secretary of the Environment may deny, suspend, or revoke a marine contractor license if the applicant or licensee violates specified provisions of the bill. Alleged violators must be given specified notice and a hearing must be held in accordance with specified law. A person who knowingly violates marine contractor licensing provisions is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 or imprisonment for up to one year, or both.

Wetlands and Waterways Regulatory Program

MDE is required to grant, deny, or condition nontidal wetlands permits, if the applicant is a licensed marine contractor, within 60 days of receiving an application. If an applicant for specified wetlands and waterways permits and licenses is a licensed marine contractor, MDE must charge a single, flat application fee of \$750. This fee is due only if, and at the time, MDE approves the application.

For all permits issued under Title 16 (Wetlands and Riparian Rights) of the Environment Article, MDE must (1) provide a mechanism to track the status of permit application review on MDE's web site; and (2) make a final decision on a permit application within 30 days of receiving the application. MDE must adopt regulations setting forth criteria for determining whether a project has a negligible impact on wetlands, and MDE must exempt licensed marine contractors from specified permitting requirements if the project meets the identified criteria. All work that requires a permit under Title 16 must be completed by, or done after consultation with, a licensed marine contractor. A violator is subject to a fine of up to (1) \$500 for a first violation; (2) \$1,000 for a second violation; and (3) \$5,000 for a third or subsequent violation, up to a total of \$25,000.

Current Law: 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, including the 100-year floodplain. Permits granted for work in privately owned wetlands are issued by MDE; licenses granted for work in State-owned wetlands are issued by the Board of Public Works (BPW).

Chapter 142 of 2008 established a Wetlands and Waterways Program Fund within MDE. As the primary revenue source, Chapter 142 established application fees for various wetlands and waterways permits and licenses. Fees range from a flat fee of \$500 for a minor modification project to a fee equal to the impact area in acres multiplied by \$7,500 for a major project. MDE does not process applications until the application fee is submitted, and will not issue a permit until all fees are paid. The Wetlands and Waterways Program Fund also consists of other revenues, including wetlands license fees collected by BPW that were previously deposited into the Tidal Wetlands Compensation Fund.

MDE is directed to use the Wetlands and Waterways Program Fund for activities related to the issuance of permits and licenses; the management, conservation, protection, and preservation of the State's wetlands and waterways; and program development. MDE must prioritize the use of the fund to improve the level of service to the regulated community. In addition, MDE must identify and implement measures that will reduce delays and duplication in the permit process. MDE is also required to prepare an annual report on the fund.

As amended by Chapter 142, the Tidal Wetlands Compensation Fund now consists of specified penalties and any monetary payment by a licensee in lieu of creating, restoring, or enhancing tidal wetlands that is required by MDE or BPW as a condition of a permit or license. Funds may only be appropriated for the creation, restoration, or enhancement of tidal wetlands.

Generally, a person must have a contractor license before acting as a contractor in the State. MHIC – housed within the Department of Labor, Licensing, and Regulation – licenses and regulates home improvement contractors, subcontractors, and salespersons in Maryland who perform services at residential properties with fewer than four dwelling units. An individual must pass an examination prior to submitting an application for licensure. In addition to the required application and fee, applicants must meet experience requirements, submit proof of compliance with insurance requirements, submit a credit report, and contribute to the Home Improvement Guaranty Fund, which reimburses homeowners for losses that result from an act or omission by a licensed contractor or that licensee's subcontractor, salesperson, or employee. Marine contractors are currently required to be licensed and regulated by MHIC.

Background:

Marine Contractors

The Maryland Marine Contractors Association advises approximately 200 marine contractor companies are working in the State. These contractors have expressed concern

about unqualified marine contractors doing substandard work in the State. In addition, there is concern about the time it takes MDE to process wetland and waterway permit applications as well as the overall effect of Chapter 142 of 2008 on the marine contractor industry.

Wetlands and Waterways

Regulation of wetlands plays a vital role in maintaining the health and function of the Chesapeake and coastal bays. The functions and values of the natural resources protected under existing wetlands laws include fish and wildlife habitat and migration, water quality enhancement, natural shoreline protection, flood protection, and recreational opportunities and aesthetics. According to MDE, the goal of the Wetlands and Waterways Program is to avoid and minimize impacts associated with development and to mitigate impacts that are determined to be necessary and unavoidable. For nontidal wetlands in particular, a goal has been established to achieve “no net loss” of wetland acreage and function and to strive for a net gain in wetlands over time.

The regulation of nontidal wetlands and waterways affects land development interests; regulated activities in these areas typically affect property owned by private landowners. The regulation of tidal wetlands affects waterfront property owners and the boating public (construction of piers, shoreline protection structures, and marinas); regulated activities in these areas generally affect submerged lands owned by the State and held in trust for the benefit of the public.

Current shore protection practices 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. Where site conditions are appropriate, living shorelines are the preferred method of shore protection because in addition to protecting the shoreline, they also trap sediment, filter pollution, and provide important habitats for both aquatic and terrestrial wildlife.

State Revenues:

Marine Contractor License Application Fees

The bill establishes a \$500 license application fee and a \$300 license renewal fee for marine contractors. The bill does not specify how these funds are to be allocated; therefore, this analysis assumes the application fee revenue goes to the general fund.

General fund revenues increase by \$100,000 in fiscal 2010 as all known marine contractors come into compliance with the new licensing requirement. This estimate assumes 200 marine contractor businesses submit applications and MDE collects only

one application fee per business. Revenue projections for fiscal 2011 assume 20 new applications, for fiscal 2012 and 2014 assume 20 new applications and 180 renewal applications, and for fiscal 2013 assume 20 new applications and 20 renewal applications.

Wetlands and Waterways Project Application Fees

Wetlands and waterways permit and license fees are based on whether an application is for a minor or major project. In general, an application that proposes impacts less than 5,000 square feet and does not require coordination with other State and federal agencies is considered a “minor project,” with a fee of \$750. An application that requires coordination with other State and federal agencies during the permit application review process is considered a “major project,” with fees beginning at \$1,500 and increasing as the magnitude of the impacts increase. The bill eliminates the distinction between minor and major projects, and requires licensed marine contractors to pay only a single, flat application fee of \$750.

The bill’s requirement that licensed marine contractors pay only \$750 per project application results in a significant estimated annual decrease in MDE’s special fund revenue, as illustrated in **Exhibit 1**. Special fund revenues decrease by \$1 million in fiscal 2010, which accounts for the bill’s October 1, 2009 effective date. Future year revenue estimates are annualized. These estimates are based on permit activity from 2006 and are consistent with the assumptions used to estimate the fiscal impact of Chapter 142 of 2008. In response to reduced revenues, MDE may be required to reduce the number of project managers available to process permit applications, impacting customer service and increasing application processing times.

Penalty and Fine Revenues

To the extent marine contractors are fined for license violations, general funds increase. General funds also increase to the extent individuals are fined for failing to hire or consult with a licensed marine contractor.

Exhibit 1
Wetland and Waterway Project Fees
Estimated Impact of SB 1017 on Annual Revenues

	<u>Number of Projects</u>	<u>Fee Charged</u>	<u>Total \$ Amount</u>
Current Law			
Minor Projects	1,068	\$750	\$801,000
Minor Modifications	163	\$500	\$81,500
Major Projects	1,487	≥\$1,500	\$2,474,036
Exemptions			(\$737,900)
Subtotal	2,718		\$2,618,636
Proposed by SB 1017			
Minor Projects	2,718	\$750	\$1,957,000
Minor Modifications	0	\$0	\$0
Major Projects	0	\$0	\$0
Exemptions			(\$737,900)
Subtotal	2,718		\$1,219,100
Difference			(\$1,399,536)

Note: This estimate reflects exemptions for State agencies, local governments, and other activities, as specified in current law.

Source: Maryland Department of the Environment

State Expenditures:

Maryland Department of the Environment

General fund expenditures increase by \$238,282 in fiscal 2010, which reflects the bill's October 1, 2009 effective date. This estimate reflects the cost of hiring a new administrator, one contractual position, and \$150,000 for one-time contractual costs associated with creating a database, online tracking system, and testing protocol. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- MDE adopts regulations for the implementation and administration of the licensing program;

- MDE investigates marine contractors that submit license applications;
- MDE issues marine contractor licenses and license renewals; and
- MDE maintains a roster of licensed individuals and firms.

Regular Position	1
Contractual Position	1
Salaries and Fringe Benefits	\$76,432
Contractual Services	150,000
Start-up Costs and Operating Expenses	<u>11,850</u>
Total FY 2010 MDE Expenditures	\$238,282

Future year expenditures reflect full salaries with 4.4% annual increases, 3% employee turnover for the regular position and 6.8% for the contractual position, 1% annual increases in ongoing operating expenses, and elimination of the contractual position at the end of fiscal 2011. MDE expenditures may increase in the future to take disciplinary action concerning licensing violations.

Department of Natural Resources

Seven engineers in DNR’s Engineering and Construction Unit provide marine contractor services. Waterway Improvement Fund expenditures increase by \$3,500 in fiscal 2010 for licensing fees. Outyear expenditures assume licensing renewal fees are paid every two years, starting in fiscal 2012, for DNR’s seven engineers.

District Court

To the extent the bill results in an increase in the District Court’s caseload, expenditures may increase for additional clerical services and court time necessary for the trial of those cases. However, the bill is not anticipated to have a significant fiscal or operational impact on the District Court.

Board of Public Works

The bill is not expected to have a significant impact on BPW.

Small Business Effect: Expenditures increase by at least \$500 for each of the estimated 200 marine contractor businesses in the State, due to license application fees. Also, expenditures may increase to comply with testing and continuing education requirements for licensing. However, to the extent wetlands and waterways application fees are capped at \$750, expenditures decrease potentially significantly.

Additional Comments: The bill requires marine contractors to be registered and in good standing with MHIC. However, MHIC licenses, rather than registers, contractors.

The bill establishes special procedures for licensed marine contractors not afforded to any other professional group (such as registered professional engineers or certified wetland professionals) submitting wetlands and waterways license and permit applications. MDE advises the bill establishes processing time frames that conflict with existing law, especially with regard to public notice requirements, and significantly reduces the revenue generated as a result of Chapter 142 of 2008.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Carroll and Montgomery counties; Board of Public Works; Department of Natural Resources; Department of Labor, Licensing, and Regulation; Maryland Department of the Environment; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of Legislative Services

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Analysis by: Amanda Mock

Direct Inquiries to:
(410) 946-5510
(301) 970-5510