

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 517

(Chair, Environmental Matters Committee)(By Request -
Departmental - Environment)

Environmental Matters

Board of Public Works - State Wetlands Licenses - Best Interest of the State

This departmental bill specifies that, if the Board of Public Works (BPW) issues a license for an activity in State wetlands, it enjoys the same proprietary rights and discretion of any other property owner in deciding whether to grant a property interest. In deciding whether to issue a license for a nonwater-dependent project on State wetlands, a marina expansion, or to dredge or fill a wetland, BPW must, in addition to operating in its proprietary capacity, act in the best interest of the State, taking into account any factor the board considers relevant. The bill repeals similar, but more limited language for BPW in considering license applications to dredge and fill wetlands. The bill exempts certain wetlands licenses issued by BPW from specified restrictions and requirements pertaining to the conveyance of title to certain State riparian lands, including the requirement to seek the advice of specified governmental entities, hold a public hearing, and issue a written decision. Finally, the bill authorizes BPW to adopt specified regulations.

The bill takes effect July 1, 2014, and does not apply to license applications pending before this date.

Fiscal Summary

State Effect: The bill is not anticipated to significantly affect State operations or finances. It is assumed that the bill's changes do not significantly affect the number or types of wetlands licenses issued by BPW.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: The Maryland Department of Environment (MDE) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Current Law: Licenses for projects in State tidal wetlands are issued by BPW. Permits for projects in private tidal wetlands are issued by MDE. BPW issues licenses for the construction of nonwater-dependent projects for the development of marina expansion projects, and to dredge or fill on State wetlands. For each project, numerous conditions and requirements apply.

MDE is required to assist BPW in determining whether to issue a license for an application to dredge or fill on State wetlands. The Secretary of the Environment must submit a report indicating whether the license should be granted and, if so, the terms, conditions, and consideration required after consultation with any interested federal, State, and local unit, and after issuing public notice and holding any requested hearing. Upon receipt of the report, BPW must decide if issuance of the license is in the best interest of the State, taking into account ecological, economic, developmental, recreational, and aesthetic values that each application presents.

Chapter 142 of 2008 established the Wetlands and Waterways Program within MDE as a statewide program for the management, conservation, and protection of Maryland's tidal wetlands and nontidal wetlands and waterways, including the 100-year floodplain. The goal of the program is to avoid and minimize impacts associated with development and to mitigate impacts that are determined to be necessary and unavoidable. The program is supported by a Wetlands and Waterways Program Fund comprised of application fees for various wetlands and waterways permits and licenses and specified compensation rates for installation of a cable, pipeline, or other structure laid on, in, or under a State wetland.

Background: In April 2012 the Maryland Court of Appeals ruled against BPW in *Maryland Board of Public Works, et al. v. K. Hovnanian's Four Seasons at Kent Island, LLC*, 425 Md. 482 (2012), a case involving a denial of a license to dredge and fill State wetlands. The Court of Appeals held that BPW must limit its focus to considering the recommendations of MDE and taking into account the ecological, economic, developmental, recreational, and aesthetic values to preserve wetlands and prevent their despoliation and destruction, and not other considerations involving the project as a whole. The court found that BPW did not consider the findings of MDE that the impact of issuing the license may have a minimal effect on wetlands, but instead rejected the license application on other grounds beyond the scope of its authority, as prescribed in statute.

MDE advises that the bill allows BPW to consider the proposed impact of a project as a whole, rather than considering only the proposed impact to the affected wetlands. The bill authorizes BPW to consider any factor it deems relevant in order to determine whether a project is in the best interest of the State.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Board of Public Works, Maryland Department of the Environment, Department of Legislative Services

Fiscal Note History: First Reader - February 11, 2014
ep/lgc

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Board of Public Works – State Wetlands Licenses – Best Interest of the State

BILL NUMBER: HB 517

PREPARED BY: Department of the Environment

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

These recommended statutory clarifications will not usurp or preempt local land use decisions. The Board of Public Works will not have authority to overturn a decision of a local government that has approved aspects of a project.