

STATE OF MARYLAND

MARYLAND DEPARTMENT OF THE ENVIRONMENT

Shari T. Wilson, Secretary

BILL NO: Senate Bill 382

COMMITTEE: Education, Health, and Environmental Affairs

POSITION: Oppose

TITLE: Marine Contractors – Licensure and Regulation – Wetland Permits and Authorizations

BILL ANALYSIS: Senate Bill 382 requires the Maryland Department of the Environment (MDE) to develop, implement, and administer a new marine contractor licensing program. Under this new program, applications for activities performed by marine contractors would be afforded a fee reduction, special handling, and faster review by the Department. For certain projects performed by licensed marine contractors, the Bill eliminates altogether the requirement to obtain a tidal wetlands license. In addition, the Bill provides immunity from civil liability to licensed marine contractors who perform certain shoreline stabilization projects.

POSITION AND RATIONALE: The Department opposes SB382. The proposed legislation affects statutory provisions enacted by the 2008 General Assembly before these provisions have been fully implemented and their effectiveness tested by the regulated community, environmental organizations, or the Department.

Marine Contractor Licensing Program

The development of the new marine contractor licensing program proposed by SB382 requires MDE to: (1) Adopt regulations for the implementation and administration of the licensing program; (2) Investigate marine contractors that submit applications for licenses; (3) Issue marine contractor licenses and provide for the renewal of issued licenses, including approved continuing education courses; and (4) Maintain a roster of licensed individuals and firms. The administration of the new program would be funded by a \$500 license application fee and a \$300 license renewal fee, which would partially support a new, dedicated position to manage the program.

During the 2008 session, the Maryland General Assembly enacted House Bill 1253, amending the jurisdiction of the Maryland Home Improvement Commission (MHIC). As a result of the legislation, marine contractors, who construct shore erosion control projects and/or piers, are required to hold a home improvement contractor license from MHIC. While the Department has encouraged the creation of a marine contractors licensing program in the past, it is important to understand whether a new, independent program administered by MDE would provide any additional benefits over the recently imposed MHIC requirements. Consequently, it is important for the Department, the MHIC, and the newly organized Maryland Marine Contractor Association to evaluate the existing program before imposing any new requirements.

Additionally, the Bill's penalty provisions are insufficient. Violations of the license provisions are punishable criminally and as a misdemeanor with only a \$1,000 fine. More importantly, the Bill would impose a penalty of up to \$25,000 on *homeowners* who hire unlicensed marine contractors, but only \$1,000 on the contractor himself.

The Bill would also immunize licensed marine contractors “from civil liability arising from a project to stabilize natural shoreline if the project was issued a permit by the Department under this title.” There is no environmental basis for exempting marine contractors from liability for violating wetlands licenses.

Wetlands and Waterways Regulatory Program

First, there is some ambiguity as to whether SB382 applies to work within both tidal wetlands and nontidal wetlands. The Department believes that the types of projects identified in the Bill are normally carried out in tidal wetlands by marine contractors. If the intent is to capture activities in nontidal wetlands, the scope of the Bill should reflect the type of activities actually performed by marine contractors in order to avoid any confusion.

Second, SB382 makes significant changes to the Wetlands and Waterways Regulatory Program. The Bill establishes special handling procedures for licensed marine contractors that are not afforded to any other professional group, such as registered professional engineers or professional wetland scientists, submitting applications for review and approval by MDE. More importantly, these special handling features not only establish processing time frames that conflict with existing law, especially with regard to public notice requirements, but also dramatically reduce the revenue generated by permit application fees, which will impact the functionality of the program.

The Bill would require MDE to “exempt a licensed marine contractor from the permitting requirements for a project that the Department designates for exemption based on the negligible impact the project will have on the wetlands in which the project is located.” This provision would create a class of projects that, if carried out by a licensed marine contractor, would be exempt from the need to obtain a license. While the intent of this provision is to eliminate permitting delays being experienced by marine contractors, the provision may produce contrary results. The federal general permit negotiated by MDE with the U.S. Army Corps of Engineers (Corps) provides for “State-only” review of minimal impact activities. Under the Maryland State Programmatic General Permit, MDE issues both the State and federal authorizations upon the successful completion of the application process, generally with no interaction between the applicant and the federal government. The creation of a State exemption, however, means that an activity regulated under Section 404 of the federal Clean Water Act or Section 10 of the federal River and Harbors Act, must now be reviewed by the Corps.

Finally, SB382 would eliminate the distinction between minor and major projects for applications submitted by marine contractors, stating that a licensed marine contractor must be charged a “single, flat application fee of \$750.” It is important to note that the fee charged is assessed to the homeowner on whose property the project is occurring, not the marine contractor performing the work. MDE’s analysis of this proposed change to the fee schedule results in the revenue loss of \$807,000 in Fiscal Year 2011. The Bill also prevents MDE from collecting an application fee if the Department ultimately denies the project. Consequently, MDE could not assess an application fee for projects that generally require the most work and documentation, a denial. An application fee should be assessed regardless of the result of the application review process.

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