



SHORE EROSION CONTROL LAW

ANNOTATED CODE OF MARYLAND
NATURAL RESOURCES ARTICLE
SECTIONS 8-1001 THROUGH 8-1008
As Amended Through 2007

Article - Natural Resources

§ 8-1001. Definitions.

(a) *In general.* - In this subtitle the following words have the meanings indicated.

(b) *Benefited property.* –

(1) "Benefited property" means land immediately abutting the waters of the State that is protected by an erosion control project constructed under the provisions of this subtitle.

(2) "Benefited property" includes land in the vicinity of the waters of the State that is protected by the erosion control project when:

(i) The owner of the land has rights of access to land immediately abutting the waters; and

(ii) The owner is a party to the application for assistance in the project.

(c) *Fund* - "Fund" means the Shore Erosion Control Construction Loan Fund.

(d) *Net Project Construction Cost* - "Net project construction cost" means the construction cost paid from the Fund, equal to the project construction cost, plus any excess costs, less the property owner's cash contribution.

(e) *Project construction cost* - "Project construction cost" means the estimated cost to design and construct a shore erosion control project, exclusive of supervision, inspection, and maintenance costs.

(f) *Property owner's cash contribution* - "Property owner's cash contribution" means the sum an owner of property benefited by a shore erosion control project is required to pay in a lump sum prior to construction of the project.

(g) *Shore erosion control project* - "Shore erosion control project" means a competently designed work project, which may include but is not limited to erection or placement of bulkheads, groins, or other erosion control devices, and measures required to stabilize waterside, shorelines, and banks, and to change drainage patterns, all in order to halt or retard erosion of shorelines and deposit of eroded sediments in the waters of the State.

§ 8-1002. Powers and duties of Department.

The Department shall:

(1) Develop and implement a program to educate the public on every phase of shore and bank erosion, its causes and effects, the locations where erosion is a problem, and steps to be taken to control erosion;

(2) Review petitions for formation of shore erosion control districts presented to any county and report to the county as provided in Article 25, § 167B of the Code;

(3) Provide technical assistance to individual property owners, municipalities, and counties having specific shore and bank erosion problems;

(4) Design or cause to be designed shore erosion control projects, including vegetative cover, in shore erosion control districts;

(5) Enter into agreements with any person to construct shore erosion control projects;

(6) Administer the Fund to provide loans to any person in support of construction of shore erosion control projects;

(7) Supervise or provide supervision of design and erection of any shore protective device the Fund finances in whole or part;

(8) Prepare requests for appropriation of funds necessary to maintain the Fund;

(9) Cooperate with the following units:

- (i) The State Highway Administration for shore erosion control where essential to protect municipal, county, or State roads;
- (ii) The United States Army Corps of Engineers to conduct shore erosion studies; and
- (iii) The Soil Conservation Service of the United States Department of Agriculture to evaluate and apply vegetative measures for shore erosion control;
- (10) Design, construct, and maintain shore erosion control works on State-owned lands if these projects are included in the budget for the Fund;
- (11) Actively seek to obtain available funds from the federal government for shore erosion control projects; and
- (12) Adopt regulations to implement this subtitle.

§ 8-1003. Shore erosion control projects.

(a) *Application for assistance in project.* - The owner of any property abutting on any body of water in the State may file a written application with the Department requesting State assistance in the design, construction, and financing of a shore erosion control project for the property. The application shall be in a form and contain information the Department prescribes. Each application form shall contain a notice warning that the applicant is responsible for maintenance of any project after the project is constructed.

(b) *Location of project.* - A project may not be approved unless the project lies within a physiographic unit established by the Department, is within a shore erosion control district established under Article 25, §§ 161 through 167E, inclusive, of the Code, or is of a nature that the project's inclusion within a physiographic unit or shore erosion control district is neither necessary nor feasible in the Department's judgment.

(c) *Participation of every property owner required for approval of physiographic unit project.* - A physiographic unit project may not be approved unless every property owner within the physiographic unit participates in planning, construction, and financing of the project. However, the Department may exclude any property owner within the physiographic unit if this exclusion does not affect materially the remainder of the project.

(d) *Schedule of priorities for projects.* - The Department shall establish a schedule of priorities for shore erosion control projects, and upon approval of an application, assign the project to a priority list number. The schedule shall take into consideration the rate of erosion, amount of silt being deposited in the waters involved, date of Department's approval, nature and amount of public benefits provided by the project, and any other factors set forth in regulations the Department adopts. If at any time the cost of an approved project at the top of the priority list exceeds the unobligated balance of the Fund, the Department may proceed with construction of a lower priority project.

(e) *Property owner's cash contribution to be placed in escrow.* - The property owner's cash contribution shall be placed in escrow immediately after a construction contract is awarded but before construction begins.

§ 8-1004. Provision of services.

(a) *In general.* - The operating budget of the Department may contain an appropriation from the Fund sufficient to provide technical and administrative services required to implement §§ 8-1002 and 8-1003 of this subtitle, including but not limited to:

- (1) Review and evaluation of requests for assistance in shore erosion control;
- (2) Supervision over construction of approved projects; and
- (3) Inspection of completed projects to insure adequate maintenance.

- (b) *Costs.* - Costs of the services enumerated in this section:
 - (1) Shall be reimbursed to the Department by the property owner; and
 - (2) May not be considered part of the construction cost of the project.
- (c) *Use of moneys.* - Moneys in the Fund may be used for administrative costs calculated in accordance with § 1-103(b)(2) of this article.

§ 8-1004.1. Nonstructural shore erosion control.

(a) *Costs to owners.* - Notwithstanding any other provision of this subtitle, to the extent that a project consists of nonstructural shore erosion control measures, the Department may:

- (1) Require the owner of the benefited property to initially incur some or all of the project costs for nonstructural measures; and
- (2) Provide assistance in the form of reimbursements to the owner.

(b) *Agreement for reimbursements.* - To be entitled to receive any reimbursements under this section, the owner of the benefited property shall have entered into a project agreement with the Department before incurring any costs. The Department shall estimate the total amount of project costs for nonstructural measures and shall establish in the agreement as the maximum amount of assistance which will be available for the project 50% of that estimate. The Department may include in the project agreement conditions under which the owner may be entitled to receive reimbursement, including conditioning the reimbursement upon the successful establishment of any vegetative elements of the project.

(c) *Amount of reimbursement.* - The Department may reimburse the owner of a benefited property for 50% of the actual project costs or for the maximum available amount established in the project agreement, whichever is less. If the Department, through its employees, agents, or contractors, has designed or installed all or part of the nonstructural measures, the Department shall include as actual project costs the value of any labor or materials contributed by the State. The value of these items already contributed by the State shall be deducted from the amount to be reimbursed to the owner.

(d) *Funds authorized.* - In carrying out this section, the Department may utilize any general, special, state reimbursable, or federal reimbursable funds appropriated in the budget for nonstructural shore erosion control. Appropriations and expenditures of funds for the purposes of this section may not be subject to any provision of §§ 8-1005 through 8-1007 of this subtitle.

§ 8-1005. Shore Erosion Control Construction Loan Fund; construction of projects; payment of contractors; maintenance of completed projects; borrowing by political subdivisions; funds for State-owned properties.

(a) *Fund established; purpose and maintenance of Fund.* -

(1) There is a "Shore Erosion Control Construction Loan Fund". The Department shall administer the fund to provide interest-free loans or grants to persons, municipalities, or counties for design and construction of shore erosion control projects. The Fund shall be maintained by:

- (i) Repayments of principal on loans made from the Fund, with the repayments made through a benefit charge the State levies on privately owned property benefited by shore erosion control projects. The benefit charge shall compensate the State for net project construction cost. The benefit charge shall be levied at a uniform rate over a period not exceeding 25 years;
- (ii) Repayment of administrative costs under § 8-1004 of this subtitle; and
- (iii) Annual appropriation of funds to restore the Fund to a level sufficient to carry out an effective shore erosion control construction loan program during the succeeding year.

(2) (i) The Fund is a special, nonlapsing fund that is not subject to § 7-302 of the State Finance and Procurement Article.

(ii) Any investment earnings of the Fund shall be credited to the General Fund of the State.

(3) A property owner whose project is approved is eligible to receive an interest-free loan covering 100% of the first \$60,000 of project construction cost, 50% of the next \$20,000 of project construction cost, 25% of the next \$20,000 of project construction cost, and 10% of the part of construction cost exceeding \$100,000. However, where 2 or more property owners are included within a shore erosion control project, the land of each property owner is considered a separate shore erosion project for the purpose of computing net project construction cost under this formula.

(b) *Budget requests to maintain Fund.* - During the first month of each fiscal year, the Department shall submit to the Department of Budget and Management:

(1) An estimate of the amount of revenues the Fund expects to receive from repayment of outstanding loans; and

(2) The amount of funds required to reestablish an adequate balance in the Fund to make loans during the next fiscal year.

(c) *Election by property owner to abandon project.* - If it appears reasonably likely that funds will be available for an approved shore erosion control project, the Department shall develop complete plans, specifications, and all information necessary to solicit firm bids for construction of the project. After selection of a contractor, in accordance with normal competitive bidding procedures, the Department shall advise the property owner of the estimated cost for the completion of all work. The property owner then may elect to abandon the project, and forfeit any initial deposit required under the regulations of the Department.

(d) *Notice to proceed; payment of owner's cash contribution; notice of lien; construction of project; payment of contractor.* -

(1) If, after completion of the procedures required under subsection (c) of this section, the property owner decides to proceed with the project, the provisions of this subsection shall apply.

(2) The property owner shall execute a written notice to proceed, on a form provided by the Department, and shall pay any property owner's cash contribution required under this subtitle. This action shall constitute an irrevocable commitment by the property owner to completion of the project in accordance with the provisions of this subtitle, including authorization for the Department to incur costs up to 10% in excess of the estimated cost above.

(3) Any excess costs within the 10% limit may not act to increase the property owner's cash contribution, but shall be included in the net project construction cost for purposes of assessing benefit charges at the conclusion of the project.

(4) The Department at this time shall cause a notice of lien to be recorded among the land records of the county where the benefited property is located. The notice generally shall describe the provisions of § 8-1006 of this subtitle regarding lien priority and the assumption of liability by a purchaser of a benefited property.

(5) The Department shall award a construction contract for the project, shall supervise actual construction work, and shall make reasonable efforts to ensure that the project is completed in accordance with all specifications and in a manner that conforms to normal industry practice. In this regard, the Department alone shall be responsible, in its own discretion, for negotiating any changes in the construction contract and for determining when the project is satisfactorily complete in all respects.

(6) On completion of the project, the Department shall:

(i) Endorse any property owner's cash contribution to the credit of the contractor;
and

(ii) Pay the balance due the contractor from the Fund.

(7) Within 30 days of completion of the project, the Department shall certify to the Board of Public Works the net project construction cost. The Board of Public Works shall levy a benefit charge in accordance with the provisions of § 8-1006 of this subtitle.

(e) *Maintenance of completed projects.* - Costs to maintain shore erosion control projects are the sole responsibility of the benefited property owner. The Department periodically shall inspect these projects to recommend to the property owner any measures required to maintain the project.

(f) *Borrowing from Fund by political subdivisions.* - Any county or any municipal corporation may borrow interest-free funds from the Fund for any approved project without the project construction cost limitation stated in this section. The county or municipal corporation shall repay the funds at a uniform rate over a period not exceeding 25 years as stated by agreement between the State and county or municipal corporation.

(g) *Funds for shore erosion protection for State-owned properties.* - The Department shall include in its budget a request for funds necessary to provide and maintain shore erosion protection for State-owned properties.

§ 8-1005.1. Procurement of design and construction services.

(a) *In general.* - Notwithstanding any other provision of this subtitle, the Department may require a property owner who has requested a loan, or a property owner may elect, to procure design and construction services for a shore erosion control project.

(b) *Regulations.* - The Department shall adopt regulations establishing procedures and technical standards for the procurement of design and construction services by a property owner.

§ 8-1006. Benefit charge.

(a) *Levy.* - On receipt of certification from the Department that a shore erosion control project has been satisfactorily completed, the Board of Public Works shall fix and levy a benefit charge on the benefited property. The benefit charge shall be:

(1) Payable in annual installments over a period of 25 years, or any shorter period as directed by the Board; and

(2) Calculated so as to return to the State the net project construction cost resulting from the shore erosion control project.

(b) *Due date of installments.* - Annual installments shall be due beginning on the first day of July following levy of the benefit charge by the Board of Public Works, and each July 1 after that date until the benefit charge is paid totally. If not paid within 90 days of its due date, an installment shall be in default and shall bear interest at the rate of 2% a month from the time of default. The Department shall be responsible for collection of annual installments.

(c) *Lien; collection of installments in default.* - A benefit charge assessed under this subtitle shall be a lien on the real property against which the benefit charge is assessed, and shall be subject to collection in the manner specified for foreclosure of mortgages. Any annual installments in default shall be a first lien on the benefited property, subject only to prior State, county, or municipal real property taxes. The outstanding balance of a benefit charge shall be afforded normal lien priority, except that the Department may agree in writing to grant precedence to a subsequent mortgage or deed of trust if necessary for refinancing, transfer, or improvement of a benefited property.

(d) *Sale of benefited property.* - Annual installments shall be a personal obligation of the owner of a benefited property at the time the installments become due. Sale of a benefited property may not extinguish a lien under this subtitle, and the purchaser in all instances shall take the

property subject to any outstanding balance of the total benefit charge still unpaid at the conclusion of the sale, and shall be required to meet the same annual installments as previously were being assessed. Any notice of sale clearly shall identify this potential liability, provided that failure to so notify may not affect the obligation if the notice of lien required under § 8-1005(d)(4) of this subtitle is filed properly.

§ 8-1007. Recording transfer of benefited property; subdivision; notice to tax officials; release of lien.

(a) *Recording transfer of benefited property.* - For purposes of § 3-104 of the Real Property Article, which pertains to payment of taxes as a prerequisite to recording of any transfer of property, it is sufficient that all current annual installments of any benefit charge levied under this subtitle have been paid.

(b) *Subdivision of benefited property.* - In the case of any subdivision of benefited property subsequent to the filing of the notice of the lien required under this subtitle, the benefit charge shall apply:

(1) Except as provided in this subsection, in proportion to the respective length of the shore erosion control project abutting each lot; or

(2) If the owners and the Department agree that a different apportionment would more fairly treat a particular situation, then in accordance with that agreement.

(c) *Notice to tax officials.* - At the time of levy of any benefit charge under this subtitle or apportionment of an existing levy among subdivision lots, the Department shall notify appropriate tax officials for inclusion of the assessment in the tax records.

(d) *Release of lien.* - On completion of payment of the total benefit charge relating to a shore erosion control project, the Department shall:

(1) Certify to the Board of Public Works for release of the lien that payment has been completed; and

(2) File a release of the lien in the appropriate land and tax records.

§ 8-1008. Regulations for shore erosion control projects.

The Department, with the approval of the Board of Public Works, shall adopt regulations in accordance with Title 10, Subtitle 1 of the State Government Article to implement the procedures of the Department for shore erosion control capital and loan projects under §§ 8-1005, 8-1006, and 8-1007 of this subtitle.