

# HOUSE BILL 1056

M3

(8lr2575)

## **ENROLLED BILL**

*—Environmental Matters/Education, Health, and Environmental Affairs—*

Introduced by **Delegates George, Beidle, Bobo, Cane, Carr, V. Clagett, Frush, Hucker, Lafferty, Niemann, Norman, Shewell, Sossi, Stein, Stull, and Walkup**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

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Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
Speaker.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Environment - Water Management Administration - Wetlands and**  
3 **Waterways Program Fees**

4 FOR the purpose of establishing certain application fees for certain applications  
5 related to activities in wetlands and waterways; making certain permits subject  
6 to a certain application fee refund process; exempting certain persons and  
7 activities from the application fees; establishing the Wetlands and Waterways  
8 Program Fund; clarifying certain provisions of the Tidal Wetlands  
9 Compensation Fund; defining certain terms; requiring the Department of the  
10 Environment to conduct certain reviews and submit certain reports and a  
11 certain plan to certain legislative committees by certain dates; altering certain  
12 definitions; and generally relating to the Wetlands and Waterways Program.

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**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

*Italics indicate opposite chamber / conference committee amendments.*



1 BY repealing and reenacting, with amendments,  
2 Article – Environment  
3 Section 1–607, 16–101(i), and 16–205  
4 Annotated Code of Maryland  
5 (2007 Replacement Volume and 2007 Supplement)

6 BY adding to  
7 Article – Environment  
8 Section 5–203.1  
9 Annotated Code of Maryland  
10 (2007 Replacement Volume and 2007 Supplement)

11 Preamble

12 WHEREAS, It is essential to the health and vitality of the Chesapeake and  
13 Atlantic Coastal Bays that all wetlands and waterways within the State are  
14 adequately protected through the permitting and licensing programs administered by  
15 the Maryland Department of the Environment; and

16 WHEREAS, Constraints on the Department’s General Fund appropriation have  
17 limited the Department’s effective protection of the State’s water resources and have  
18 delayed the processing of permits, which in turn has negatively impacted Maryland  
19 business interests; and

20 WHEREAS, The assessment of application fees will enable the Department to  
21 render permit decisions more quickly and efficiently, even though current processing  
22 delays are often the result of requirements outside the control of the Department,  
23 including review by other governmental agencies, procedures for public participation,  
24 and the failure of an applicant to submit complete and timely information to the  
25 Department; and

26 WHEREAS, It is the intent of the General Assembly that the goals of the  
27 statewide Nontidal Wetlands Protection Act be furthered and that the joint permitting  
28 process with the U.S. Army Corps of Engineers be improved so as to meet the goals  
29 and deadlines of the Act more effectively and promptly; and

30 WHEREAS, It is the intent of the General Assembly that the most equitable  
31 way to fund the full and effective administration of a statewide Wetlands and  
32 Waterways Program in the Department is through reasonable application fees and  
33 General Fund appropriations; now, therefore,

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

36 **Article – Environment**

37 1–607.

1           (a)   (1)   This subsection applies to applications for all licenses and permits  
2 issued, or required to be reissued, by the Department.

3                   (2)   On or before January 1, 1998, and each year thereafter, in  
4 consultation with interested parties, the Department shall publish expected review  
5 times for each licensing and permitting program.

6                   (3)   On or before January 1, 1998, for each licensing and permitting  
7 program, the Department shall offer assistance and information to persons which may  
8 include:

9                           (i)   Written lists of information and materials required with  
10 applications;

11                           (ii)   Written lists of common application questions and mistakes;

12                           (iii)   Preapplication meetings with prospective applicant to  
13 address technical issues;

14                           (iv)   Written receipts to the applicant upon submission of an  
15 application; and

16                           (v)   The status of active applications.

17           (b)   (1)   This subsection applies to permits which are:

18                           (I)   [identified] **IDENTIFIED** in § 1-601(a) of this subtitle; **OR**

19                           (II)   **ISSUED UNDER TITLE 5, SUBTITLE 9 OF THIS ARTICLE.**

20                   (2)   The Department shall provide to the applicant:

21                           (i)   A notice of completed application; or

22                           (ii)   If the Department determines that the application is  
23 incomplete, the reasons, in writing, that the application was determined to be  
24 incomplete.

25                           (3)   (I) [The] **FOR PERMITS IDENTIFIED IN § 1-601(A) OF THIS**  
26 **SUBTITLE, THE** notice of completed application shall include an estimated time for  
27 issuance of the tentative determination if requested by the applicant.

28                                   (II)   **FOR PERMITS ISSUED UNDER TITLE 5, SUBTITLE 9 OF**  
29 **THIS ARTICLE, THE NOTICE OF COMPLETED APPLICATION SHALL INCLUDE AN**

1 **ESTIMATE OF THE DATE BY WHICH THE DEPARTMENT WILL GRANT, DENY, OR**  
2 **CONDITION THE PERMIT.**

3 (4) A permit applicant may apply to the Department for a refund of all  
4 or a portion of the application fee if:

5 (i) 1. **[The] FOR PERMITS IDENTIFIED IN § 1-601(A) OF**  
6 **THIS SUBTITLE, THE** Department fails to issue a tentative determination regarding  
7 the application within the estimated time provided in the notice of completed  
8 application; **OR**

9 **2. FOR PERMITS ISSUED UNDER TITLE 5, SUBTITLE**  
10 **9 OF THIS ARTICLE, THE DEPARTMENT FAILS TO GRANT, DENY, OR CONDITION A**  
11 **PERMIT WITHIN THE TIME PERIODS PROVIDED UNDER § 5-906 OF THIS**  
12 **ARTICLE;**

13 (ii) The applicant demonstrates that the delay was caused solely  
14 by the Department and was not the result of procedures or requirements outside  
15 control of the Department, including:

16 1. Reviews by federal, local, or other State government  
17 agencies;

18 2. Procedures for public participation; or

19 3. The failure of the applicant to submit information to  
20 the Department in a timely manner; and

21 (iii) 1. **[The] FOR PERMITS IDENTIFIED IN § 1-601(A) OF**  
22 **THIS SUBTITLE, THE** applicant applies to the Department within 60 days after the  
23 estimated time for issuance of a tentative determination; **OR**

24 **2. FOR PERMITS ISSUED UNDER TITLE 5, SUBTITLE**  
25 **9 OF THIS ARTICLE, THE APPLICANT APPLIES TO THE DEPARTMENT WITHIN 60**  
26 **DAYS AFTER THE DATE BY WHICH THE DEPARTMENT WAS TO HAVE GRANTED,**  
27 **DENIED, OR CONDITIONED A PERMIT UNDER THE TIME PERIODS PROVIDED**  
28 **UNDER § 5-906 OF THIS ARTICLE.**

29 (5) The Secretary, or the Secretary's designee, shall review the refund  
30 request and determine if a refund of any amount is appropriate.

31 (6) If the Secretary denies the refund request, the Department shall  
32 provide the applicant a written explanation of the denial and of the procedures and  
33 requirements outside the control of the Department on which the denial was based  
34 within 60 days.

1 **5-203.1.**

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
3 MEANINGS INDICATED.

4 (2) "MAJOR PROJECT" MEANS A PROJECT THAT:

5 (I) PROPOSES TO PERMANENTLY IMPACT 5,000 SQUARE  
6 FEET OR MORE OF WETLANDS OR WATERWAYS, INCLUDING THE 100-YEAR  
7 FLOODPLAIN;

8 (II) IS LOCATED IN AN AREA IDENTIFIED AS POTENTIALLY  
9 IMPACTING THREATENED OR ENDANGERED SPECIES OR SPECIES IN NEED OF  
10 CONSERVATION BY A GEOGRAPHICAL INFORMATION SYSTEM DATABASE THAT:

11 1. INCLUDES SENSITIVE SPECIES PROJECT REVIEW  
12 AREAS AND WATERFOWL CONCENTRATION AND STAGING AREAS;

13 2. HAS BEEN DEVELOPED AND MAINTAINED BY THE  
14 DEPARTMENT OF NATURAL RESOURCES; AND

15 3. IS USED BY THE DEPARTMENT TO SCREEN  
16 INCOMING APPLICATIONS;

17 (III) IS LOCATED IN AN AREA THAT HAS BEEN IDENTIFIED AS  
18 POTENTIALLY IMPACTING HISTORICAL OR ARCHEOLOGICAL RESOURCES BY A  
19 GEOGRAPHICAL INFORMATION SYSTEM DATABASE THAT:

20 1. INCLUDES MARYLAND ARCHEOLOGICAL SITES,  
21 THE MARYLAND INVENTORY OF HISTORIC PROPERTIES, THE NATIONAL  
22 REGISTER OF HISTORIC PLACES, THE MARYLAND HISTORICAL TRUST  
23 PRESERVATION EASEMENTS, THE ANNAPOLIS MARYLAND INVENTORY OF  
24 HISTORIC PROPERTIES, AND THE ANNAPOLIS MARYLAND INVENTORY OF  
25 HISTORIC PROPERTIES STREET MAP;

26 2. HAS BEEN DEVELOPED AND MAINTAINED BY THE  
27 MARYLAND HISTORICAL TRUST; AND

28 3. IS USED BY THE DEPARTMENT TO SCREEN  
29 INCOMING APPLICATIONS;

1 (IV) IS LOCATED IN AN AREA IDENTIFIED AS POTENTIALLY  
2 IMPACTING A NONTIDAL WETLAND OF SPECIAL STATE CONCERN BY A  
3 GEOGRAPHICAL INFORMATION SYSTEM DATABASE THAT:

4 1. HAS BEEN DEVELOPED AND MAINTAINED BY THE  
5 DEPARTMENT OF NATURAL RESOURCES; AND

6 2. IS USED BY THE DEPARTMENT TO SCREEN  
7 INCOMING APPLICATIONS;

8 (V) IS ADJACENT TO USE III OR USE IV WATERS, AS  
9 DEFINED IN REGULATION BY THE DEPARTMENT; OR

10 (VI) REQUIRES THE ISSUANCE OF A PUBLIC NOTICE BY THE  
11 DEPARTMENT.

12 (3) "MINOR PROJECT" MEANS A PROJECT THAT:

13 (I) PROPOSES TO PERMANENTLY IMPACT LESS THAN 5,000  
14 SQUARE FEET OF WETLANDS OR WATERWAYS, INCLUDING THE 100-YEAR  
15 FLOODPLAIN; AND

16 (II) DOES NOT MEET THE DEFINITION OF A MAJOR  
17 PROJECT.

18 (B) (1) EXCEPT AS PROVIDED UNDER PARAGRAPH (2) OF THIS  
19 SUBSECTION, ALL APPLICATIONS FOR WETLANDS AND WATERWAYS  
20 AUTHORIZATIONS ISSUED BY THE DEPARTMENT UNDER §§ 5-503, 5-906,  
21 16-202, 16-302, AND 16-307 OF THIS ARTICLE OR WETLANDS LICENSES ISSUED  
22 BY THE BOARD OF PUBLIC WORKS UNDER § 16-202 OF THIS ARTICLE SHALL BE  
23 ACCOMPANIED BY AN APPLICATION FEE AS FOLLOWS:

24 (I) FOR AN APPLICATION FOR A MINOR PROJECT OR  
25 GENERAL PERMIT.....\$750;

26 (II) FOR AN APPLICATION FOR A MINOR  
27 MODIFICATION.....\$500;

28 (III) FOR AN APPLICATION FOR A MAJOR PROJECT OR  
29 MAJOR MODIFICATION WITH A PROPOSED PERMANENT IMPACT OF:

30 1. LESS THAN 1/4 ACRE.....\$1,500;



1 (II) SUBJECT TO THE APPROPRIATE APPLICATION FEE  
2 UNDER PARAGRAPH (1)(I) AND (II) OF THIS SUBSECTION.

3 (4) EXCEPT AS PROVIDED IN PARAGRAPH (5) OF THIS  
4 SUBSECTION, THE FEES IMPOSED UNDER THIS SUBSECTION MAY NOT BE  
5 MODIFIED PRIOR TO JANUARY 1, 2012.

6 (5) (I) THE DEPARTMENT MAY ADJUST THE FEES  
7 ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION TO REFLECT  
8 CHANGES IN THE CONSUMER PRICE INDEX, ~~AS AUTHORIZED BY 40 C.F.R. PART~~  
9 ~~70 (OPERATING PERMIT PROGRAM)~~ FOR ALL "URBAN CONSUMERS" FOR THE  
10 EXPENDITURE CATEGORY "ALL ITEMS NOT SEASONALLY ADJUSTED", AND FOR  
11 ALL REGIONS.

12 (II) THE ANNUAL CONSUMER PRICE INDEX FOR THE  
13 PERIOD ENDING EACH DECEMBER, AS PUBLISHED BY THE BUREAU OF LABOR  
14 STATISTICS OF THE U.S. DEPARTMENT OF LABOR, SHALL BE USED TO ADJUST  
15 THE FEES ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

16 (C) (1) THERE IS A WETLANDS AND WATERWAYS PROGRAM FUND.

17 (2) THE DEPARTMENT SHALL ADMINISTER THE FUND.

18 (3) ~~(I) AT THE END OF EACH FISCAL YEAR, ANY UNSPENT OR~~  
19 ~~UNENCUMBERED BALANCE IN THE FUND SHALL REVERT TO THE GENERAL~~  
20 ~~FUND OF THE STATE, IN ACCORDANCE WITH § 7-302 OF THE STATE FINANCE~~  
21 ~~AND PROCUREMENT ARTICLE.~~

22 ~~(II)~~ THE TREASURER SHALL HOLD THE FUND SEPARATELY  
23 AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

24 (4) THE FUND CONSISTS OF ALL:

25 (I) APPLICATION FEES COLLECTED BY THE DEPARTMENT  
26 UNDER THIS SECTION;

27 (II) MONETARY COMPENSATION PAID TO THE STATE IN  
28 CONJUNCTION WITH A WETLANDS LICENSE OTHER THAN THAT COMPENSATION  
29 SPECIFIED IN § 16-205(C)(2) OF THIS ARTICLE;

30 (III) MONEY APPROPRIATED IN THE STATE BUDGET TO THE  
31 FUND; AND



1 (IV) INVESTMENT EARNINGS, INTEREST, AND ANY OTHER  
2 MONEY FROM ANY OTHER SOURCE ACCEPTED FOR THE BENEFIT OF THE FUND.

3 (5) IN ACCORDANCE WITH SUBSECTION (E) OF THIS SECTION, THE  
4 DEPARTMENT SHALL USE THE WETLANDS AND WATERWAYS PROGRAM FUND  
5 FOR ACTIVITIES RELATED TO:

6 (I) THE ISSUANCE OF AUTHORIZATIONS BY THE  
7 DEPARTMENT UNDER §§ 5-503, 5-906, 16-202, 16-302, AND 16-307 OF THIS  
8 ARTICLE OR THE ISSUANCE OF WETLANDS LICENSES BY THE BOARD OF PUBLIC  
9 WORKS UNDER § 16-202 OF THIS ARTICLE;

10 (II) THE MANAGEMENT, CONSERVATION, PROTECTION, AND  
11 PRESERVATION OF THE STATE'S WETLANDS AND WATERWAY RESOURCES; AND

12 (III) PROGRAM DEVELOPMENT ASSOCIATED WITH TITLE 5  
13 AND TITLE 16 OF THIS ARTICLE, AS PROVIDED BY THE STATE BUDGET.

14 (D) ~~BY~~ ON OR BEFORE DECEMBER 31 OF EACH YEAR ~~AND~~, IN  
15 ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE  
16 DEPARTMENT SHALL PREPARE AND SUBMIT AN ANNUAL REPORT TO THE  
17 HOUSE ENVIRONMENTAL MATTERS COMMITTEE, THE HOUSE  
18 APPROPRIATIONS COMMITTEE, THE SENATE EDUCATION, HEALTH, AND  
19 ENVIRONMENTAL AFFAIRS COMMITTEE, AND THE SENATE BUDGET AND  
20 TAXATION COMMITTEE ON THE WETLANDS AND WATERWAYS PROGRAM FUND,  
21 INCLUDING AN ACCOUNTING OF FINANCIAL RECEIPTS DEPOSITED INTO THE  
22 FUND AND EXPENDITURES FROM THE FUND.

23 (E) THE DEPARTMENT SHALL:

24 (1) PRIORITIZE THE USE OF THE WETLANDS AND WATERWAYS  
25 PROGRAM FUND TO IMPROVE THE LEVEL OF SERVICE TO THE REGULATED  
26 COMMUNITY; AND

27 (2) IDENTIFY AND IMPLEMENT MEASURES THAT WILL REDUCE  
28 DELAYS AND DUPLICATION IN THE ADMINISTRATION OF THE WETLANDS AND  
29 WATERWAYS PERMIT PROCESS, INCLUDING THE PROCESSING OF APPLICATIONS  
30 FOR WETLANDS AND WATERWAYS PERMITS IN ACCORDANCE WITH § 1-607 OF  
31 THE ENVIRONMENT ARTICLE.

32 16-101.

1           (i) “Person” means any natural person, partnership, joint-stock company,  
2 unincorporated association or society, THE FEDERAL GOVERNMENT, the State, any  
3 unit of the State, a political subdivision, or other corporation of any type.

4 16–205.

5           (a) The Board may require as a condition to issuance of a wetlands license  
6 that compensation be made to the State, of a kind and in an amount deemed  
7 appropriate by the Board.

8           (b) Monetary compensation received by the State in conjunction with a  
9 wetlands license may not be applied to the State Annuity Bond Fund Account.

10           (c) (1) There is created a special fund, known as the Tidal Wetlands  
11 Compensation Fund.

12                       (2) The following money shall be deposited in the Tidal Wetlands  
13 Compensation Fund:

14                               (i) [Any monetary compensation paid to the State in  
15 conjunction with a wetlands license, including compensation paid by an applicant  
16 instead of engaging in the creation, restoration, or enhancement of a tidal wetland]  
17 **ANY MONETARY PAYMENT BY A LICENSEE IN LIEU OF CREATING, RESTORING,**  
18 **OR ENHANCING TIDAL WETLANDS THAT IS REQUIRED BY THE DEPARTMENT OR**  
19 **THE BOARD AS A CONDITION OF A PERMIT OR LICENSE;**

20                               (ii) Any penalty imposed by a court in accordance with this title;  
21 and

22                               (iii) Any penalty imposed by the Department under this title.

23           (d) Funds in the Tidal Wetlands Compensation Fund may be appropriated  
24 only for [acquisition and conservation of wetland areas by the State, including cost  
25 sharing assistance to landowners in the management and control of phragmites under  
26 Title 8, Subtitle 21 of the Natural Resources Article] **THE CREATION, RESTORATION,**  
27 **OR ENHANCEMENT OF TIDAL WETLANDS, INCLUDING:**

28                               (1) **ACQUISITION OF LAND OR EASEMENTS;**

29                               (2) **MAINTENANCE OF MITIGATION SITES;**

30                               (3) **PURCHASE OF CREDITS IN MITIGATION BANKS;**

31                               (4) **MANAGEMENT OF INVASIVE OR NUISANCE SPECIES**  
32 **IDENTIFIED BY THE DEPARTMENT;**

1           **(5) COST SHARING ASSISTANCE TO LANDOWNERS IN THE**  
2 **MANAGEMENT AND CONTROL OF PHRAGMITES UNDER TITLE 8, SUBTITLE 21 OF**  
3 **THE NATURAL RESOURCES ARTICLE; AND**

4           **(6) CONTRACTUAL SERVICES NECESSARY TO ACCOMPLISH THE**  
5 **INTENT OF THIS SUBSECTION.**

6           (e) Funds [appropriated in the budget for wetlands acquisition and  
7 conservation under this section] **CREDITED AND ANY INTEREST ACCRUED TO THE**  
8 **FUND:**

9           (1) Shall remain available until expended; and

10           (2) May not [be reverted] **REVERT TO THE GENERAL FUND** under  
11 any other provision of law.

12           **(F) ALL MONETARY COMPENSATION PAID TO THE STATE IN**  
13 **CONJUNCTION WITH A WETLANDS LICENSE OTHER THAN THAT SPECIFIED**  
14 **UNDER SUBSECTION (C)(2) OF THIS SECTION SHALL BE DEPOSITED IN THE**  
15 **WETLANDS AND WATERWAYS PROGRAM FUND ESTABLISHED UNDER § 5-203.1**  
16 **OF THIS ARTICLE.**

17           SECTION 2. AND BE IT FURTHER ENACTED, That the Department of the  
18 Environment shall:

19           (a) (1) In conjunction with representatives of the U.S. Army Corps of  
20 Engineers and any other federal and State agencies involved in the joint permitting  
21 process, review the current wetlands and waterways joint permitting process and  
22 develop an action plan with recommendations for improvement in the joint process to  
23 meet the goals and deadlines under § 5-906(j) of the Environment Article more  
24 effectively and promptly, including an assessment of any gaps that may exist in  
25 meeting the goals and deadlines under § 5-906(j) of the Environment Article and  
26 specific measures for resolving those gaps by January 1, 2010;

27           (2) In accordance with § 2-1246 of the State Government Article,  
28 submit the action plan to the House Environmental Matters Committee and the  
29 Senate Education, Health, and Environmental Affairs Committee by January 1, 2009;  
30 and

31           (3) On or before January 1, 2010, in accordance with § 2-1246 of the  
32 State Government Article, submit a report to the House Environmental Matters  
33 Committee and the Senate Education, Health, and Environmental Affairs Committee  
34 demonstrating that the measures identified in the action plan have been implemented  
35 to achieve compliance with the goals and deadlines under § 5-906(j) of the  
36 Environment Article; and

1 (b) On or before January 1, 2011, convene a work group consisting of  
2 interested stakeholders to review and assess whether the Wetlands and Waterways  
3 Program, due to the enactment of this Act, successfully improved the level of service to  
4 the regulated community, including:

5 (1) Reviewing the number of new positions assigned to the Program;

6 (2) Reviewing the Program's progress in improving permit turnaround  
7 time frames and permit backlogs and any enhanced services provided to the regulated  
8 community as a result of this Act;

9 (3) Analyzing the long-term funding needs of the Wetlands and  
10 Waterways Program;

11 (4) Determining whether the application fees provided by this Act are  
12 adequate to support an effective program; and

13 (5) On or before December 1, 2011, in accordance with § 2-1246 of the  
14 State Government Article, reporting the findings and recommendation of the work  
15 group to the Legislative Policy Committee, the House Environmental Matters  
16 Committee, and the Senate Education, Health, and Environmental Affairs Committee.

17 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
18 July 1, 2008.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.