

CHAPTER 142

(House Bill 1056)

AN ACT concerning

Environment – Water Management Administration – Wetlands and Waterways Program Fees

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

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

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

Preamble

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

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

WHEREAS, The assessment of application fees will enable the Department to render permit decisions more quickly and efficiently, even though current processing

delays are often the result of requirements outside the control of the Department, including review by other governmental agencies, procedures for public participation, and the failure of an applicant to submit complete and timely information to the Department; and

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

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

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

Article – Environment

1-607.

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

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

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

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

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

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

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

(v) The status of active applications.

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

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

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

(2) The Department shall provide to the applicant:

(i) A notice of completed application; or

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

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

(II) **FOR PERMITS ISSUED UNDER TITLE 5, SUBTITLE 9 OF THIS ARTICLE, THE NOTICE OF COMPLETED APPLICATION SHALL INCLUDE AN ESTIMATE OF THE DATE BY WHICH THE DEPARTMENT WILL GRANT, DENY, OR CONDITION THE PERMIT.**

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

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

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

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

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

2. Procedures for public participation; or

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

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

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

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

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

5-203.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. AT LEAST 1/4 ACRE, BUT LESS THAN 1/2 ACRE.....\$3,000;

3. AT LEAST 1/2 ACRE, BUT LESS THAN 3/4 ACRE.....\$4,500;

4. AT LEAST 3/4 ACRE, BUT LESS THAN 1 ACRE.....\$6,000; AND

5. 1 ACRE OR MORE.....THE IMPACT AREA IN ACRES MULTIPLIED BY \$7,500.

(2) THE FOLLOWING ARE EXEMPT FROM THE APPLICATION FEES ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION:

(I) REGULATED ACTIVITIES CONDUCTED BY THE STATE, A MUNICIPAL CORPORATION, COUNTY, BICOUNTY OR MULTICOUNTY AGENCY UNDER ARTICLE 28 OR ARTICLE 29 OF THE CODE, OR A UNIT OF THE STATE, A MUNICIPAL CORPORATION, OR A COUNTY;

(II) PERFORMANCE OF AGRICULTURAL BEST MANAGEMENT PRACTICES CONTAINED IN A SOIL CONSERVATION AND WATER QUALITY PLAN APPROVED BY THE APPROPRIATE SOIL CONSERVATION DISTRICT;

(III) PERFORMANCE OF FORESTRY BEST MANAGEMENT PRACTICES CONTAINED IN AN EROSION AND SEDIMENT CONTROL PLAN:

- 1. PREPARED BY A REGISTERED FORESTER; AND**
- 2. APPROVED BY THE APPROPRIATE SOIL CONSERVATION DISTRICT; AND**

(IV) STREAM RESTORATION, VEGETATIVE SHORELINE STABILIZATION, WETLAND CREATION, OR OTHER PROJECT IN WHICH THE PRIMARY EFFECT IS TO ENHANCE THE STATE'S WETLAND OR WATER RESOURCES.

(3) FOR PURPOSES OF THIS SUBSECTION, A MINING ACTIVITY UNDERTAKEN ON AFFECTED LAND AS IDENTIFIED IN A PERMIT ISSUED UNDER TITLE 15 OF THIS ARTICLE SHALL BE:

- (I) DEEMED TO BE A MINOR PROJECT; AND**
- (II) SUBJECT TO THE APPROPRIATE APPLICATION FEE UNDER PARAGRAPH (1)(I) AND (II) OF THIS SUBSECTION.**

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

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

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

- (C) (1) THERE IS A WETLANDS AND WATERWAYS PROGRAM FUND.**
- (2) THE DEPARTMENT SHALL ADMINISTER THE FUND.**
- (3) ~~(I) AT THE END OF EACH FISCAL YEAR, ANY UNSPENT OR UNENCUMBERED BALANCE IN THE FUND SHALL REVERT TO THE GENERAL~~**

~~FUND OF THE STATE, IN ACCORDANCE WITH § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.~~

~~(H) THE TREASURER SHALL HOLD THE FUND SEPARATELY AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.~~

(4) THE FUND CONSISTS OF ALL:

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

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

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

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

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

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

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

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

(D) ~~BY~~ ON OR BEFORE DECEMBER 31 OF EACH YEAR ~~AND~~, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE DEPARTMENT SHALL PREPARE AND SUBMIT AN ANNUAL REPORT TO THE HOUSE ENVIRONMENTAL MATTERS COMMITTEE, THE HOUSE APPROPRIATIONS COMMITTEE, THE SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE, AND THE SENATE BUDGET AND TAXATION COMMITTEE ON THE WETLANDS AND WATERWAYS PROGRAM FUND,

INCLUDING AN ACCOUNTING OF FINANCIAL RECEIPTS DEPOSITED INTO THE FUND AND EXPENDITURES FROM THE FUND.

(E) THE DEPARTMENT SHALL:

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

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

16-101.

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

16-205.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Shall remain available until expended; and

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

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

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

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

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

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

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

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

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

(3) Analyzing the long–term funding needs of the Wetlands and Waterways Program;

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

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

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

Approved by the Governor, April 24, 2008.