

Department of Legislative Services
 Maryland General Assembly
 2008 Session

FISCAL AND POLICY NOTE
 Revised

House Bill 1056

(Delegate George, *et al.*)

Environmental Matters

Education, Health, and Environmental Affairs

Environment - Water Management Administration - Wetlands and Waterways
 Program Fees

This bill establishes a Wetlands and Waterways Program Fund within the Maryland Department of the Environment. As the primary revenue source, the bill establishes application fees for various wetlands and waterways permits and licenses. The bill establishes the required uses of the fund and reporting requirements for MDE.

The bill takes effect July 1, 2008.

Fiscal Summary

State Effect: Special fund revenues from application fees would increase by \$2.6 million in FY 2009. Future year revenue estimates are adjusted for inflation. Special fund expenditures would increase correspondingly, primarily to restaff the Wetlands and Waterways Program to historical levels. Future year expenditures are annualized and adjusted for inflation.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
SF Revenue	\$2,618,600	\$2,668,400	\$2,721,800	\$2,784,400	\$2,848,400
ReimB. Rev.	-	-	-	-	-
SF Expenditure	2,618,600	2,668,400	2,721,800	2,784,400	2,848,400
ReimB. Exp.	-	-	-	-	-
Net Effect	\$0	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill would not materially affect local operations or finances. Local governments would be exempt from the bill's fee provisions.

Small Business Effect: Minimal.

Analysis

Bill Summary: The following permits and licenses would be subject to the bill's application fees: • permits to construct, reconstruct, or repair any reservoir, dam, or waterway obstruction, and other related activities; • nontidal wetlands permits; • licenses for dredging or filling on State tidal wetlands; • licenses for dredging and filling on private tidal wetlands; and • permits to conduct other activities on private tidal wetlands.

The bill establishes the following fees:

- minor project or general permit, \$750;
- minor modification, \$500;
- major project or major modification with a proposed permanent impact of less than one-fourth acre, \$1,500;
- major project or major modification with a proposed permanent impact of at least one-fourth acre but less than one-half acre, \$3,000;
- major project or major modification with a proposed permanent impact of at least one-half acre but less than three-fourths acre, \$4,500;
- major project or major modification with a proposed permanent impact of at least three-fourths acre but less than one acre, \$6,000; and
- major project or major modification with a proposed permanent impact of one acre or more, the impact area in acres multiplied by \$7,500.

The fees may not be modified before January 1, 2012; however, MDE is authorized to adjust the fees to reflect changes in the consumer price index. State agencies and local governments would be exempt from the fees, as would specified activities. The bill provides for the reimbursement of fees if permit applications are not acted upon within a specified timeframe.

The fund would also consist of other revenues, including wetlands license fees currently paid into the Tidal Wetlands Compensation Fund. The bill makes corresponding changes to provisions governing the revenue sources of that fund and modifies its uses.

MDE is directed to use the new fund for • activities related to the issuance of permits and licenses; • the management, conservation, protection, and preservation of the State's wetlands and waterways; and • program development. MDE must prioritize the use of the fund to improve the level of service to the regulated community. MDE must identify and implement measures that will reduce delays and duplication in the permit process. MDE must prepare an annual report on the fund.

MDE must review the current joint federal-State wetlands and waterways permitting process, develop an action plan with recommendations for improvement, and submit the action plan to the General Assembly by January 1, 2009. A follow-up report must be submitted by January 1, 2010. By January 1, 2011, MDE must convene a workgroup to review and assess whether the bill has improved the level of service to the regulated community. Work group findings and recommendations must be reported to specified legislative committees by December 1, 2011.

Finally, the bill modifies the definition of “person” under tidal wetlands law to include the federal government, thus making federal projects impacting tidal wetlands subject to regulation by MDE.

Current Law: The Wetlands and Waterways Program within MDE administers a statewide program for the management, conservation, and protection of Maryland’s tidal wetlands and nontidal wetlands and waterways, including the 100-year floodplain. Permits granted for work in privately owned wetlands are issued by MDE; licenses granted for work in State-owned wetlands are issued by the Board of Public Works.

BPW may require that compensation be made to the State as a condition to issuance of a tidal wetlands license. MDE does not have the authority to assess application fees. Any monetary compensation paid to the State in conjunction with a wetlands license, along with specified penalties, are credited to the Tidal Wetlands Compensation Fund. MDE must use the fund for acquisition and conservation of wetland areas by the State, including cost-sharing assistance to landowners in the management and control of phragmites. Funds remain available until expended and may not be reverted under any other provision of law.

Any monetary compensation paid by an applicant instead of engaging in the creation, restoration, or enhancement of a nontidal wetland, along with specified penalties, are paid into the Nontidal Wetlands Compensation Fund. The fund may be used only for the creation, restoration, or enhancement of nontidal wetlands. Funds remain available until expended and may not be reverted to the general fund under any other provision of law.

Background: Regulation of wetlands plays a vital role in maintaining the health and function of the Chesapeake and coastal bays. The functions and values of the natural resources protected under existing wetlands laws include fish and wildlife habitat and migration, water quality enhancement, natural shoreline protection, flood protection, and recreational opportunities and aesthetics. According to MDE, the goal of the Wetlands and Waterways Program is to avoid and minimize impacts associated with development and to mitigate impacts that are determined to be necessary and unavoidable. For nontidal wetlands in particular, a goal has been established to achieve “no net loss” of wetland acreage and function and to strive for a net gain in wetlands over time.

The regulation of nontidal wetlands and waterways affects land development interests; regulated activities in these areas typically affect property owned by private landowners. The regulation of tidal wetlands affects waterfront property owners and the boating public (construction of piers, shoreline protection structures, and marinas); regulated activities in these areas generally affect submerged lands owned by the State and held in trust for the benefit of the public.

The Wetlands and Waterways Program is a subprogram within the Water Pollution Control Program. The fiscal 2009 budget includes \$33.6 million for the Water Pollution Control Program, including \$15.1 million in general funds. Within that appropriation, \$6.0 million is provided for the Wetlands and Waterways Program (approximately \$3.1 million in general funds, \$1.1 million in special funds, \$1.6 million in federal funds, and \$0.2 million in reimbursable funds).

MDE advises that, since 1991, the program has experienced nearly a 40% reduction in personnel (the 1991 workforce consisted of 70 full-time employees; the Governor's proposed fiscal 2009 budget includes 43 permanent employees). According to MDE, due to a continuing reduction of personnel combined with increasing demands on the program, MDE's ability to process and evaluate applications in a thorough and timely manner has declined. MDE advises that the revenue generated by the proposed application fees, together with a continuing general fund appropriation, will dramatically improve its ability to manage, conserve and protect the State's vital wetland and water resources, while providing a more efficient and effective application process. MDE advises that any additional revenues generated by the bill would largely be used to restaff the program to historical levels in order to meet the intent of the bill.

In response to unsuccessful departmental legislation introduced during the 2004 session (HB 495), MDE convened a stakeholder workgroup during the 2004 interim to evaluate and make recommendations regarding the establishment of fees within the Wetlands and Waterways Program. As a result of the workgroup's recommendations, legislation was introduced as HB 154 of 2005 but was not enacted. This bill is nearly identical to HB 154 as passed by the House and as reported by the Senate Education, Health, and Environmental Affairs Committee.

According to MDE, Pennsylvania administers a wetlands and waterways program similar to Maryland's program. Application fees range from \$50 to \$750; in most instances, when a single application covers multiple structures or activities, the application fee is the sum of the fee for each applicable structure and activity. Virginia's program, which is also similar to Maryland's program, is supported by a combination of permit fees and general funds. Virginia's permit fees range from \$0 (for a general permit for activities that disturb less than 0.1 acre) to \$2,400 plus \$220 for each additional 0.1 acre increment up to \$60,000 (for individual permits covering more than 2 acres).

State Fiscal Effect:

Fee Revenues

Special fund revenues could increase by \$2,618,636 in fiscal 2009, as shown in **Exhibit 1**. This estimate is based on permit activity from 2006 and assumes that MDE would collect only one application fee for each joint application. It also assumes no reimbursements of application fees. Fee revenue could vary depending on the type and number of applications received. Future year projections reflect adjustments in the fees to reflect changes in the specified consumer price index.

Anticipated Spending from the New Fund

Special fund expenditures could increase by an estimated \$2,618,636 in fiscal 2009, which reflects a 90-day start-up delay. This estimate is based on the anticipated revenue stream and reflects the cost of hiring 34 employees to restaff the program to historical levels in order to meet the intent of the bill (13 natural resources planners to perform delineation and verification of wetlands resources in conjunction with application review; 10 environmental compliance specialists to perform field inspections to ensure compliance by the regulated community; 4 water resource engineers to conduct hydrologic and hydraulic engineering reviews associated with permit applications; 3 office secretaries for program support; 2 administrative officers to collect fees and manage the new fund; 1 data programmer to provide computer support and manage data; and 1 Assistant Attorney General). It includes salaries, fringe benefits, one-time start-up costs (including the purchase of 20 vehicles), and ongoing operating expenses (including costs for contractual services, grants, employee training, and travel).

Positions	34
Salaries and Fringe Benefits	\$1,465,979
Contractual Services/Grants	581,534
Automobile Purchase/Operation	452,625
Equipment	95,880
Other Operating Expenses	<u>22,618</u>
Total FY 2009 MDE Expenditures	\$2,618,636

Special fund expenditures could vary depending on the actual fee revenue generated.

The estimate assumes that the fees established by the bill are designed to *augment*, rather than *supplant*, existing general fund appropriations for the program.

Future year expenditures reflect • full salaries with 4.4% annual increases and 3% employee turnover; • 2% annual increases in most ongoing operating expenses; and • ongoing contractual services and grants as can be supported with available fee revenues.

Impacts on Other Agencies

Legislative Services notes that some of the fee revenues will be used to provide grants to other State agencies (such as the Department of Natural Resources and the Maryland Historical Trust) for activities that support MDE's program. Accordingly, reimbursable fund revenues and expenditures of affected agencies could increase.

Additional Information

Prior Introductions: Similar legislation was introduced as HB 154 of 2005. The bill passed the House with amendments and was reported favorably by the Senate Education, Health, and Environmental Affairs Committee but was recommitted to the committee. Fee legislation was also introduced as HB 495 of 2004. The bill received an unfavorable report from the House Environmental Matters Committee. SB 241/HB 294 of 2002 would have, among other things, established wetlands and waterways fees. SB 241 received an unfavorable report from Education, Health, and Environmental Affairs and HB 294 received an unfavorable report from Environmental Matters.

Cross File: None.

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

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ncs/jr Revised - House Third Reader - March 26, 2008
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Exhibit 1
Annual Fee Revenue Estimates

Minor Project Application Fees				
Type of Application	Area of Permanent Impact	Number (2006 Applications)	Fee	Total
Applications for Minor Projects or General Permits	<5,000 square feet	1,068	\$750	\$801,000
Applications for Minor Modifications	<5,000 square feet	163	\$500	\$81,500
Subtotal				\$882,500

Major Project Application Fees – New Applications and Modifications				
Type of Application	Area of Permanent Impact	Number (2006 Applications)	Fee	Total
Applications for Major Projects	<¼ acre	1,432	\$1,500	\$2,148,000
	≤ ¼ acre to < ½ acre	28	\$3,000	\$84,000
	≤ ½ acre to < ¾ acre	10	\$4,500	\$45,000
	≤ ¾ acre to < 1 acre	10	\$6,000	\$60,000
	≥ 1 acre	≈18.27 acres	\$7,500 / acre	\$137,036
Subtotal				\$2,474,036

Total, Not Including Exemptions			\$3,356,536
Exemptions	State Agencies	(\$193,250)	(\$737,900)
	County Agencies	(\$398,775)	
	Municipal Agencies	(\$75,000)	
	Vegetative Shoreline Protection	(\$70,875)	
Total Revenues			\$2,618,636

Source: Maryland Department of the Environment