
By: **Delegate Frush**

Introduced and read first time: January 20, 2005

Assigned to: Environmental Matters

A BILL ENTITLED

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; prohibiting the collection of
 6 certain application fees under a certain circumstance; exempting certain
 7 persons and activities from the application fees; establishing the Wetlands and
 8 Waterways Program Fund; clarifying certain provisions of the Tidal Wetlands
 9 Compensation Fund; defining certain terms; requiring the Department of the
 10 Environment to conduct a certain review and submit a certain report to certain
 11 legislative committees by a certain date; and generally relating to the Wetlands
 12 and Waterways Program.

13 BY adding to

14 Article - Environment
 15 Section 5-203.1
 16 Annotated Code of Maryland
 17 (1996 Replacement Volume and 2004 Supplement)

18 BY repealing and reenacting, with amendments,

19 Article - Environment
 20 Section 16-205
 21 Annotated Code of Maryland
 22 (1996 Replacement Volume and 2004 Supplement)

23 Preamble

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

28 WHEREAS, Constraints on the Department's General Fund appropriation have
 29 limited the Department's effective protection of the State's water resources and have

1 delayed the processing of permits, which in turn has negatively impacted Maryland
2 business interests; and

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

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

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

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

19 **Article - Environment**

20 5-203.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (2) "MINOR PROJECT" MEANS A PROJECT THAT:

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

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

28 (B) (1) THE FEES IMPOSED UNDER THIS SECTION MAY NOT BE COLLECTED
29 IN ANY FISCAL YEAR FOR WHICH THE WETLANDS AND WATERWAYS PROGRAM
30 RECEIVES A GENERAL FUND APPROPRIATION OF LESS THAN \$1.9 MILLION.

31 (2) EXCEPT AS PROVIDED UNDER PARAGRAPHS (1) AND (3) OF THIS
32 SUBSECTION, ALL APPLICATIONS FOR WETLANDS AND WATERWAYS
33 AUTHORIZATIONS ISSUED BY THE DEPARTMENT UNDER §§ 5-503, 5-906, 16-202,
34 16-302, AND 16-307 OF THIS ARTICLE OR WETLANDS LICENSES ISSUED BY THE BOARD
35 OF PUBLIC WORKS UNDER § 16-202 OF THIS ARTICLE SHALL BE ACCOMPANIED BY AN
36 APPLICATION FEE AS FOLLOWS:

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

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

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

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

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

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

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

10 5. 1 ACRE OR MORETHE IMPACT AREA IN ACRES
11 MULTIPLIED BY \$7,500.

12 (3) THE FOLLOWING ARE EXEMPT FROM THE APPLICATION FEES
13 IMPOSED UNDER PARAGRAPH (2) OF THIS SUBSECTION:

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

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

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

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

24 (2) THE DEPARTMENT SHALL ADMINISTER THE FUND.

25 (3) (I) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT
26 SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

27 (II) THE TREASURER SHALL HOLD THE FUND SEPARATELY AND
28 THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

29 (4) THE FUND CONSISTS OF ALL:

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

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

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

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

8 (5) THE DEPARTMENT SHALL USE THE WETLANDS AND WATERWAYS
9 PROGRAM FUND FOR ACTIVITIES RELATED TO:

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

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

16 (III) PROGRAM DEVELOPMENT ASSOCIATED WITH THIS ARTICLE, AS
17 PROVIDED BY THE STATE BUDGET.

18 (D) BY DECEMBER 31 OF EACH YEAR AND IN ACCORDANCE WITH § 2-1246 OF
19 THE STATE GOVERNMENT ARTICLE, THE DEPARTMENT SHALL PREPARE AN ANNUAL
20 REPORT ON THE WETLANDS AND WATERWAYS PROGRAM FUND, INCLUDING AN
21 ACCOUNTING OF FINANCIAL RECEIPTS DEPOSITED INTO THE FUND AND
22 EXPENDITURES FROM THE FUND.

23 16-205.

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

27 (b) Monetary compensation received by the State in conjunction with a
28 wetlands license may not be applied to the State annuity bond fund account.

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

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

33 (i) [Any monetary compensation paid to the State in conjunction
34 with a wetlands license, including compensation paid by an applicant instead of
35 engaging in the creation, restoration, or enhancement of a tidal wetland] ANY
36 MONETARY PAYMENT BY A LICENSEE IN LIEU OF CREATING, RESTORING, OR

1 ENHANCING TIDAL WETLANDS THAT IS REQUIRED BY THE DEPARTMENT OR THE
2 BOARD AS A CONDITION OF A PERMIT OR LICENSE;

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

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

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

11 (1) ACQUISITION OF LAND OR EASEMENTS;

12 (2) MAINTENANCE OF MITIGATION SITES;

13 (3) PURCHASE OF CREDITS IN MITIGATION BANKS;

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

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

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

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

24 (1) Shall remain available until expended; and

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

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

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

33 (a) In conjunction with representatives of the U.S. Army Corps of Engineers
34 and any other federal and State agencies involved in the joint permitting process,
35 review the current wetland and waterways joint permitting process and develop
36 recommendations for improvement in the joint process to meet the goals and

1 deadlines under § 5-906(j) of the Environment Article more effectively and promptly;
2 and

3 (b) In accordance with § 2-1246 of the State Government Article, report to the
4 House Environmental Matters Committee and the Senate Education, Health, and
5 Environmental Affairs Committee by January 1, 2006 regarding the results of the
6 review and its recommendations.

7 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 July 1, 2005.