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By: ~~Delegate Frush~~ **Delegates Frush and Hogan**

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Assigned to: Environmental Matters

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Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 16, 2005

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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; ~~prohibiting the collection of~~  
6 ~~certain application fees under a certain circumstance; making certain permits~~  
7 subject to a certain application fee refund process; exempting certain persons  
8 and activities from the application fees; establishing the Wetlands and  
9 Waterways Program Fund; clarifying certain provisions of the Tidal Wetlands  
10 Compensation Fund; defining certain terms; requiring the Department of the  
11 Environment to conduct ~~a certain review~~ certain reviews and submit ~~a certain~~  
12 ~~report~~ certain reports and a certain plan to certain legislative committees by a  
13 ~~certain date~~ certain dates; and generally relating to the Wetlands and  
14 Waterways Program.

15 BY adding to  
16 Article - Environment  
17 Section 5-203.1  
18 Annotated Code of Maryland  
19 (1996 Replacement Volume and 2004 Supplement)

20 BY repealing and reenacting, with amendments,  
21 Article - Environment  
22 Section 1-607 and 16-205  
23 Annotated Code of Maryland  
24 (1996 Replacement Volume and 2004 Supplement)

1 Preamble

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

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

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

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

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

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

26 **Article - Environment**

27 1-607.

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

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

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

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

- 1                   (ii)     Written lists of common application questions and mistakes;  
2                   (iii)    Preapplication meetings with prospective applicant to address  
3 technical issues;  
4                   (iv)     Written receipts to the applicant upon submission of an  
5 application; and  
6                   (v)     The status of active applications.
- 7       (b)     (1)     This subsection applies to permits which are:  
8                   (I)     [identified] IDENTIFIED in § 1-601(a) of this subtitle; OR  
9                   (II)    ISSUED UNDER TITLE 5, SUBTITLE 9 OF THIS ARTICLE.
- 10               (2)     The Department shall provide to the applicant:  
11                   (i)     A notice of completed application; or  
12                   (ii)    If the Department determines that the application is  
13 incomplete, the reasons, in writing, that the application was determined to be  
14 incomplete.
- 15               (3)     (I)     [The] FOR PERMITS IDENTIFIED IN § 1-601(A) OF THIS  
16 SUBTITLE, THE notice of completed application shall include an estimated time for  
17 issuance of the tentative determination if requested by the applicant.
- 18                   (II)    FOR PERMITS ISSUED UNDER TITLE 5, SUBTITLE 9 OF THIS  
19 ARTICLE, THE NOTICE OF COMPLETED APPLICATION SHALL INCLUDE AN ESTIMATE  
20 OF THE DATE BY WHICH THE DEPARTMENT WILL GRANT, DENY, OR CONDITION THE  
21 PERMIT.
- 22               (4)     A permit applicant may apply to the Department for a refund of all or  
23 a portion of the application fee if:
- 24                   (i)     1.     [The] FOR PERMITS IDENTIFIED IN § 1-601(A) OF THIS  
25 SUBTITLE, THE Department fails to issue a tentative determination regarding the  
26 application within the estimated time provided in the notice of completed application;  
27 OR
- 28                   2.     FOR PERMITS ISSUED UNDER TITLE 5, SUBTITLE 9 OF THIS  
29 ARTICLE, THE DEPARTMENT FAILS TO GRANT, DENY, OR CONDITION A PERMIT  
30 WITHIN THE TIME PERIODS PROVIDED UNDER § 5-906 OF THIS ARTICLE;
- 31                   (ii)    The applicant demonstrates that the delay was caused solely by  
32 the Department and was not the result of procedures or requirements outside control  
33 of the Department, including:
- 34                   1.     Reviews by federal, local, or other State government  
35 agencies;



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

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

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

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

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

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

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

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

21 ~~(2)~~ (3) "MINOR PROJECT" MEANS A PROJECT THAT:

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

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

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

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

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

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

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

- 3 1. LESS THAN 1/4 ACRE ..... \$1,500;
- 4 2. AT LEAST 1/4 ACRE, BUT LESS THAN 1/2 ACRE ..... \$3,000;
- 5 3. AT LEAST 1/2 ACRE, BUT LESS THAN 3/4 ACRE ..... \$4,500;
- 6 4. AT LEAST 3/4 ACRE, BUT LESS THAN 1 ACRE ..... \$6,000; AND
- 7 5. 1 ACRE OR MORE .....THE IMPACT AREA IN ACRES  
8 MULTIPLIED BY \$7,500.

9 ~~(3)~~ (2) THE FOLLOWING ARE EXEMPT FROM THE APPLICATION FEES  
10 IMPOSED UNDER PARAGRAPH ~~(2)~~ (1) OF THIS SUBSECTION:

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

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

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

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

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

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

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

32 (4) THE FEES IMPOSED UNDER THIS SUBSECTION MAY NOT BE  
33 MODIFIED PRIOR TO JANUARY 1, 2009.

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

1 (2) THE DEPARTMENT SHALL ADMINISTER THE FUND.

2 (3) (I) ~~THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT~~  
3 ~~SUBJECT TO AT THE END OF EACH FISCAL YEAR, ANY UNSPENT OR UNENCUMBERED~~  
4 ~~BALANCE IN THE FUND SHALL REVERT TO THE GENERAL FUND OF THE STATE. IN~~  
5 ~~ACCORDANCE WITH § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.~~

6 (II) THE TREASURER SHALL HOLD THE FUND SEPARATELY AND  
7 THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

8 (4) THE FUND CONSISTS OF ALL:

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

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

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

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

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

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

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

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

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

34 (E) THE DEPARTMENT SHALL:

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

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

6 16-205.

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

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

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

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

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

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

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

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

30             (1)     ACQUISITION OF LAND OR EASEMENTS;

31             (2)     MAINTENANCE OF MITIGATION SITES;

32             (3)     PURCHASE OF CREDITS IN MITIGATION BANKS;

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

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

4 (6) CONTRACTUAL SERVICES NECESSARY TO ACCOMPLISH THE INTENT  
5 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 any  
11 other provision of law.

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

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

18 (a) (1) In conjunction with representatives of the U.S. Army Corps of  
19 Engineers and any other federal and State agencies involved in the joint permitting  
20 process, review the current wetland and waterways joint permitting process and  
21 develop an action plan with recommendations for improvement in the joint process to  
22 meet the goals and deadlines under § 5-906(j) of the Environment Article more  
23 effectively and promptly, including an assessment of any gaps that may exist in  
24 meeting the goals and deadlines under § 5-906(j) of the Environment Article and  
25 specific measures for resolving those gaps by January 1, 2007; and

26 (b) (2) In accordance with § 2-1246 of the State Government Article, ~~report~~  
27 submit the action plan to the House Environmental Matters Committee and the  
28 Senate Education, Health, and Environmental Affairs Committee by January 1, 2006  
29 ~~regarding the results of the review and its recommendations; and~~

30 (3) On or before January 1, 2007, in accordance with § 2-1246 of the  
31 State Government Article, submit a report to the House Environmental Matters  
32 Committee and the Senate Education, Health, and Environmental Affairs Committee  
33 demonstrating that the measures identified in the action plan have been  
34 implemented to achieve compliance with the goals and deadlines under § 5-906(j) of  
35 the Environment Article; and

36 (b) On or before January 1, 2008, convene a work group consisting of  
37 interested stakeholders to review and assess whether the Wetlands and Waterways  
38 Program, due to the enactment of this Act, successfully improved the level of service  
39 to the regulated community, including;

- 1           (1)     Reviewing the number of new positions assigned to the Program;
- 2           (2)     Reviewing the Program's progress in improving permit turnaround  
3 time frames and permit backlogs and any enhanced services provided to the regulated  
4 community as a result of this Act;
- 5           (3)     Analyzing the long-term funding needs of the Wetlands and  
6 Waterways Program;
- 7           (4)     Determining whether the application fees provided by this Act are  
8 adequate to support an effective program; and
- 9           (5)     On or before December 1, 2008, in accordance with § 2-1246 of the  
10 State Government Article, reporting the findings and recommendation of the work  
11 group to the Legislative Policy Committee, the House Environmental Matters  
12 Committee, and the Senate Education, Health, and Environmental Affairs  
13 Committee.

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