

**Department of Legislative Services**  
 Maryland General Assembly  
 2005 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 154

(Delegate Frush)

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 (MDE). As the primary revenue source, the bill establishes application fees for various wetlands and waterways permits and licenses. At the end of each fiscal year, any unspent or unencumbered fund balance must revert to the general fund. The bill establishes reporting requirements for MDE.

The bill takes effect July 1, 2005.

**Fiscal Summary**

**State Effect:** The Governor’s proposed FY 2006 budget reduces the general fund appropriation for the Water Pollution Control Program by \$1 million contingent upon enactment of this bill. General fund expenditures would thus decrease by \$1 million annually beginning in FY 2006. State revenues from application fees would increase by \$3.6 million annually beginning in FY 2006 (of that total, an estimated \$3.3 million would be spent as special fund expenditures in FY 2006 and the remainder would revert to the general fund). Future year special fund expenditures are adjusted for inflation. Unspent revenues would revert to the general fund.

(in dollars)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
GF/SF Rev.	\$3,560,400	\$3,560,400	\$3,560,400	\$3,560,400	\$3,560,400
GF Expenditure	(1,000,000)	(1,000,000)	(1,000,000)	(1,000,000)	(1,000,000)
SF Expenditure	3,307,300	2,998,300	3,111,400	3,233,000	3,363,700
Net Effect	\$1,253,100	\$1,562,100	\$1,449,000	\$1,327,400	\$1,196,700

*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.

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## 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  $\frac{1}{4}$  acre, \$1,500;
- major project or major modification with a proposed permanent impact of at least  $\frac{1}{4}$  acre but less than  $\frac{1}{2}$  acre, \$3,000;
- major project or major modification with a proposed permanent impact of at least  $\frac{1}{2}$  acre but less than  $\frac{3}{4}$  acre, \$4,500;
- major project or major modification with a proposed permanent impact of at least  $\frac{3}{4}$  acre but less than 1 acre, \$6,000; and
- major project or major modification with a proposed permanent impact of 1 acre or more, the impact area in acres multiplied by \$7,500.

The fees may not be modified before January 1, 2009. 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 and uses of that fund.

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. By December 31 of each year, 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 plan to the General Assembly by January 1, 2006. A follow-up report must be submitted by January 1, 2007, and by January 1, 2008, 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 committees of the General Assembly by December 1, 2008.

**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). 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 is 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 appropriated in the budget for wetlands acquisition and conservation remain available until expended and may not be reverted 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.

MDE advises that, since 1991, the Wetlands and Waterways Program has experienced a 40% reduction in personnel (the 1991 workforce consisted of 71 full-time employees; the program currently has 42 full-time employees; and the Governor's proposed fiscal 2006 budget includes 41 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. Fees are viewed as a mechanism to render permit decisions more quickly and efficiently. MDE advises that any additional revenue generated by the bill would largely be used to restaff the program in order to meet the intent of the bill. The proposed fees are designed to augment future general fund appropriations to support the program.

According to MDE, Pennsylvania administers a wetlands and waterways program similar to Maryland's program. Application fees range from \$50 to \$750. 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 \$600 to \$9,000.

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. This bill is a direct result of the workgroup's recommendations.

**State Revenues:** State revenues could increase by \$3,560,350 annually beginning in fiscal 2006, as shown in **Appendix 1**. This estimate is based on permit activity from 2003 and assumes that MDE would collect only one application fee for each joint application. Fee revenue could vary depending on the type and number of applications received. The estimate also assumes no reimbursements of application fees.

Based on the estimated fee revenues and anticipated spending from the special fund, as described below, in fiscal 2006, an estimated \$3,307,300 would be retained as special fund revenues, while \$253,055 would revert to the general fund. Future year reversions, based on estimated unspent fee revenue, are estimated to total \$562,081 in fiscal 2007, \$448,938 in fiscal 2008, \$327,379 in fiscal 2009, and \$196,633 in fiscal 2010. To the extent MDE spends more from the fund in any given year, general fund revenues would decrease correspondingly.

**State Expenditures:** The Wetlands and Waterways Program is a subprogram within the Water Pollution Control Program. The Governor's proposed fiscal 2006 budget includes \$23.8 million for the Water Pollution Control Program, including \$12.4 million in general funds. Within that appropriation, \$4.9 million is provided for the Wetlands and Waterways Program (approximately \$2.4 million in general funds, \$0.8 million in special funds, \$1.6 million in federal funds, and \$0.1 million in reimbursable funds). The

proposed budget, however, reduces the general fund appropriation for the Water Pollution Control Program by \$1 million contingent upon the enactment of legislation to increase fees for wetlands services. Passage of this bill would trigger the contingent reduction. Accordingly, general fund expenditures within MDE would decrease by \$1 million annually beginning in fiscal 2006 due to the contingent reduction. (Although the level of future general fund appropriations is unknown, it is assumed that, in the absence of the bill, the general fund appropriation for the Wetlands and Waterways Program would total approximately \$2.4 million annually).

Special fund expenditures could increase by an estimated \$3,307,295 in fiscal 2006. This estimate 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, employee training, and travel). It also includes costs to supplant general funds that would otherwise be appropriated for the program, including costs to convert 17 general fund positions to special fund positions.

Salaries and Fringe Benefits	\$1,775,943
Costs to Supplant Contingent GF Reduction	1,000,000
Automobile Purchase/Operation	266,100
Equipment	128,570
Contractual Services	100,000
Other Operating Expenses	<u>36,682</u>
<b>Total FY 2006 Special Fund Expenditures</b>	<b>\$3,307,295</b>

Special fund expenditures could be less to the extent there is a delay in hiring staff.

Future year special fund expenditures reflect: (1) 4.6% annual increases in salaries and 3% employee turnover; (2) 1% annual increases in ongoing operating expenses; and (3) ongoing costs of \$1 million to supplant lost general funds. Special fund expenditures could vary depending on the actual revenue that is generated as a result of the bill.

Legislative Services notes that, in implementing the bill, MDE may convert additional general fund positions to special fund positions, while funding some of the new staff with general funds. The net effect on overall program spending would be unchanged, but, depending on the variation in salaries and associated expenses, this could result in a reduction in general fund expenditures beyond the \$1 million contingent reduction, with a corresponding increase in special fund expenditures.

Any further increase in spending from the special fund for program enhancements would decrease the end of year fund balance, thereby reducing amounts that would otherwise revert to the general fund. Legislative Services advises that it is likely that MDE would increase spending from the fund in order to reduce any reversions.

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### **Additional Information**

**Prior Introductions:** Legislation establishing fees for the Wetlands and Waterways Program was 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 waterways and wetlands fees. SB 241 received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee and HB 294 received an unfavorable report from the House Environmental Matters Committee.

**Cross File:** None.

**Information Source(s):** Maryland Department of the Environment, Department of Legislative Services

**Fiscal Note History:** First Reader - January 31, 2005  
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**Appendix 1**  
**Annual Fee Revenue Estimates**

<b>Minor Project Application Fees</b>				
<b>Type of Application</b>	<b>Area of Permanent Impact</b>	<b>Number (2003 Applications)</b>	<b>Fee</b>	<b>Total</b>
Applications for Minor Projects or General Permits	<5,000 square feet	1,369	\$750	\$1,026,750
Applications for Minor Modifications	<5,000 square feet	149	\$500	\$74,500
Subtotal				\$1,101,250

<b>Major Project Application Fees – New Applications</b>				
<b>Type of Application</b>	<b>Area of Permanent Impact</b>	<b>Number (2003 Applications)</b>	<b>Fee</b>	<b>Total</b>
Applications for Major Projects	<¼ acre	1,283	\$1,500	\$1,924,500
	≤ ¼ acre to < ½ acre	16	\$3,000	\$48,000
	≤ ½ acre to < ¾ acre	11	\$4,500	\$49,500
	≤ ¾ acre to < 1 acre	1	\$6,000	\$6,000
	≥ 1 acre	65.8 acres	\$7,500 / acre	\$493,500
Subtotal				\$2,521,500

<b>Major Project Application Fees – Modifications</b>				
<b>Type of Application</b>	<b>Area of Permanent Impact</b>	<b>Number (2003 Applications)</b>	<b>Fee</b>	<b>Total</b>
Applications for Major Modifications	<¼ acre	112	\$1,500	\$168,000
	≤ ¼ acre to < ½ acre	7	\$3,000	\$21,000
	≤ ½ acre to < ¾ acre	2	\$4,500	\$9,000
	≤ ¾ acre to < 1 acre	3	\$6,000	\$18,000
	≥ 1 acre	5.48 acres	\$7,500 / acre	\$41,100
Subtotal				\$257,100
<b>Total, Not Including Exemptions</b>				<b>\$3,879,850</b>
Exemptions	State Agencies		(\$ 93,750)	(\$319,500)
	County Agencies		(\$164,250)	
	Municipal Agencies		(\$ 30,000)	
	Vegetative Shoreline Protection		(\$ 31,500)	
<b>Total Revenues</b>				<b>\$3,560,350</b>

