

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1091
(Senator Eckardt)
Education, Health, and Environmental Affairs

Wetlands and Waterways Program - Fee Reduction

This bill decreases specified wetlands and waterways application fees for minor and major projects under the Wetlands and Waterways Program within the Maryland Department of the Environment (MDE). The bill also establishes two new fee categories applicable to major projects that have a proposed permanent impact of at least one acre but less than five acres and major projects that have a proposed permanent impact of five acres or more.

Fiscal Summary

State Effect: Special fund revenues for MDE's Wetlands and Waterways Program Fund decrease by approximately \$300,500 in FY 2017 and by approximately \$400,600 annually thereafter due to the decrease in application fees. Special fund expenditures decrease correspondingly. MDE's general fund expenditures increase by the same amount to offset the loss of special funds in order to maintain program staff and levels of service.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
SF Revenue	(\$300,500)	(\$400,600)	(\$400,600)	(\$400,600)	(\$400,600)
GF Expenditure	\$300,500	\$400,600	\$400,600	\$400,600	\$400,600
SF Expenditure	(\$300,500)	(\$400,600)	(\$400,600)	(\$400,600)	(\$400,600)
Net Effect	(\$300,500)	(\$400,600)	(\$400,600)	(\$400,600)	(\$400,600)

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

Local Effect: The bill is not anticipated to materially affect local operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary/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.

The Wetlands and Waterways Program Fund is used for the issuance of permits and licenses; the management, conservation, protection, and the preservation of the State's wetlands and waterway resources; and program development. The special fund is largely funded by permit application fees for projects that affect wetlands or waterways in the State. The bill decreases a number of those fees, as shown in **Exhibit 1**. The program also receives general funds, federal funds, and reimbursable funds.

In addition to decreasing the application fees for projects of less than one acre, the bill also addresses the fees applicable to projects with a proposed permanent impact of at least one acre. Specifically, the bill establishes a cap of \$15,000 on the fee for projects with a proposed permanent impact of at least one acre but less than five acres. The bill does not establish a specific per acre fee for such projects; thus, it is unclear how such projects are to be charged. Under the bill, the fee for a project that has a proposed permanent impact of five acres or more is \$4,000 per acre (with no cap). Under current law, the fee for any project that has a proposed permanent impact of one acre or more is \$7,500 per acre.

Background: The purpose of MDE's Wetlands and Waterways Program Fund, which was established by Chapter 142 of 2008, was to improve customer service to the regulated community by generating funds to support additional positions and improve application processing turnaround times. Chapter 142 required MDE to convene a workgroup consisting of interested stakeholders to review and assess whether the Wetlands and Waterways Program had successfully improved the level of service to the regulated community as a result of the new fees and fund established by the Act. The workgroup found that Chapter 142 allowed MDE to add 34 new positions and to review 90% of permit applications within the 45-day deadline. However, the workgroup still recommended altering the statutory fee schedule to address the funding shortfall, while also relieving the current burden on the owners of residential property. That recommendation was addressed by Chapter 722 of 2012, which altered wetlands compensation rates and certain application fees. According to MDE, the program is currently staffed by 59.5 permanent positions.

Chapter 722 also required MDE to convene a workgroup to again assess whether the program successfully improved the level of service to the regulated community and to make recommendations. The workgroup report was due by December 1, 2015. As of the writing of this fiscal and policy note, that report had not yet been submitted.

Exhibit 1
Current and Proposed Wetlands and Waterways Program Application Fees

<u>Minor Project Application Fees</u>					
Type of Application	Permanent Impact Area	Current Fee	Proposed Fee	Current Revenue²	Change in Revenue Under Bill²
Applications for Minor Projects or General Permits	< 5,000 square feet	\$750	\$500 ¹	\$645,250	(\$215,083)
Applications for Minor Modifications	< 5,000 square feet	\$250	\$200	\$39,533	(\$7,907)
<u>Major Modification Application Fees</u>					
Type of Application	Permanent Impact Area	Current Fee	Proposed Fee	Current Revenue	Change in Revenue Under Bill
Applications for Major Modifications	> 5,000 square feet	\$1,500	\$750	\$5,750	(\$2,875)
Applications for Major Projects	< ¼ acre	\$1,500	\$750	\$80,000	(\$40,000)
	≥ ¼ acre to < ½ acre	\$3,000	\$1,500	\$31,000	(\$15,500)
	≥ ½ acre to < ¾ acre	\$4,500	\$2,750	\$24,000	(\$9,333)
	≥ ¾ acre to < 1 acre	\$6,000	\$3,000	\$14,000	(\$7,000)
	≥ 1 acre	\$7,500 / acre	\$4,000 ³ / acre	\$220,567	(\$102,931)
Total Projected Loss in Revenue					(\$400,629)

¹Application fees for certain types of minor projects, which range from \$300 to \$500, are maintained under the bill and are not included in this exhibit.

²Current and proposed revenue estimates are based on the average number of applications and associated fee revenue collected for each type of application from fiscal 2013 through 2015.

³This fee is split into two separate fees under the bill, as discussed above. For this analysis, it is assumed that the fee is \$4,000 per acre for both categories. However, the bill indicates that for projects between one and five acres, the fee is simply “not to exceed \$15,000”; there is no multiplier. Thus, it is unclear how the fee is charged for these projects. In addition, the actual impact on special fund revenues may be greater to the extent any projects are capped at the \$15,000 limit.

Source: Maryland Department of the Environment; Department of Legislative Services

State Fiscal Effect: Special fund revenues for MDE's Wetlands and Waterways Program Fund decrease by approximately \$300,472 in fiscal 2017, which reflects the bill's October 1, 2016 effective date, and by approximately \$400,629 annually thereafter due to the bill's reduction in the application fees for wetlands and waterways projects. Special fund expenditures decrease correspondingly. This estimate is based on the average actual application fee revenue from fiscal 2013 through 2015 and assumes that permit activity remains constant over time. The impact is shown by category in Exhibit 1.

As shown in **Exhibit 2**, there is insufficient fund balance to absorb this decrease in special fund revenues, based on anticipated special fund expenditures in the Governor's proposed fiscal 2017 budget, the projected fund balance at the beginning of fiscal 2017, and anticipated revenues under current law and under the bill. Thus, in order to maintain current staffing levels and permit turnaround times, this analysis assumes that general fund expenditures increase by \$300,472 in fiscal 2017 and by \$400,629 annually thereafter to offset the loss of special fund revenues. As the Governor's proposed fiscal 2017 budget includes nearly \$3 million in general funds for the program, it is reasonable to assume that additional general funds must be provided to offset the loss in special funds, particularly given the legislative history regarding the program and the fund.

Exhibit 2
Estimated Fiscal 2017 Fund Balance
Under Current Law and Under the Bill

	FY 2016	FY 2017 Current Law	FY 2017 Under the Bill
Starting Fund Balance	\$683,114	\$98,994	\$98,994
Expenditures	2,784,120	2,499,275	2,499,275
Fee Revenues	2,200,000	2,425,000	2,124,528
Ending Fund Balance	\$98,994	\$24,719	(\$275,753)

Source: Department of Legislative Service

As noted above, under the bill, the fee for a permit application for a major modification for a project that has a permanent proposed impact of one acre or more is split into two separate fees under the bill. Although the bill is unclear regarding how MDE must calculate the fee for projects of between one and five acres, for the purposes of this analysis, it is assumed that the fee is \$4,000 per acre up to the \$15,000 cap. However, the Department of Legislative Services does not have data regarding how many of the current projects that

are one acre or more (and are currently charged \$7,500 per acre) fall within the one and five acre range and how many might reach the \$15,000 cap. Accordingly, this analysis reflects the \$4,000 per acre fee but does not reflect the \$15,000 cap. Thus, the decrease in special fund revenues could be higher.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - March 14, 2016
min/lgc

Analysis by: Kathleen P. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510