
By: Senator Pinsky

Introduced and read first time: January 31, 1997

Assigned to: Economic and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 19, 1997

CHAPTER ____

1 AN ACT concerning

2 Water Resources - Projects and Activities - Notification and Review

3 FOR the purpose of prohibiting the Department of the Environment from authorizing
4 the conduct of certain activities on nontidal wetlands and buffers or certain
5 activities that alter certain streams or nontidal waters of the State without certain
6 notification and review; establishing additional exemptions from the requirement to
7 obtain a certain permit before conducting certain activities; defining a certain term;
8 and generally relating to certain activities in connection with certain waters of the
9 State.

10 BY repealing and reenacting, with amendments,

11 Article - Environment

12 Section 5-503(a)(1), 5-901, and 5-903

13 Annotated Code of Maryland

14 (1996 Replacement Volume and 1996 Supplement)

15 BY adding to16 Article - Environment17 Section 5-503(h) and (i)18 Annotated Code of Maryland19 (1996 Replacement Volume and 1996 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

21 MARYLAND, That the Laws of Maryland read as follows:

2

1 **Article - Environment**

2 5-503.

3 (a) (1) (I) A person shall obtain a permit from the Department to construct,
4 reconstruct, or repair any reservoir, dam, or waterway obstruction, to make, construct, or
5 permit to be made or constructed any change or addition to any reservoir, dam, or
6 waterway obstruction, to make or permit to be made any change in, addition to, or repair
7 of any existing waterway obstruction, or in any manner to change in whole or part the
8 course, current, or cross section of any stream or body of water within the State, except
9 tidal waters. The permit is obtained upon written application to the Department.

10 (II) THE DEPARTMENT MAY NOT AUTHORIZE THE CONDUCT OF A
11 SPECIFIC TYPE OF PROJECT, ACTIVITY, OR CATEGORY OF ACTIVITY THAT CHANGES
12 THE COURSE, CURRENT, OR CROSS SECTION OF A STREAM OR NONTIDAL WATER OF
13 THE STATE, INCLUDING THE 100-YEAR FLOODPLAIN, WITHOUT NOTIFICATION TO
14 THE DEPARTMENT OF THE PROJECT OR ACTIVITY BY THE APPLICANT AND REVIEW
15 OF THE PROJECT OR ACTIVITY BY THE DEPARTMENT.

16 (H) (1) A FORESTRY ACTIVITY RELATED TO CLEARING AND GRADING FOR
17 CONSTRUCTION, MAINTENANCE, AND REPAIR OF TEMPORARY ACCESS WATERWAY
18 CROSSINGS, SUCH AS CULVERTS, FORDS, AND BRIDGES, REQUIRED TO CONVEY
19 MECHANIZED EQUIPMENT IS EXEMPT FROM THE REQUIREMENT OF OBTAINING A
20 PERMIT FROM THE DEPARTMENT.

21 (2) THE ACTIVITY SHALL BE DESIGNED AND CONSTRUCTED IN
22 ACCORDANCE WITH STANDARDS AND CONDITIONS SPECIFIED BY THE
23 DEPARTMENT.

24 (3) THE SOIL CONSERVATION DISTRICT SHALL NOTIFY THE
25 DEPARTMENT OF ANY ACTIVITY APPROVED UNDER THIS SECTION.

26 (I) (1) AN ACTIVITY RELATED TO THE CONSTRUCTION, MAINTENANCE,
27 AND REPAIR OF AGRICULTURAL BEST MANAGEMENT PRACTICES IS EXEMPT FROM
28 THE REQUIREMENT OF OBTAINING A PERMIT FROM THE DEPARTMENT.

29 (2) THE ACTIVITY SHALL BE DESIGNED AND CONSTRUCTED
30 ACCORDING TO STANDARDS AND CONDITIONS SPECIFIED BY THE DEPARTMENT
31 AND APPROVED, IN WRITING, BY THE SOIL CONSERVATION DISTRICT IN
32 ACCORDANCE WITH PROCEDURES SPECIFIED BY THE DEPARTMENT.

33 (3) THE SOIL CONSERVATION DISTRICT SHALL NOTIFY THE
34 DEPARTMENT OF ANY ACTIVITY APPROVED UNDER THIS SECTION.

35 5-901.

36 (a) In this subtitle the following words have the meanings indicated.

37 (b) (1) "Agricultural activity" means aquaculture and farming activities.

38 (2) "Agricultural activity" includes:

39 (i) Plowing, tillage, cropping, seeding, cultivating, and harvesting for
40 the production of food and fiber products; and

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1 (ii) The grazing of livestock.

2 (c) "Best management practices" means conservation practices or systems of
3 practices and management measures that:

4 (1) Control soil loss and reduce water quality degradation caused by
5 nutrients, animal waste, toxics, and sediment; and

6 (2) Minimize adverse impacts to the surface water and groundwater flow
7 and circulation patterns, and to the chemical, physical, and biological characteristics of a
8 nontidal wetland.

9 (d) "Department" means the Department of the Environment.

10 (e) "Forestry activity" means planting, cultivating, thinning, harvesting, or any
11 other activity undertaken to use forest resources or to improve their quality or
12 productivity.

13 (F) "GENERAL PERMIT" MEANS AN AUTHORIZATION TO CONDUCT A
14 SPECIFIC TYPE OF PROJECT, ACTIVITY, OR CATEGORY OF ACTIVITY ON A NONTIDAL
15 WETLAND OR BUFFER WITHOUT NOTIFICATION TO THE DEPARTMENT BY THE
16 APPLICANT OF THE PROJECT OR ACTIVITY AND WITHOUT REVIEW OF THE PROJECT
17 OR ACTIVITY BY THE DEPARTMENT.

18 [(f)] (G) "Isolated nontidal wetland" means a nontidal wetland that is not
19 hydrologically connected, through surface or subsurface flow, to streams, tidal or nontidal
20 wetlands, or tidal waters.

21 [(g)] (H) "Mitigation banking" means wetland restoration, creation, or
22 enhancement undertaken expressly for the purpose of providing compensation credits for
23 wetland losses from future activities.

24 [(h)] (I) (1) "Nontidal wetland" means an area that is inundated or saturated
25 by surface water or groundwater at a frequency and duration sufficient to support, and
26 that under normal circumstances does support, a prevalence of vegetation typically
27 adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

28 (2) The determination of whether an area is a nontidal wetland shall be
29 made in accordance with the publication known as the "Federal Manual for Identifying
30 and Delineating Jurisdictional Wetlands", published in 1989 and as may be amended.

31 (3) "Nontidal wetlands" do not include tidal wetlands regulated under Title
32 16 of this article.

33 [(i)] (J) (1) "Regulated activity" means any of the following activities in a
34 nontidal wetland or within a 25 foot buffer of the nontidal wetland:

35 (i) The removal, excavation, or dredging of soil, sand, gravel,
36 minerals, organic matter, or materials of any kind;

37 (ii) The changing of existing drainage characteristics, sedimentation
38 patterns, flow patterns, or flood retention characteristics;

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1 (iii) The disturbance of the water level or water table by drainage,
2 impoundment, or other means;

3 (iv) The dumping, discharging of material, or filling with material,
4 including the driving of piles and placing of obstructions;

5 (v) The grading or removal of material that would alter existing
6 topography; and

7 (vi) The destruction or removal of plant life that would alter the
8 character of a nontidal wetland.

9 (2) "Regulated activity" does not include an agricultural activity or forestry
10 activity as defined in this section.

11 [(j)] (K) "Soil conservation and water quality plan" means a land use plan for a
12 farm that shows a farmer how to make best possible use of soil and water resources while
13 protecting and conserving those resources for the future.

14 [(k)] (L) "Compensation ratio" means the ratio of the area of wetland restored,
15 created, or enhanced to the area of wetland for which mitigation is required.

16 5-903.

17 (a) There is a statewide program within the Department for the conservation,
18 regulation, enhancement, creation, monitoring, and wise use of nontidal wetlands.

19 (b) The Department shall:

20 (1) Coordinate with other State agencies, federal agencies, other states,
21 local governments, and interested persons in the regulation of nontidal wetlands;

22 (2) Assist local governments in undertaking nontidal wetland management
23 planning, including mapping, technical assistance, and expediting the permit process;

24 (3) Develop certification programs to ensure uniform and professional
25 standards for the identification, delineation, functional assessment, and mitigation of
26 nontidal wetlands;

27 (4) Evaluate proposed activities on nontidal wetlands and grant or deny
28 permits or other approvals of proposed activities;

29 (5) Conduct watershed studies and educational programs and disseminate
30 information concerning the nontidal wetlands program;

31 (6) Prepare, adopt, and periodically revise guidance maps of nontidal
32 wetlands;

33 (7) Adopt standards for planning, regulating, restoring, creating, and
34 enhancing nontidal wetlands;

35 (8) Purchase, restore, and create nontidal wetlands; and

36 (9) Conduct periodic monitoring, cumulative impact assessment, and
37 evaluation of activities authorized under this subtitle.

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1 (C) THE DEPARTMENT MAY NOT AUTHORIZE THE CONDUCT OF ANY
2 PROJECT, ACTIVITY, OR CATEGORY OF ACTIVITY ON A NONTIDAL WETLAND OR
3 BUFFER THROUGH THE ISSUANCE OF A GENERAL PERMIT.

4 [(c)] (D) By December 31, 1989 the Department shall adopt final regulations
5 necessary to administer this subtitle, in accordance with § 10-111(a) of the State
6 Government Article.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 1997.