

**Department of Legislative Services**  
 Maryland General Assembly  
 2004 Session

**FISCAL AND POLICY NOTE**

House Bill 495 (Chairman, Environmental Matters Committee)  
 (By Request – Departmental – Environment)

Environmental Matters

**Water Management Administration - Wetlands and Waterways Programs Fees**

This departmental bill establishes a Wetlands and Waterways Program Fund within the Maryland Department of the Environment (MDE) and authorizes MDE to adopt rules and regulations to establish reasonable application and processing fees for specified wetlands and waterways permits and licenses. The bill directs the Board of Public Works (BPW) to require the owner of any public or private commercial marina constructed over State wetlands to pay an annual fee of \$50 per slip to MDE by June 30 of each year. All fees would be paid into the new fund and used for specified activities. The bill also changes the name of the existing Wetlands Compensation Fund to the Tidal Wetlands Compensation Fund and modifies the revenue sources and uses of that fund.

**Fiscal Summary**

**State Effect:** Special fund revenue increase of \$2.59 million in FY 2005. Special fund revenues could increase further due to changes regarding payment of penalties; general fund revenues could decrease. Special fund expenditure increase of \$322,100 in FY 2005. State agency fee payments (all funds) could total an estimated \$97,400 in FY 2005. Future year estimates reflect full implementation. The bill eliminates the need for a general fund appropriation for the Wetlands and Waterways Program after FY 2005.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
GF Revenue	(-)	(-)	(-)	(-)	(-)
SF Revenue	2,589,400	7,045,700	7,045,700	7,045,700	7,045,700
GF Expenditure	0*	(2,591,500)	(2,721,100)	(2,857,200)	(3,000,000)
SF Expenditure	322,100	4,890,600	4,850,000	5,099,000	5,363,300
GF/SF/FF Exp.	97,400	790,200	790,200	790,200	790,200
Net Effect	\$2,169,900	\$3,956,400	\$4,126,600	\$4,013,700	\$3,892,200

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

\*General fund reduction not assumed in FY 2005 because most SF revenue would accrue at the end of the year.

**Local Effect:** Once the bill is fully implemented, local expenditures could increase due to the bill's fee provisions. Based on 2003 permit data, MDE's proposed fee schedule, and the estimated number of slips at local marinas, expenditures could increase by an estimated \$964,926 annually. Local revenues could decrease due to the bill's changes regarding payment of penalties.

**Small Business Effect:** MDE has determined that this bill will have minimal or no impact on small business (attached). The Department of Legislative Services (DLS) disagrees with that assessment, as discussed below.

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## Analysis

**Bill Summary:** The rules or regulations adopted by MDE must establish a reasonable fee schedule that: (1) provides financial incentives to conserve the State's tidal wetlands, nontidal wetlands, and waterways; (2) relates to the anticipated cost to MDE of regulating and monitoring activities within tidal wetlands, nontidal wetlands, and waterways; and (3) supports the anticipated needs of MDE for program development activities, including conducting watershed studies, functional resource assessments, and educational programs; monitoring and assessing the cumulative impacts associated with regulated activities on the State's wetlands and waterways; and providing technical assistance to local governments. The assessment rate of the marina fee may be adjusted by a majority action of BPW.

MDE is directed to use the new fund for activities related to program development associated with the Environment Article; management, conservation, protection, and preservation of the State's wetlands and waterways; and removal of waterway obstructions. MDE must consult with the regulated community in adopting a rule or regulation under the bill. Unexpended funds and interest accrued to the new fund does not revert to the general fund at the end of a fiscal year.

The Tidal Wetlands Compensation Fund, as renamed by the bill, would consist of any monetary compensation paid by an applicant instead of engaging in the creation, restoration, or enhancement of a tidal wetland and any civil or criminal penalty imposed by a court under Title 16 (Wetlands and Riparian Rights) of the Environment Article. The fund may be appropriated only for the creation, restoration, or enhancement of tidal wetlands, including acquisition of land, acquisition of easements, maintenance of mitigation sites, purchase of credits in mitigation banks, cost-sharing assistance to landowners in the management and control of phragmites, and contractual services.

**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. MDE does not have the authority to assess application and processing fees similar to those proposed by the bill. Any monetary compensation paid to the State in conjunction with a wetlands license is credited to the 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.

The following permits and licenses would be subject to the bill's application and processing fee provisions: 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. Permits granted for work in privately-owned wetlands are issued by MDE; licenses granted for work in State-owned wetlands are issued by BPW. BPW may require that compensation be made to the State as a condition to issuance of a tidal wetlands license.

**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. 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 improve existing levels of service and restore capabilities

that have been lost over the last 13 years. MDE advises that the additional revenue generated by the bill would largely be used to re-staff the program in order to meet the intent of the bill. Although specific fees would be established in regulation, MDE has developed a proposed fee schedule. The proposed fee schedule is designed to eliminate the need for any future general fund appropriation to support the program.

According to MDE, Pennsylvania administers a wetlands and waterways program similar to Maryland's program. Application fees for various activities 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. According to MDE, Virginia's permit fees currently range from \$0 to \$3,000, but the state is considering higher fees.

With respect to the proposed marina fee, MDE advises that the majority of marinas in Maryland are constructed over State waters and that the fee would be a lease payment for the use of State property. Although BPW may require, as a condition of a tidal wetlands license, that compensation be made to the State, MDE advises that, historically, annual assessments have been charged only for cables and pipelines crossing navigable waters. Based on information provided by MDE, several states (such as Alabama, Connecticut, Delaware, Florida, Mississippi, North Carolina, South Carolina, and Wisconsin) impose application fees, lease fees, and/or dredging fees on marinas. Two states (Maine and New York) reported that they do not assess such fees.

**State Revenues:** Special fund revenues could increase by an estimated \$2,589,352 in fiscal 2005 (\$2,533,125 to MDE from the bill's fee provisions and \$56,227 to the Department of Natural Resources (DNR) from increases in fees assessed slipholders). Future year estimates (totaling \$7,045,727 annually, including \$6,989,500 to MDE and \$56,227 to DNR) reflect a full year under the bill's fee provisions. Special fund revenues to MDE could increase further due to the bill's changes regarding the payment of specified penalties; general fund revenues could decrease due to those changes.

#### *Maryland Department of the Environment*

Although application and processing fees would be established in regulation, MDE has developed a proposed fee schedule based on the guidelines established in the bill. The proposed fee structure, combined with the marina fee set by the bill, will generate an estimated \$6,989,500 in special fund revenues for the Wetlands and Waterways Program Fund annually beginning in fiscal 2006. This estimate is based on a fixed application fee of \$200, processing fees that vary depending on the square footage of environmental impact, and the annual marina fee of \$50 per slip set by the bill.

Based on permit activity for 2003, the estimate assumes that MDE will collect \$595,000 in application fees annually beginning in fiscal 2006. This estimate assumes that MDE

will only collect one application fee for each joint application submitted for waterway construction, waterway obstruction, nontidal wetland, and tidal wetland permits.

<u>Number of Applications</u>	<u>Application Fee</u>	<u>Estimated Revenues</u>
2,975	200	\$595,000

Based on permit activity for 2003, the estimate also assumes that MDE will generate an estimated \$4,448,750 in processing fees annually beginning in fiscal 2006 as follows.

<u>Impact (square feet)</u>	<u>Number</u>	<u>Processing Fee</u>	<u>Estimated Revenues</u>
0-999	2,143	\$0	\$0
1,000-1,999	297	500	148,500
2,000-2,999	104	1,000	104,000
3,000-3,999	58	2,000	116,000
4,000-4,999	49	4,000	196,000
5,000 or more	<u>80</u>	\$1 per square foot	<u>3,884,250</u>
<b>Total</b>	<b>2,731</b>		<b>\$4,448,750</b>

Based on information provided by MDE regarding the number of active marinas in the State, the estimate assumes MDE will collect \$1,945,750 annually in marina fees.

<u>Number of Marinas</u>	<u>Number of Slips</u>	<u>Marina Fee per Slip</u>	<u>Estimated Revenues</u>
425	38,915	\$50	\$1,945,750

In fiscal 2005, MDE would collect an estimated \$2,533,125, which reflects the bill's October 1, 2004 effective date. This assumes that MDE will collect 75% of the annual revenue from application fees in fiscal 2005. In addition, because the processing fee is tied to resource impacts associated with each application, the processing fee cannot be collected until MDE has completed its review and is prepared to issue an authorization. As a result, there is a time delay between receipt of an application and the collection of the processing fee. The estimate, therefore, assumes a delay in the collection of processing fees from minor projects (those up to 4,999 square feet of impact) until the fourth quarter of fiscal 2005; it also assumes that no processing fees would be collected from major projects (those with at least 5,000 square feet of impact) until fiscal 2006. The estimate does, however, assume the full impact of marina fees in fiscal 2005, as the bill provides that such fees would be payable to the State on or before June 30 of each year. It is assumed, therefore, that marina fees would be collected at the end of each fiscal year, beginning in fiscal 2005.

DLS emphasizes that the revenue estimates are based on 2003 permit data and the estimated number of slips at active marinas in the State; future year estimates assume that the number and type of permit activity as well as the number of slips remain relatively constant. In addition, the estimate assumes that BPW does not adjust the assessment rate of the marina fee, as authorized by the bill.

Special fund revenues to the Tidal Wetlands Compensation Fund could increase due to the bill's changes regarding the deposit of civil and criminal penalties imposed by a court under Title 16 (Wetlands and Riparian Rights). Currently, such penalties are either paid into the general fund (for cases heard in the District Court) or to the local jurisdiction (for cases heard in the circuit courts).

#### *Department of Natural Resources*

Special fund revenues to DNR would increase by an estimated \$56,227 annually beginning in fiscal 2005 as a result of increased fees assessed slipholders in order to offset DNR's costs associated with the proposed marina fee. The net effect of the proposed marina fee on DNR is described below under the State Expenditures section.

**State Expenditures:** Special fund expenditures would increase by \$322,135 in fiscal 2005 for MDE to begin implementing the bill. Expenditures by State agencies for their share of fee payments (including DNR's costs relating to the marina fee) would total an estimated \$97,407 in fiscal 2005. Future year estimates are annualized, adjusted for inflation as appropriate, and reflect full program implementation in fiscal 2006, including costs to supplant general funds that would otherwise be appropriated for MDE's Wetlands and Waterways Program.

#### *Maryland Department of the Environment (Impact on Special Funds)*

Special fund expenditures for MDE could increase by an estimated \$322,135 in fiscal 2005, which accounts for the bill's October 1, 2004 effective date. This estimate reflects the cost of hiring one administrative officer to collect fees and manage the new special fund, one office secretary to assist with billing and tracking, and one environmental compliance specialist to perform field inspections to ensure compliance by the regulated community. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, including contractual services to support wetlands delineations, verifications, functional assessments, monitoring, and stream restoration activities.

Salaries and Fringe Benefits	\$102,149
Contractual Services	187,500
Automobile Purchase and Operations	21,799
Equipment/ Operating Expenses	<u>10,687</u>
<b>FY 2005 MDE Expenditures</b>	<b>\$322,135</b>

Future year expenditures reflect full implementation by MDE. Specifically, future year expenditures reflect: (1) costs to hire an additional 31 staff (13 natural resources planners, 9 field inspectors, 4 water resource engineers, 2 secretaries, 1 administrative officer, 1 Assistant Attorney General, and 1 data programmer) to restaff the program to historical levels in order to meet the intent of the bill; (2) full salaries with 4.6% annual increases and 3% employee turnover; (3) 1% annual increases in ongoing operating expenses; and (4) costs to supplant general funds that otherwise would have been appropriated for the program, including conversion of 34 existing positions from general fund to special fund positions, as described below. Expenditures could vary depending on the actual revenue that is generated as a result of the bill.

*MDE's Need for General Funds Eliminated Beginning in Fiscal 2006*

The Governor's proposed fiscal 2005 budget includes \$3,922,184 for the current program (\$2,468,123 in general funds, \$731,628 in special funds, \$539,723 in federal funds, and \$182,710 in reimbursable funds). Accordingly, the current program relies on general funds for about 63% of its funding. By providing a special fund revenue source for the program, the bill would eliminate the need for any general fund appropriation after fiscal 2005. (Although MDE will collect some revenue in fiscal 2005, most of that would not be available for use until the start of fiscal 2006 because of the due date of the marina fee (June 30). DLS notes that this fiscal and policy note does not reflect a reduction in general funds in fiscal 2005 largely because of that due date. If the due date were accelerated, MDE's reliance on general funds in fiscal 2005 could be reduced.)

Assuming that, in the absence of the bill, the general fund appropriation for the program would have increased by 5% annually, general fund expenditures would decrease by an estimated \$2,591,530 in fiscal 2006; \$2,721,107 in fiscal 2007, \$2,857,162 in fiscal 2008, and \$3,000,020 in fiscal 2009.

*State Agencies Subject to Fee Provisions*

As permit applicants, several State agencies (such as the Maryland Port Administration, the State Highway Administration, and others, including some nonbudgeted agencies)

could be subject to the application and processing fees that will be established by regulation. Based on 2003 permit data, State agencies could pay an estimated \$733,929 annually in application and processing fees once the bill is fully implemented. In fiscal 2005, due to the startup delay, agencies could pay an estimated \$41,180 in such fees.

According to MDE, the only State agency that would be subject to the marina fee is DNR. DNR is responsible for six marina facilities; according to DNR, these facilities include a total of 953 slips. At \$50 per slip, annual fee payments would total \$47,650 annually beginning in fiscal 2005. DNR advises, however, that to offset the cost of the \$50 annual fee, it would have to increase fees it charges its slipholders by almost \$59 per slip because, pursuant to current law, counties receive 15% of the revenue derived from those marinas. Assuming DNR is able to increase slipholder fees enough to offset the total cost of the annual marina fee, the marina fee provision would have no net impact on DNR finances (revenues and expenditures would both increase by approximately \$56,227 annually). To the extent DNR is unable to do so, however, expenditures would increase.

#### *Board of Public Works*

BPW could handle the bill's requirements with existing budgeted resources.

**Local Fiscal Effect:** As permit applicants, local jurisdictions should benefit from the increased level of customer service anticipated as a result of the bill. Local jurisdictions would, however, be subject to the bill's fee provisions. Based on permit data from 2003, MDE's proposed fee schedule, and the estimated number of slips at local marinas, local expenditures could increase by an estimated \$964,926 annually once the bill is fully implemented. The estimate reflects 177 permits held by the counties, Baltimore City, the Maryland-National Capital Park and Planning Commission (M-NCPPC), and the Washington Suburban Sanitary Commission (WSSC) totaling \$809,525 in processing fees and \$36,200 in application fees. The estimate reflects 28 permits held by municipalities, totaling \$57,651 in processing fees and \$5,600 in application fees. The estimate also reflects an estimated \$55,950 in marina fees, which could be at least partially offset by an increase in slipholder fees. Estimated costs by local jurisdiction are presented in **Appendix 1**.

Local revenues could decrease due to the bill's changes regarding the payment of specified penalties for those cases heard in the circuit courts.

**Small Business Effect:** DLS concurs that, as permit applicants, businesses should benefit from the increased level of customer service anticipated as a result of the bill. However, MDE is basing its assessment that the bill will have minimal impact on small businesses in part on the fact that a business could reduce its processing fee by avoiding or minimizing the resource impacts associated with a project. DLS advises, however,

that it is unclear whether a permit applicant could do so without affecting the nature, and possibly the income potential, of the project. In addition, MDE advises that the annual marina fee represents a small percentage increase in the seasonal cost of a slip at a private marina. DLS advises, however, that many marinas in the State sustained significant damage from Hurricane Isabel and, as a result, lost much of their potential to generate income in the short term. It is assumed, however, that marina owners will pass on the cost of the marina fee to slipholders to the extent possible. Accordingly, while the net impact on small businesses is unknown, the proposed fees could have a potentially meaningful impact on some small businesses.

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### **Additional Information**

**Prior Introductions:** SB 241/HB 294 of 2002 would have established various waterways and wetlands fees, modified the uses of the Maryland Clean Water Fund, provided for cost recovery from responsible parties, and expanded criminal, civil, and administrative penalty provisions. 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, Board of Public Works, Department of Natural Resources, Kent County, Montgomery County, Washington County, Worcester County, Town of Bel Air, City of Salisbury, City of Westminster, Marine Trades Association, Department of Legislative Services

**Fiscal Note History:** First Reader - February 25, 2004  
ncs/ljm

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**Appendix 1**  
**Estimated Impact on Local Governments**

<u>County/ Municipality</u>	<u>Number of Permits</u>	<u>Application Fee (Dollars)</u>	<u>Processing Fee (Dollars)</u>	<u>Marina Fee (Dollars)</u>	<u>Impact on Local Government (Dollars)</u>
Allegany	4	\$800	\$22,498	\$0	\$23,298
Anne Arundel	32	6,400	407,809	2,150	416,359
Baltimore City	12	2,400	6,839	0	9,239
Baltimore	14	2,800	0	0	2,800
Calvert	3	600	10,193	0	10,793
Caroline	0	0	0	3,500	3,500
Carroll	10	2,000	0	0	2,000
Cecil	9	1,800	500	0	2,300
Charles	2	400	1,000	0	1,400
Dorchester	7	1,400	24,959	3,100	29,459
Frederick	24	4,800	0	0	4,800
Garrett	1	200	0	0	200
Harford	12	2,400	8,140	12,200	22,740
Howard	8	1,600	0	0	1,600
Kent	0	0	0	2,500	2,500
Montgomery	9	1,800	126,760	0	128,560
Prince George's	6	1,200	0	0	1,200
Queen Anne's	1	200	0	0	200
St. Mary's	4	800	0	0	800
Somerset	1	200	0	1,450	1,650
Talbot	0	0	0	550	550
Washington	4	800	0	0	800
Wicomico	5	1,000	0	10,500	11,500
Worcester	4	800	98,639	0	99,439
MNCPPC	4	800	0	0	800
WSSC	5	1,000	102,188	0	103,188
<b>Subtotal</b>	<b>177</b>	<b>\$36,200</b>	<b>\$809,525</b>	<b>\$35,950</b>	<b>\$881,675</b>

<u>County/ Municipality</u>	<u>Number of Permits</u>	<u>Application Fee (Dollars)</u>	<u>Processing Fee (Dollars)</u>	<u>Marina Fee (Dollars)</u>	<u>Impact on Local Government (Dollars)</u>
Annapolis	1	\$200	\$0	\$0	\$200
Brunswick	1	200	0	0	200
Cambridge	1	200	0	9,800	10,000
Chevy Chase	1	200	0	0	200
College Park	1	200	0	0	200
Elkton	1	200	0	0	200
Emmitsburg	1	200	0	0	200
Frederick	4	800	0	0	800
Gaithersburg	2	400	0	0	400
Hancock	1	200	0	0	200
Havre de Grace	0	0	0	2,400	2,400
LaPlata	1	200	500	0	700
Lonaconing	1	200	57,151	0	57,351
Middletown	1	200	0	0	200
Northeast	1	200	0	0	200
Oakland	1	200	0	0	200
Pocomoke City	0	0	0	1,750	1,750
Poolesville	1	200	0	0	200
Rock Hall	1	200	0	0	200
Rockville	2	400	0	0	400
Salisbury	2	400	0	5,150	5,550
Secretary	0	0	0	900	900
Thurmont	1	200	0	0	200
Westernport	1	200	0	0	200
Westminster	1	200	0	0	200
<b>Subtotal</b>	<b>28</b>	<b>\$5,600</b>	<b>\$57,651</b>	<b>\$20,000</b>	<b>\$83,251</b>
<b>Total</b>	<b>205</b>	<b>\$41,800</b>	<b>\$867,176</b>	<b>\$55,950</b>	<b>\$964,926</b>

Source: Maryland Department of the Environment