

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1411

(Delegate George, *et al.*)

Environmental Matters

Education, Health, and Environmental Affairs

**Environment - Water Management Administration - Wetlands and Waterways
Program Fees**

This bill alters specified wetlands and waterways application fees and minimum compensation rates under the Wetlands and Waterways Program and codifies specified exemptions from the application fees. The bill alters the definition of a “major project” and establishes several new definitions. The bill also prohibits the modification of the application fees without legislative enactment. Finally, the bill requires the Maryland Department of the Environment (MDE) to convene a workgroup consisting of specified stakeholders by January 1, 2015, which must report its findings and recommendations on the effect of this bill and other specified issues to the General Assembly by December 1, 2015.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: Special fund revenues to MDE’s Wetlands and Waterways Program Fund may increase by about \$307,800 annually beginning in FY 2013 due to the bill’s changes in the fee structure and compensation rates for wetlands and waterways projects. The bill does not require additional expenditures, and MDE can handle the workgroup with existing resources.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
SF Revenue	\$307,800	\$307,800	\$307,800	\$307,800	\$307,800
Expenditure	0	0	0	0	0
Net Effect	\$307,800	\$307,800	\$307,800	\$307,800	\$307,800

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: The bill alters the wetlands and waterways application fee schedule by reducing the fee for a minor modification from \$500 to \$250 and establishing a \$1,500 fee for a major modification, regardless of the acreage proposed to be permanently impacted (under current law, the fee for a major modification varies depending on the acreage affected).

In addition, while the bill does not change the application fee of \$750 for a minor project or general permit, it establishes lower application fees for specified minor projects as follows:

- \$300 for installation of one boat lift, hoist, or personal watercraft lift at each authorized slip, for up to four slips, lifts, or hoists per pier;
- \$300 for installation of a maximum of six mooring pilings;
- \$300 for in-kind repair and replacement of structures;
- \$300 for installation of a fixed or floating platform on an existing pier with a total platform area of up to 200 square feet;
- \$300 for construction of a nonhabitable structure that permanently impacts less than 1,000 square feet, such as a driveway, deck, pool, shed, or fence;
- \$500 for a replacement bulkhead of up to 18 inches channelward of the existing structure; and
- \$500 for in-kind repair and replacement of existing infrastructure.

The application fees are subject to the current authorization for MDE to adjust fees to account for inflation, but in order to do so, legislation must be enacted. The bill's changes to the application fee structure are also shown in **Exhibit 1**.

The bill also codifies current exemptions from the requirement to pay an application fee. Consistent with current practice, an application fee is not required for the installation of a boatlift, hoist, or personal watercraft lift on existing pilings. The bill also codifies a current regulatory exemption from the requirement to pay an application fee with respect to the routine maintenance, repair, or replacement of specified structures if the existing structure is functional and there is no increase in the original length, width, height, or channelward encroachment.

Exhibit 1

Current and Proposed Wetlands and Waterways Program Application Fees

Minor Project Application Fees

<u>Type of Application</u>	<u>Permanent Impact Area</u>	<u>Current Fee</u>	<u>Proposed Fee</u>
Applications for Minor Projects or General Permits	< 5,000 square feet	\$750	\$750 ¹
Applications for Minor Modifications	< 5,000 square feet	\$500	\$250

Major Modification Application Fees

<u>Type of Application</u>	<u>Permanent Impact Area</u>	<u>Current Fee</u>	<u>Proposed Fee</u>
Applications for Major Modification	< ¼ acre	\$1,500	\$1,500
	≤ ¼ acre to < ½ acre	\$3,000	\$1,500
	≤ ½ acre to < ¾ acre	\$4,500	\$1,500
	≤ ¾ acre to < 1 acre	\$6,000	\$1,500
	≥ 1 acre	\$7,500 / acre	\$1,500

Proposed Fees for Certain Minor Projects

<u>Permit Type</u>	<u>Project Description</u>	<u>Proposed Fee</u>
Tidal Wetlands	Installation of an individual boatlift with 2 pilings	\$300
	Installation of a maximum of 6 pilings	\$300
	In-kind repair and replacement of structures	\$300
	Installation of a fixed or floating platform, where the total platform area (fixed and floating) does not exceed 200 square feet	\$300
	Replacement of an existing bulkhead where the replacement bulkhead does not exceed more than 18 inches channelward of the existing structure	\$500
Nontidal Wetlands and Waterways	Construction of a nonhabitable structure that permanently impacts less than 1,000 square feet, such as a driveway, deck, pool, shed or fence	\$300
	In-kind repair and replacement of existing infrastructure	\$500

¹Application fees for certain types of minor projects are reduced, as shown below.

Note: Since the definition of a “major project” changes, some projects considered “major” under current law are considered “minor” under the bill. The application fees for major projects are unchanged by the bill.

Source: Maryland Department of the Environment

The bill alters the definition of a “major project” by repealing references to specified areas identified in geographic information system databases maintained by the Department of Natural Resources and used by MDE to screen incoming applications with respect to potential impacts to rare, threatened, or endangered species, or historical or archaeological resources. Also repealed from the definition are references to locations adjacent to “Use III” or “Use IV” waters as defined by MDE in regulation, which relate to natural and recreational trout waters. By repealing these references from the definition of a “major project,” projects in these specified areas are no longer automatically considered “major projects” under the bill. The definition of “minor project” is unchanged; under current law and under the bill, a “minor project” is a project that proposes to permanently impact less than 5,000 square feet of wetlands or waterways, including the 100-year floodplain, and does not meet the definition of a major project.

The bill specifies that a “residential activity” issued a wetlands or waterways permit is to be considered a minor project subject to a minor project application fee. The bill defines “residential activity” as a noncommercial activity that is conducted on “residential property.” “Residential property” is defined as improved property that is used primarily as a residence or unimproved property that is zoned for use as a residence, and it includes property owned by a homeowners’ association and a condominium but does not include a commercial building, marina, or residential apartment complex or building. A “marina” is defined as a facility for the mooring, docking, or storing of more than 10 vessels on tidal navigable waters, including a commercial, noncommercial, or community facility.

The bill also establishes several other definitions applicable to the Wetlands and Waterways Program including “commercial activity,” “commercial building,” “development,” “dwelling unit,” and “subdivision.”

The Board of Public Works (BPW) is required to establish a minimum compensation rate applicable to specified cables, pipelines, and similar structures of \$2.50 per linear foot per year for each cable, pipeline, or similar structure, which applies to all new and existing authorizations beginning July 2, 2012. BPW is authorized to increase the compensation rate as considered appropriate and to adjust the rate to reflect inflation based on specified measures.

Finally, the bill requires MDE to convene a workgroup by January 1, 2015, consisting of interested stakeholders to review and assess whether the Wetlands and Waterways Program successfully improved the level of services to the regulated community under the bill. This review must include (1) reviewing the number of positions assigned to the program; (2) reviewing the program’s progress in improving permit turnaround time frames, permit backlogs, and any enhanced services provided to the regulated community; (3) analyzing the long-term funding needs of the Wetlands and Waterways Program; and (4) determining whether the application fees provided under the bill are adequate to support an effective program. MDE must report the workgroup’s findings and recommendations to specified legislative committees by December 1, 2015.

Current Law: Chapter 142 of 2008 established the Wetlands and Waterways Program Fund to be supported by application fees for various wetlands and waterways permits and licenses. In addition, the fund is also supported by specified compensation required as a condition to issuance of a wetlands license of a kind and in an amount deemed appropriate by BPW. BPW regulations currently set the compensation rate at \$1 per linear foot per year for a cable, pipeline, or other structure laid on, in, or under a State wetland, which may be adjusted to reflect inflation after five years.

Exhibit 1 shows the application fees established by Chapter 142 as well as the bill's changes to those fees. Some activities are exempt from the fees, including stream restoration, vegetative shoreline stabilization, wetlands creation, aquaculture, or other projects in which the primary effect is to enhance the State's wetlands or water resources. State agencies and local governments are also exempt from payment of the generally applicable fees.

In addition, a person is not required to obtain a license to dredge or fill in a State wetland if the person is undertaking the routine maintenance or repair of existing bulkheads, provided that there is no addition or channelward encroachment. Likewise, current regulations state that a State tidal wetlands license or a private tidal wetlands permit is not required for routine maintenance, repair, or replacement of a highway structure, pier, boathouse, a structure on a pier, bulkhead, revetment, tidal impoundment dike, water control structure, aboveground transmission facility, agricultural drainage ditch, or highway drainage ditch when the existing structure is functional and there is no increase in the original length, width, height, or channelward encroachment.

The fund is used by MDE 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.

Background:

The Wetlands and Waterways Program

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. The goal of the program is to avoid and minimize impacts associated with development and to mitigate impacts that are determined to be necessary and unavoidable. Permits granted for work in privately owned wetlands are issued by MDE; licenses granted for work in State-owned wetlands are issued by BPW. 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. One of the program's primary goals for nontidal wetlands is to achieve no net overall loss in nontidal wetland acreage and function, and to strive for a net resource gain in nontidal wetlands.

In general, a person may not dredge; fill; construct, reconstruct, or repair structures; conduct certain other activities over, on, in, or under State tidal wetlands; or alter State tidal wetlands without a license issued by BPW. MDE is required to forward a report of its recommendations to BPW on each tidal wetlands license application; the report must state whether a license should be granted and any terms or conditions that should be attached to a license. Current MDE regulations describe numerous criteria MDE must use in evaluating tidal wetlands license applications.

The Wetlands and Waterways Program Funding Workgroup Report

Chapter 142 of 2008 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 law. The Wetlands and Waterways Program Funding Workgroup met four times over 11 weeks between September 2011 and November 2011.

The workgroup analyzed the effect that the new funding source established by Chapter 142 had on increasing program personnel. Between 1991 and 2008, the Wetlands and Waterways Program lost 28 of its 70 positions, a decline in staffing capacity of 40%. At the same time, the workgroup noted that the demands on the program only continued to increase, resulting in the inability to process and evaluate permit and license applications in a timely manner and causing a backlog of 5,768 permits to develop by March 1, 2008.

The funding provided by the application fees established by Chapter 142 allowed MDE to add 34 new positions for the program between June 2008 and January 2009. The additional staffing, in conjunction with implementation of new standard operating procedures, tracking of measurable milestones, and monitoring of permit review performance, allowed the program to essentially eliminate the backlog by October 1, 2010. In addition, the program meets each 45-day application review deadline about 90% of the time.

Despite the enhanced performance of the Wetlands and Waterways Program following the addition of 34 positions, the workgroup noted that the current fee schedule has not been sufficient to support the program even with ongoing general fund appropriations. Instead, the program has relied on temporary supplemental funds from the Maryland Clean Water Fund, which the workgroup noted is not sustainable. Therefore, the workgroup recommended altering the statutory fee schedule to address the funding shortfall, while also relieving the current burden on the owners of residential property.

The workgroup also recommended changing the definition of a “major project,” establishing a definition for a “residential activity” or “noncommercial activity,” and convening another workgroup in 2015 to review and assess the program’s performance following any change to the fee structure.

State Fiscal Effect: Net special fund revenues may increase by about \$307,760 annually for the Wetlands and Waterways Program Fund beginning in fiscal 2013 as shown in **Exhibit 2**. This estimate is based on the difference between actual Wetlands and Waterways Program Fund revenues in fiscal 2011 and MDE’s estimate of application and compensation fee revenues under the structure established by the bill, which is based on permit activity from calendar 2010. Thus, it assumes that actual revenues attained in fiscal 2011 remain unchanged in the absence of the bill and that permit activity from calendar 2010 remains unchanged.

As shown in Exhibit 2, this additional net revenue is the result of a significant increase in BPW compensation fee revenues, partially offset by a decrease in application fee revenues. To the extent permit activity varies from the calendar 2010 level, the impact of the bill will also vary from the estimate. Because this estimate is based on permit activity from calendar 2010, which reflects depressed economic conditions, the bill’s impact could vary to the extent the economy continues to recover and additional construction activity occurs.

Exhibit 2
Wetlands and Waterways Program Fund Annual Revenue Increase
Under HB 1411
Fiscal 2013-2017

<u>Revenue</u>	<u>Current Law</u>	<u>HB 1411</u>	<u>Difference</u>
Application Fees	\$1,477,880	\$1,236,375	(\$241,505)
Compensation Fees	<u>462,845</u>	<u>1,012,110</u>	<u>549,265</u>
Total Revenue	\$1,940,725	\$2,248,485	\$307,760

Source: Maryland Department of the Environment

This analysis also assumes that MDE would not otherwise modify its fees in future years to reflect inflation, as is authorized under current law but requires additional legislation under the bill. MDE reports that it has not adjusted its fees since the establishment of the fund.

General fund expenditures for the Wetlands and Waterways Program are assumed to be unaffected by the bill. Chapter 142 of 2008 expressed the intent of the General Assembly that the most equitable way to fund the full and effective administration of a statewide Wetlands and Waterways Program is through reasonable application fees *and general fund appropriations*, and the bill expresses this same intent.

The bill does not require any additional expenditures. The workgroup can be handled with existing resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Charles, Frederick, and Montgomery counties; the cities of Frederick and Havre de Grace; Board of Public Works; Department of Natural Resources; Maryland Department of the Environment; Maryland Department of Transportation; Wetlands and Waterways Program Funding Work Group; Department of Legislative Services

Fiscal Note History: First Reader - March 18, 2012
ncs/lgc Revised - House Third Reader - April 1, 2012
Revised - Enrolled Bill - May 18, 2012

Analysis by: Evan M. Isaacson

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