

HOUSE BILL 1411

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By: **Delegates George, Frush, and Lafferty**
Introduced and read first time: February 27, 2012
Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Environment – Water Management Administration – Wetlands and**
3 **Waterways Program Fees**

4 FOR the purpose of altering certain application fees for major wetlands and
5 waterways projects, minor wetlands and waterways projects, and major and
6 minor modifications; requiring the Board of Public Works to establish a
7 minimum compensation rate for certain structures in accordance with certain
8 requirements; authorizing the Board to adjust the compensation rate under
9 certain circumstances; requiring the Department of the Environment to
10 convene a certain workgroup to review and assess a certain program and to
11 report to certain legislative committees on or before a certain date; defining
12 certain terms; altering certain definitions; making stylistic changes;
13 establishing the intent of the General Assembly; and generally relating to
14 wetlands and waterways program fees.

15 BY repealing and reenacting, with amendments,
16 Article – Environment
17 Section 5–203.1 and 16–205
18 Annotated Code of Maryland
19 (2007 Replacement Volume and 2011 Supplement)

20 Preamble

21 WHEREAS, It is essential to the health and vitality of the Chesapeake and
22 Atlantic Coastal Bays that all wetlands and waterways within the State are
23 adequately protected through the permitting and licensing programs administered by
24 the Department of the Environment; and

25 WHEREAS, Past constraints on the Department’s General Fund appropriation
26 have limited the Department’s effective protection of the State’s water resources and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 have delayed the processing of permits which negatively impact State business
2 interests; and

3 WHEREAS, The continued assessment of application fees will enable the
4 Department to render permit decisions more quickly and efficiently, even though
5 processing delays are often the result of requirements outside the control of the
6 Department, including review by other governmental agencies, procedures for public
7 participation, and the failure of an applicant to submit complete and timely
8 information to the Department; and

9 WHEREAS, It is the intent of the General Assembly that the goals of the
10 statewide wetlands and waterways program be furthered by effectively protecting the
11 State's wetland and water resources and by providing sound guidance and efficient
12 service to applicants; and

13 WHEREAS, It is the intent of the General Assembly that the most equitable
14 way to fund the full and effective administration of a statewide wetlands and
15 waterways program in the Department is through reasonable application fees and
16 General Fund appropriations; now, therefore,

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article – Environment**

20 5–203.1.

21 (a) (1) In this section the following words have the meanings indicated.

22 **(2) (I) “COMMERCIAL ACTIVITY” MEANS A PROJECT OR**
23 **ACTIVITY UNDERTAKEN FOR CONSIDERATION, REGARDLESS OF WHETHER A**
24 **PROFIT IS MADE.**

25 **(II) “COMMERCIAL ACTIVITY” INCLUDES:**

26 **1. A SUBDIVISION;**

27 **2. A DEVELOPMENT; AND**

28 **3. CONSTRUCTING OR OPERATING A MARINA.**

29 **(3) “COMMERCIAL BUILDING” MEANS A BUILDING THAT IS USED**
30 **PRIMARILY FOR COMMERCIAL ACTIVITY.**

31 **(4) “DEVELOPMENT” MEANS A PROJECT FOR THE**
32 **CONSTRUCTION OF:**

1 **(I) TWO OR MORE RESIDENTIAL DWELLING UNITS;**

2 **(II) A COMMERCIAL STRUCTURE; OR**

3 **(III) AN INDUSTRIAL STRUCTURE.**

4 **(5) “DWELLING UNIT” MEANS A PROPERTY THAT CONTAINS:**

5 **(I) ONE OR MORE ROOMS USED AS A RESIDENCE;**

6 **(II) KITCHEN FACILITIES; AND**

7 **(III) BATHROOM FACILITIES.**

8 **[(2)] (6) “Major project” means a project that:**

9 (i) Proposes to permanently impact 5,000 square feet or more of
10 wetlands or waterways, including the 100–year floodplain;

11 (ii) [Is located in an area identified as potentially impacting
12 threatened or endangered species or species in need of conservation by a geographical
13 information system database that:

14 1. Includes sensitive species project review areas and
15 waterfowl concentration and staging areas;

16 2. Has been developed and maintained by the
17 Department of Natural Resources; and

18 3. Is used by the Department to screen incoming
19 applications;

20 (iii) Is located in an area that has been identified as potentially
21 impacting historical or archaeological resources by a geographical information system
22 database that:

23 1. Includes Maryland archaeological sites, the Maryland
24 Inventory of Historic Properties, the National Register of Historic Places, the
25 Maryland Historical Trust Preservation Easements, the Annapolis Maryland
26 Inventory of Historic Properties, and the Annapolis Maryland Inventory of Historic
27 Properties street map;

28 2. Has been developed and maintained by the Maryland
29 Historical Trust; and

1 3. Is used by the Department to screen incoming
2 applications;

3 (iv)] Is located in an area identified as potentially impacting a
4 nontidal wetland of special State concern by a geographical information system
5 database that:

6 1. Has been developed and maintained by the
7 Department of Natural Resources; and

8 2. Is used by the Department to screen incoming
9 applications; **OR**

10 [(v) Is adjacent to Use III or Use IV waters, as defined in
11 regulation by the Department; or

12 (vi)] **(III)** Requires the issuance of a public notice by the
13 Department.

14 **(7) “MARINA” MEANS A FACILITY FOR THE MOORING, DOCKING,
15 OR STORING OF MORE THAN 10 VESSELS ON TIDAL NAVIGABLE WATERS,
16 INCLUDING A COMMERCIAL, NONCOMMERCIAL, OR COMMUNITY FACILITY.**

17 **[(3)] (8)** “Minor project” means a project that:

18 (i) Proposes to permanently impact less than 5,000 square feet
19 of wetlands or waterways, including the 100–year floodplain; and

20 (ii) Does not meet the definition of a major project.

21 **(9) “RESIDENTIAL ACTIVITY” MEANS A NONCOMMERCIAL
22 ACTIVITY THAT IS CONDUCTED ON RESIDENTIAL PROPERTY.**

23 **(10) (I) “RESIDENTIAL PROPERTY” MEANS IMPROVED
24 PROPERTY THAT IS USED PRIMARILY AS A RESIDENCE OR UNIMPROVED
25 PROPERTY THAT IS ZONED FOR USE AS A RESIDENCE.**

26 **(II) “RESIDENTIAL PROPERTY” INCLUDES:**

27 1. PROPERTY OWNED BY A HOMEOWNERS’
28 ASSOCIATION; AND

29 2. A CONDOMINIUM.

30 **(III) “RESIDENTIAL PROPERTY” DOES NOT INCLUDE:**

- 1 1. **A COMMERCIAL BUILDING;**
- 2 2. **A MARINA; OR**
- 3 3. **A RESIDENTIAL APARTMENT COMPLEX OR**
- 4 **BUILDING.**

5 **(11) (I) "SUBDIVISION" MEANS THE DIVISION OF A LOT, TRACT,**
6 **OR PARCEL OF LAND INTO TWO OR MORE LOTS, PLOTS, SITES, TRACTS,**
7 **PARCELS, OR OTHER DIVISIONS FOR THE IMMEDIATE OR FUTURE PURPOSE OF**
8 **SELLING OR DEVELOPMENT.**

9 **(II) "SUBDIVISION" INCLUDES RESUBDIVISION.**

10 (b) (1) Except as provided under [paragraph] **PARAGRAPHS (2) AND (3)**
11 of this subsection, all applications for wetlands and waterways authorizations issued
12 by the Department under §§ 5-503[,] AND 5-906[,] **OF THIS TITLE AND §§ 16-202,**
13 **16-302, and 16-307 of this article or wetlands licenses issued by the Board of Public**
14 **Works under § 16-202 of this article shall be accompanied by an application fee as**
15 **follows:**

16 (i) For an application for a minor project or general
17 permit.....\$750;

18 (ii) For an application for a minor modification [~~\$500~~] **\$250**;

19 (iii) For an application for a major project [or major modification
20 with a proposed permanent impact of], **\$2,000 AND A FEE FOR A PROPOSED**
21 **PERMANENT IMPACT OF:**

22 1. Less than 1/4
23 acre..... [~~\$1,500~~] **\$500**;

24 2. At least 1/4 acre, but less than 1/2
25 acre.....\$3,000;

26 3. At least 1/2 acre, but less than 3/4
27 acre.....\$4,500;

28 4. At least 3/4 acre, but less than 1
29 acre.....\$6,000; and

30 5. 1 acre or more.....the
31 impact area in acres multiplied by \$7,500; AND

1 (IV) FOR AN APPLICATION FOR A MAJOR
2 MODIFICATION..... \$2,000.

3 (2) The following are exempt from the application fees established
4 under paragraph (1) of this subsection:

5 (i) Regulated activities conducted by the State, a municipal
6 corporation, county, bicounty or multicounty agency under Article 28 of the Code or
7 Division II of the Public Utilities Article, or a unit of the State, a municipal
8 corporation, or a county;

9 (ii) Performance of agricultural best management practices
10 contained in a soil conservation and water quality plan approved by the appropriate
11 soil conservation district;

12 (iii) Performance of forestry best management practices
13 contained in an erosion and sediment control plan:

- 14 1. Prepared by a registered forester; and
- 15 2. Approved by the appropriate soil conservation
16 district;

17 (iv) Stream restoration, vegetative shoreline stabilization,
18 wetland creation, or other project in which the primary effect is to enhance the State's
19 wetland or water resources; and

20 (v) Aquacultural activities for which the Department of Natural
21 Resources has issued a permit under [§ 4-11A-02] TITLE 4, SUBTITLE 11A of the
22 Natural Resources Article.

23 (3) [For purposes of this subsection, a mining activity undertaken on
24 affected land as identified in a permit issued under Title 15 of this article shall be:

- 25 (i) Deemed to be a minor project; and
- 26 (ii) Subject to the appropriate application fee under paragraph
27 (1)(i) and (ii) of this subsection.] **EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS**
28 **SUBSECTION, THE FOLLOWING SHALL BE MINOR PROJECTS AND SUBJECT TO**
29 **THE APPROPRIATE APPLICATION FEE UNDER PARAGRAPH (1)(I) AND (II) OF**
30 **THIS SUBSECTION:**

31 (I) A RESIDENTIAL ACTIVITY ISSUED A PERMIT UNDER §§
32 5-503 AND 5-906 OF THIS TITLE AND §§ 16-202, 16-302, AND 16-307 OF THIS
33 ARTICLE; AND

1 (II) A MINING ACTIVITY UNDERTAKEN ON AFFECTED LAND
2 AS IDENTIFIED IN A PERMIT ISSUED UNDER TITLE 15 OF THIS ARTICLE.

3 (4) SUBJECT TO PARAGRAPH (5) OF THIS SUBSECTION, AN
4 APPLICATION FOR THE FOLLOWING MINOR PROJECTS SHALL BE ACCOMPANIED
5 BY THE FOLLOWING APPLICATION FEES:

6 (I) INSTALLATION OF ONE BOAT LIFT, HOIST, OR
7 PERSONAL WATERCRAFT LIFT AT EACH AUTHORIZED SLIP, NOT EXCEEDING
8 FOUR SLIPS, LIFTS, OR HOISTS PER PIER \$300;

9 (II) INSTALLATION OF A MAXIMUM OF SIX MOORING
10 PILINGS..... \$300;

11 (III) IN-KIND REPAIR AND REPLACEMENT OF
12 STRUCTURES..... \$300;

13 (IV) INSTALLATION OF A FIXED OR FLOATING PLATFORM ON
14 AN EXISTING PIER WHERE THE TOTAL PLATFORM AREA DOES NOT EXCEED 200
15 SQUARE FEET..... \$300;

16 (V) CONSTRUCTION OF A NONHABITABLE STRUCTURE THAT
17 PERMANENTLY IMPACTS LESS THAN 1,000 SQUARE FEET, SUCH AS A DRIVEWAY,
18 DECK, POOL, SHED, OR FENCE..... \$300;

19 (VI) REPLACEMENT OF AN EXISTING BULKHEAD WHERE THE
20 REPLACEMENT BULKHEAD DOES NOT EXCEED MORE THAN 18 INCHES
21 CHANNELWARD OF THE EXISTING STRUCTURE..... \$500; AND

22 (VII) IN-KIND REPAIR AND REPLACEMENT OF EXISTING
23 INFRASTRUCTURE..... \$500.

24 (5) THE DEPARTMENT MAY NOT REQUIRE AN APPLICATION FEE
25 FOR THE INSTALLATION OF A BOATLIFT ON EXISTING PILINGS.

26 [(4)] (6) Except as provided in paragraph [(5)] (7) of this subsection,
27 the fees imposed under this subsection may not be modified prior to January 1, 2012.

28 [(5)] (7) (i) The Department may adjust the fees established
29 under [paragraph] PARAGRAPHS (1) AND (4) of this subsection to reflect changes in
30 the consumer price index for all “urban consumers” for the expenditure category “All
31 items not seasonally adjusted”, and for all regions.

1 (ii) The Annual Consumer Price Index for the period ending
2 each December, as published by the Bureau of Labor Statistics of the U.S. Department
3 of Labor, shall be used to adjust the fees established under [paragraph]
4 **PARAGRAPHS (1) AND (4)** of this subsection.

5 (c) (1) There is a Wetlands and Waterways Program Fund.

6 (2) The Department shall administer the Fund.

7 (3) The Treasurer shall hold the Fund separately and the Comptroller
8 shall account for the Fund.

9 (4) The Fund consists of all:

10 (i) Application fees collected by the Department under this
11 section;

12 (ii) Monetary compensation paid to the State in conjunction
13 with a wetlands license other than that compensation specified in § 16-205(c)(2) of
14 this article;

15 (iii) Money appropriated in the State budget to the Fund; and

16 (iv) Investment earnings, interest, and any other money from
17 any other source accepted for the benefit of the Fund.

18 (5) In accordance with subsection (e) of this section, the Department
19 shall use the Wetlands and Waterways Program Fund for activities related to:

20 (i) The issuance of authorizations by the Department under §§
21 5-503[,] AND 5-906[,] **OF THIS TITLE AND §§** 16-202, 16-302, and 16-307 of this
22 article or the issuance of wetlands licenses by the Board of Public Works under §
23 16-202 of this article;

24 (ii) The management, conservation, protection, and
25 preservation of the State's wetlands and waterways resources; and

26 (iii) Program development associated with Title 5 and Title 16 of
27 this article, as provided by the State budget.

28 (d) On or before December 31 of each year, in accordance with § 2-1246 of
29 the State Government Article, the Department shall prepare and submit an annual
30 report to the House Environmental Matters Committee, the House Appropriations
31 Committee, the Senate Education, Health, and Environmental Affairs Committee, and
32 the Senate Budget and Taxation Committee on the Wetlands and Waterways Program
33 Fund, including an accounting of financial receipts deposited into the Fund and
34 expenditures from the Fund.

1 (e) The Department shall:

2 (1) Prioritize the use of the Wetlands and Waterways Program Fund
3 to improve the level of service to the regulated community; and

4 (2) Identify and implement measures that will reduce delays and
5 duplication in the administration of the wetlands and waterways permit process,
6 including the processing of applications for wetlands and waterways permits in
7 accordance with § 1-607 of this article.

8 16-205.

9 (a) The Board may require as a condition to issuance of a wetlands license
10 that compensation be made to the State, of a kind and in an amount deemed
11 appropriate by the Board.

12 **(B) (1) THE BOARD SHALL ESTABLISH A COMPENSATION RATE IN**
13 **ACCORDANCE WITH THIS SUBSECTION.**

14 **(2) THE MINIMUM COMPENSATION RATE:**

15 **(I) IS \$2.50 PER LINEAR FOOT PER YEAR FOR CABLES,**
16 **PIPELINES, OR SIMILAR STRUCTURES;**

17 **(II) APPLIES TO EACH INDIVIDUAL CABLE, PIPELINE, OR**
18 **SIMILAR STRUCTURE; AND**

19 **(III) APPLIES TO ALL NEW AND EXISTING AUTHORIZATIONS**
20 **BEGINNING JULY 2, 2012.**

21 **(3) THE BOARD MAY:**

22 **(I) INCREASE THE COMPENSATION RATE AS CONSIDERED**
23 **APPROPRIATE; AND**

24 **(II) ADJUST THE COMPENSATION RATE TO REFLECT**
25 **CHANGES IN THE CONSUMER PRICE INDEX AS PUBLISHED BY THE BUREAU OF**
26 **LABOR STATISTICS OF THE U.S. DEPARTMENT OF LABOR OR BY AN**
27 **APPROPRIATE METHOD SELECTED BY THE BOARD.**

28 **[(b)] (C)** Monetary compensation received by the State in conjunction with a
29 wetlands license may not be applied to the State Annuity Bond Fund Account.

1 **[(c)] (D)** (1) There is created a special fund, known as the Tidal
2 Wetlands Compensation Fund.

3 (2) The following money shall be deposited in the Tidal Wetlands
4 Compensation Fund:

5 (i) Any monetary payment by a licensee in lieu of creating,
6 restoring, or enhancing tidal wetlands that is required by the Department or the
7 Board as a condition of a permit or license;

8 (ii) Any penalty imposed by a court in accordance with this title;
9 and

10 (iii) Any penalty imposed by the Department under this title.

11 **[(d)] (E)** Funds in the Tidal Wetlands Compensation Fund may be
12 appropriated only for the creation, restoration, or enhancement of tidal wetlands,
13 including:

14 (1) Acquisition of land or easements;

15 (2) Maintenance of mitigation sites;

16 (3) Purchase of credits in mitigation banks;

17 (4) Management of invasive or nuisance species identified by the
18 Department;

19 (5) Cost sharing assistance to landowners in the management and
20 control of phragmites under Title 8, Subtitle 21 of the Natural Resources Article; and

21 (6) Contractual services necessary to accomplish the intent of this
22 subsection.

23 **[(e)] (F)** Funds credited and any interest accrued to the Fund:

24 (1) Shall remain available until expended; and

25 (2) May not revert to the General Fund under any other provision of
26 law.

27 **[(f)] (G)** All monetary compensation paid to the State in conjunction with a
28 wetlands license other than that specified under subsection **[(c)(2)] (D)(2)** of this
29 section shall be deposited in the Wetlands and Waterways Program Fund established
30 under § 5–203.1 of this article.

1 SECTION 2. AND BE IT FURTHER ENACTED, That the Department of the
2 Environment shall, on or before January 1, 2015, convene a workgroup consisting of
3 interested stakeholders to review and assess whether the wetlands and waterways
4 program, due to the passage of this Act, successfully improved the level of services to
5 the regulated community, including:

6 (1) Reviewing the number of positions assigned to the program;

7 (2) Reviewing the program's progress in improving permit turnaround
8 time frames, permit backlogs, and any enhanced services provided to the regulated
9 community as a result of this Act;

10 (3) Analyzing the long-term funding needs of the wetlands and
11 waterways program;

12 (4) Determining whether the application fees provided by this Act are
13 adequate to support an effective program; and

14 (5) Reporting the findings and recommendations of the work group to
15 the Legislative Policy Committee, the House Environmental Matters Committee, and
16 the Senate Education, Health, and Environmental Affairs Committee on or before
17 December 1, 2015, in accordance with § 2-1246 of the State Government Article.

18 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 July 1, 2012.