

Senate Bill 1005 would prohibit the Board of Public Works (Board) from charging more than \$50 for a tidal wetlands license that is issued for riparian structures or activities that will not increase revenue to a commercial enterprise and for which the Maryland Department of the Environment did not hold a public hearing. The Maryland Department of the Environment (MDE) opposed Senate Bill 1005 during the Senate hearing, and there was not a hearing in the House of Delegates. MDE and the Board requested a veto of the bill.

Under § 16-205 of the Environment Article, the Board may require monetary compensation as a condition to the issuance of a wetlands license. As a result, licensees conducting regulated activities on State tidal wetlands are charged a nonrecurring, nonrefundable fee according to a schedule established under Code of Maryland Regulations 23.02.04.22. Typically these activities affect submerged lands owned by the State and held in trust for the benefit of the general public. Due to the ambiguous wording of the bill, it is unclear the impact it may have on the Board's ability to require adequate compensation for activities conducted on State property.

Senate Bill 1005 also negates a recent regulation change that was properly promulgated by the Board. The new regulations were published in the Maryland Register on November 12, 2004. The Board approved the proposed regulations at its January 5, 2005 meeting. Subsequently, a notice of final action on regulations was published in the Maryland Register on January 21, 2005 with an effective date of January 31, 2005. This was the first time the Board amended its regulations since they were originally promulgated in 1994. It is also important to note the Board did not receive any comments during the promulgation process. The regulations set the compensation fee for certain regulated activities at \$1,000. Senate Bill 1005 reduces the fee for certain noncommercial riparian structures or activities, which do not require a public informational hearing during the application review process, to \$50, a 95% reduction in the amount of compensation that may be assessed by the Board.

In addition to altering the fee schedule, the regulations redirected the fees collected by the Board from the State general fund to the Tidal Wetlands Compensation Fund, which is administered by MDE for the acquisition and conservation of wetland areas. Historically, this fund was used exclusively for property acquisition in conjunction with Program Open Space administered by the Maryland Department of Natural Resources. During the 1996 legislative session, however, the use of the fund was broadened to accommodate the conservation of wetland areas, including the management and control of phragmites. The change in the compensation fee schedule proposed by Senate Bill 1005 will reduce the amount of special funds available to MDE. As a result, the bill will reduce the amount of special funds used to acquire sensitive wetland areas or perform environmental restoration projects that benefit the Chesapeake and Coastal Bays, as well as the citizens of Maryland.

Senate Bill 1005 may affect the ability of the Board to assess compensation for activities conducted on State property and the impact on the Tidal Wetlands Compensation Fund could be disastrous. The Board is concerned it will no longer be able to force utilities, developers, and businesses to pay the fair market value for the use of State land. This concern is concisely articulated by Sheila McDonald, the Executive Secretary of the Board of Public Works, in her April 26, 2005 letter to Kenneth Masters, my Chief Legislative Officer. MDE concurs with Ms. McDonald's