

**Department of Legislative Services**  
 Maryland General Assembly  
 2020 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 854 (Delegate Hill)  
 Environment and Transportation

**Department of the Environment - Nontidal Wetlands - Study of Vernal Pools**

This bill requires the Maryland Department of the Environment (MDE) to conduct a study on vernal pools in the State. In conducting the study, MDE must (1) complete an inventory of vernal pools in the State (including the number and location of vernal pools in the State); (2) identify measures to protect and manage vernal pools, as specified; and (3) make recommendations that address the protection and management measures identified in the study. MDE must report its findings and recommendations to the Governor and the General Assembly by October 1, 2021.

**Fiscal Summary**

**State Effect:** General fund expenditures increase by \$1.2 million in FY 2021 only. Revenues are not affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1,200,000	0	0	0	0
Net Effect	(\$1,200,000)	\$0	\$0	\$0	\$0

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

**Local Effect:** None.

**Small Business Effect:** None.

**Analysis**

**Current Law/Background:** Vernal pools are a specialized category of nontidal wetlands that are typically water-filled from early winter through mid-summer. Vernal pools are

unique, small-scale ecosystems that contribute to Maryland biodiversity by providing habitat for species that cannot reproduce in alternative habitats, including the wood frog, mole salamanders, and fairy shrimp. Regulations define a “vernal pool” as a nontidal wetland in a confined depression that has surface water for at least two consecutive months during the growing season and (1) is free of adult fish populations; (2) provides habitat for amphibians; and (3) lacks abundant herbaceous vegetation.

Current State law designates wetlands that are vernal pools as having significant plant and wildlife. This means these wetlands and activities that affect these wetlands are subject to regulation (regardless of size) under the Nontidal Wetlands Protection Act. Vernal pools, due to their size, would otherwise be exempt from State oversight under that Act. However, MDE advises that some vernal pools do not have qualifying criteria of soils, waters, and vegetation to meet the definition of a wetland and, therefore, do not receive State regulatory protections. Thus, there is a gap in State regulatory protection for some vernal pools.

Additionally, at least some vernal pools would have been protected under the federal Clean Water Act. However, the U.S. Environmental Protection Agency recently narrowed the definition of “waters of the United States” to exclude small, seasonal, or rain-dependent streams, wetlands, and tributaries. Under this change, vernal pools that might have received federal regulatory protection could lose these protections. A coalition of 11 attorneys general, including Attorney General Frosh, is challenging the change in this definition.

**State Expenditures:** General fund expenditures increase by \$1.2 million in fiscal 2021 only for MDE to engage contractual services to conduct the required study and write the required report. This estimate assumes that all 24 counties in Maryland must be surveyed to identify vernal pools and develop protection measures and that the cost of the contractual services totals \$50,000 per county. MDE notes, and the Department of Legislative Services concurs, that even with additional contractual services, meeting the October 1, 2021 deadline for the completion of the required study and report will be difficult.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Maryland Department of the Environment; U.S. Environmental Protection Agency; Department of Legislative Services

**Fiscal Note History:** First Reader - February 24, 2020  
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