

# HOUSE BILL 869

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CF SB 945

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By: **Delegates Gilchrist, Foley, D. Jones, Lehman, J. Lewis, Ruth, Stein, and P. Young**

Introduced and read first time: February 7, 2022

Assigned to: Environment and Transportation

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 14, 2022

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Wetlands and Waterways Program Division – ~~Authorizations~~ Permitting for**  
3 **Ecological Restoration Projects – ~~Required~~ Study**

4 FOR the purpose of requiring the Department of the ~~Environment~~ Environment's Wetlands  
5 and Waterways Program Division to ~~establish a certain process for reviewing and~~  
6 ~~evaluating applications for wetlands and waterways authorizations~~ study permitting  
7 for ecological restoration projects ~~on or before a certain date~~; and generally relating  
8 ~~to wetlands and waterways authorizations~~ a study on permitting for ecological  
9 restoration projects.

10 ~~BY adding to~~  
11 ~~Article – Environment~~  
12 ~~Section 5 – 203.2~~  
13 ~~Annotated Code of Maryland~~  
14 ~~(2013 Replacement Volume and 2021 Supplement)~~

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

17 (a) The Department of the Environment's Wetlands and Waterways Program  
18 Division shall conduct a comprehensive study, analysis, and evaluation of:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1           (1) State statutes and regulations that affect permitting or completion of  
2 ecological restoration projects permitted by the Wetlands and Waterways Program  
3 Division;

4           (2) the permit and permit review process for ecological restoration permits  
5 in the State;

6           (3) the opportunities for robust public comment and community review of  
7 ecological restoration projects in order to:

8                 (i) determine if the short-term and long-term effects of a project  
9 will meet the aims of the community; and

10               (ii) review the scientific basis of the purpose of a project and its  
11 connection to the watershed;

12           (4) the average time it takes between project submittal to project approval  
13 for an ecological restoration project in the State compared to other states; and

14           (5) the efficiency and effectiveness of the current joint application permit  
15 and permit review processes and current counterincentives to watershed-based stream  
16 restoration.

17           (b) The Wetlands and Waterways Program Division shall conduct the  
18 comprehensive study, analysis, and evaluation required under subsection (a) of this section  
19 in consultation and coordination with:

20               (1) the Department of Natural Resources;

21               (2) representatives of:

22                         (i) the ecological restoration industry that have completed ecological  
23 restoration projects in the State;

24                         (ii) environmental advocacy organizations with scientific or practical  
25 background in ecosystem restoration;

26                         (iii) community groups and community-based environmental  
27 advocacy organizations; and

28                         (iv) county governments in the State, including county  
29 environmental policy directors and county sustainability officers; and

30           (3) if able to participate, representatives from:

31                         (i) the University of Maryland Center for Environmental Science –  
32 Chesapeake Biological Laboratory;

1                   (ii) the University of Maryland Palmer Lab; and

2                   (iii) any other scientific research center or laboratory that specializes  
3 in ecosystem restoration.

4           (c) The Wetlands and Waterways Program Division shall develop legislative and  
5 regulatory recommendations based on the results of the comprehensive study, analysis,  
6 and evaluation required under subsection (a) of this section, including:

7                   (1) the definition of ecological restoration that incorporates measurable  
8 scientific aims, including:

9                   (i) the reduction of nitrogen, sediment, and phosphorus pollution;  
10 and

11                   (ii) the improvement of benthic environment as compared with  
12 conditions existing at the site of the project during site selection;

13                   (2) recommendations for a separate and distinct permit application and  
14 processes for watershed-based ecological restoration permits;

15                   (3) a schedule for regular evaluation of regulations to determine if changes  
16 are necessary to reflect scientific advances in the field, in accordance with § 10–132 of the  
17 State Government Article;

18                   (4) an evaluation of the need for continuing education requirements for  
19 staff of the Department of the Environment and the Department of Natural Resources  
20 involved in permitting activities for wetlands and waterways;

21                   (5) recommendations for ensuring permits are issued in a timely and  
22 efficient manner, and any other improvements to the existing permit process;

23                   (6) recommendations for permits to be reviewed holistically and in a  
24 manner that weighs the benefits of a restored ecosystem over individual resources;

25                   (7) to ensure that permits are issued in a timely and efficient manner to  
26 achieve the optimal ecosystem restoration outcome, changes to statutes and regulations  
27 that hinder or conflict with ecological restoration permits, review processes, or project  
28 implementation; and

29                   (8) an analysis of whether additional staff or resources are needed for the  
30 establishment of a new permit.

31           (d) On or before June 1, 2024, the Department of the Environment shall report  
32 on the findings and recommendations in accordance with this section to the Governor and,  
33 in accordance with § 2–1257 of the State Government Article, the General Assembly.

**Article—Environment**

~~5-203.2.~~

~~(A) ON OR BEFORE OCTOBER 1, 2023, THE DEPARTMENT SHALL ESTABLISH A PROCESS FOR REVIEWING AND EVALUATING APPLICATIONS FOR WETLANDS AND WATERWAYS AUTHORIZATIONS FOR ECOLOGICAL RESTORATION PROJECTS.~~

~~(B) THE PROCESS REQUIRED UNDER SUBSECTION (A) OF THIS SECTION, SHALL:~~

~~(1) BE SEPARATE AND DISTINCT FROM THE PROCESS FOR REVIEWING AND EVALUATING APPLICATIONS FOR WETLANDS AND WATERWAYS AUTHORIZATIONS FOR DEVELOPMENT PROJECTS;~~

~~(2) (I) BE BASED ON THE BEST AVAILABLE SCIENCE; AND~~

~~(II) BE UPDATED ACCORDINGLY AS THE BEST AVAILABLE SCIENCE EVOLVES;~~

~~(3) REQUIRE APPLICATIONS TO BE REVIEWED BY INDIVIDUALS WITH EXPERTISE IN ECOLOGICAL RESTORATION PROJECTS, INCLUDING TRAINING ON:~~

~~(I) THE BEST AVAILABLE SCIENCE, TECHNOLOGY, AND PRACTICES APPLICABLE TO ECOLOGICAL RESTORATION PROJECTS; AND~~

~~(II) THE DIFFERENCES BETWEEN DEVELOPMENT PROJECTS AND ECOLOGICAL RESTORATION PROJECTS;~~

~~(4) ESTABLISH REVIEW CRITERIA THAT ARE SPECIFICALLY TAILORED TO RESTORATION;~~

~~(5) REQUIRE APPLICATIONS TO BE REVIEWED IN A MANNER THAT WEIGHS THE BENEFITS OF A RESTORED ECOSYSTEM OVER THE BENEFITS OF AN INDIVIDUAL WETLAND OR WATERWAY;~~

~~(6) IF APPROPRIATE, WAIVE ANY REQUIREMENT TO MINIMIZE ALTERATION, IMPAIRMENT, OR DISTURBANCE OF A WETLAND OR WATERWAY IF AN ALTERATION, IMPAIRMENT, OR DISTURBANCE OF THE WETLAND OR WATERWAY IS NECESSARY FOR THE VIABILITY OF THE PROJECT; AND~~

1           ~~(7) PROVIDE A METHOD FOR EXPEDITING REVIEW OF WETLANDS AND~~  
2 ~~WATERWAYS AUTHORIZATIONS FOR ECOLOGICAL RESTORATION PROJECTS FOR THE~~  
3 ~~PURPOSES OF:~~

4           ~~(I) ENSURING STATE FUNDING FOR RESTORATION IS USED~~  
5 ~~MOST EFFICIENTLY AND EFFECTIVELY; AND~~

6           ~~(H) AVOIDING UNNECESSARY COSTS ASSOCIATED WITH~~  
7 ~~WETLANDS AND WATERWAYS AUTHORIZATIONS AND PROJECT CONSTRUCTION IN~~  
8 ~~ORDER TO LOWER THE OVERALL COSTS TO THE STATE TO ACHIEVE ITS~~  
9 ~~CHESAPEAKE BAY RESTORATION GOALS UNDER THE CHESAPEAKE BAY TOTAL~~  
10 ~~MAXIMUM DAILY LOAD AND THE 2014 CHESAPEAKE BAY WATERSHED~~  
11 ~~AGREEMENT.~~

12           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13           October 1, 2022.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.