# **HOUSE BILL 1284**

M3, M1 4lr1761

By: **Delegates Terrasa, Lehman, and Ruth** Introduced and read first time: February 9, 2024 Assigned to: Environment and Transportation

#### A BILL ENTITLED

## 1 AN ACT concerning

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### Wetlands and Waterways Program - Stream Restoration Projects

3 FOR the purpose of repealing an exemption for stream restoration projects from certain 4 application fees for certain projects that impact a wetland or waterway; requiring a 5 person applying for a wetlands and waterways authorization for a stream restoration 6 project associated with achieving certain restoration goals to include in the 7 authorization application certain objectives, standards, and plans; requiring the 8 Department of the Environment to conduct a certain community engagement process 9 before issuing a certain wetlands and waterways authorization for a stream restoration project; requiring the Department to maintain on its website certain 10 11 information for certain stream restoration projects; requiring the Department to 12 adjust certain pollution reduction credits in a certain manner; repealing an 13 exemption for certain stream restoration projects from provisions of law under the 14 Forest Conservation Act; and generally relating to wetlands and waterways and 15 stream restoration projects.

- 16 BY repealing and reenacting, without amendments,
- 17 Article Environment
- 18 Section 5–203.1(b)(1)
- 19 Annotated Code of Maryland
- 20 (2013 Replacement Volume and 2023 Supplement)
- 21 BY repealing and reenacting, with amendments,
- 22 Article Environment
- 23 Section 5–203.1(b)(2)(iv)
- 24 Annotated Code of Maryland
- 25 (2013 Replacement Volume and 2023 Supplement)
- 26 BY adding to
- 27 Article Environment
- 28 Section 5–203.2

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



$\frac{1}{2}$	Annotated Code of Maryland (2013 Replacement Volume and 2023 Supplement)									
3 4 5 6 7	BY repealing and reenacting, without amendments, Article – Natural Resources Section 5–1602(a) Annotated Code of Maryland (2023 Replacement Volume and 2023 Supplement)									
8 9 10 11 12	BY repealing and reenacting, with amendments, Article – Natural Resources Section 5–1602(b)(11) and (13) Annotated Code of Maryland (2023 Replacement Volume and 2023 Supplement)									
13 14 15 16 17	BY repealing Article – Natural Resources Section 5–1602(12) Annotated Code of Maryland (2023 Replacement Volume and 2023 Supplement)									
18 19	SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:									
20				Ar	ticle – Envir	onme	nt			
21	5–203.1.									
22 23 24 25 26	(b) (1) Except as provided under paragraphs (2), (3), and (6) of this subsection, all applications for wetlands and waterways authorizations issued by the Department under §§ 5–503 and 5–906 of this title and §§ 16–202, 16–302, and 16–307 of this article or wetlands licenses issued by the Board of Public Works under § 16–202 of this article shall be accompanied by an application fee as follows:									
27 28	permit	(i)			application					_
29		(ii)	For a	n ap	plication for a	minor	modificati	on	•••••	\$250;
30 31	impact of:	(iii)	For a	n ap	plication for a	major	project wit	h a propos	ed pe	rmanent
32			1.	Les	ss than 1/4 ac	re				\$1,500;
33			2.	At 1	least 1/4 acre,	but les	ss than 1/2	acre	•••••	\$3,000;
34			3.	At 1	least 1/2 acre,	but les	ss than 3/4	acre		\$4,500;

$\frac{1}{2}$	and	4. A	t least 3/4 acre, but less than 1 acre\$6,000;							
3 4	\$7,500; and	5. 1	acre or morethe impact area in acres multiplied by							
5	(iv)	For an a	application for a major modification\$1,500.							
6 7	(2) The following are exempt from the application fees established under paragraph (1) of this subsection:									
8 9 10 11	(iv) stabilization, wetland <b>RESTORATION,</b> in which resources; and	creation	n restoration, vegetative] <b>VEGETATIVE</b> shoreline in, or other project, <b>NOT INCLUDING STREAM</b> mary effect is to enhance the State's wetland or water							
12	5-203.2.									
13 14 15 16 17	WATERWAYS AUTHORIZ WITH ACHIEVING LOCA TARGETS, CHESAPEA	ATION I L MUN KE B	LIES TO A PERSON APPLYING FOR A WETLANDS AND FOR A STREAM RESTORATION PROJECT ASSOCIATED ICIPAL SEPARATE STORM SEWER SYSTEM PERMIT AY TOTAL MAXIMUM DAILY LOAD GOALS, OALS, OR OTHER RESTORATION GOALS.							
18 19 20	` '		M RESTORATION PROJECT SHALL INCLUDE IN THE							
21 22 23		THE PRO	BJECTIVES OF THE PROJECT, INCLUDING A DJECT WILL IMPROVE OR ALIGN WITH EACH OF THE QUANTIFIABLE GOALS REGARDING:							
24	<b>(</b> I <b>)</b>	Вюсо	GICAL UPLIFT;							
25	(II)	Ecolo	GICAL UPLIFT;							
26	(III)	CHESA	PEAKE BAY WATER QUALITY;							
27	(IV)	FORES	T CONSERVATION; AND							
28	(v)	CLIMA	ΓΕ CHANGE;							

- 4 1 **(2)** A PLAN FOR MONITORING BIOLOGICAL UPLIFT, INCLUDING A 2 PLAN FOR: 3 **(I)** Pre-AND POST-RESTORATION MONITORING OF 4 BIOLOGICAL COMMUNITY HEALTH AND WATER QUALITY IN UPSTREAM AREAS ABOVE 5 THE PROJECT AND DOWNSTREAM AREAS BELOW THE PROJECT; AND 6 (II) USING BEFORE-AFTER-CONTROL-IMPACT THE 7 METHODOLOGY TO EVALUATE THE IMPACTS OF ACTIVITIES ASSOCIATED WITH THE 8 PROJECT; 9 **(3)** A PLAN FOR MINIMIZING TREE REMOVAL, INCLUDING: A MAP OF ALL TREES OVER 2 INCHES IN CALIPER WITHIN 10 **(I)** 11 THE PROJECT AREA THAT ILLUSTRATES WHICH TREES WILL BE REMOVED; AND 12 (II) A PLAN FOR ACCOUNTING FOR ANY ADDITIONAL TREES LOST OR REMOVED DURING THE PROJECT PROCESS; 13 14 **(4)** MEASURABLE AND QUANTIFIABLE **STANDARDS FOR** 15 **DETERMINING STREAM RESTORATION SUCCESS;** 16 A PLAN FOR ADDRESSING RELATED UPLAND BEST MANAGEMENT **(5)** 17 PRACTICES; AND 18 A PLAN FOR ADDRESSING EACH OF THE POTENTIAL UNINTENDED 19 IMPACTS ASSOCIATED WITH STREAM AND FLOODPLAIN RESTORATION PROJECTS THAT ARE LISTED IN TABLE 19 OF THE CHESAPEAKE BAY PROGRAM'S "A UNIFIED 20 GUIDE FOR CREDITING STREAM AND FLOODPLAIN RESTORATION PROJECTS IN 21THE CHESAPEAKE BAY WATERSHED". 2223 (1) BEFORE THE DEPARTMENT MAY ISSUE A WETLANDS AND 24WATERWAYS AUTHORIZATION FOR A STREAM RESTORATION PROJECT, THE DEPARTMENT SHALL CONDUCT A COMMUNITY ENGAGEMENT PROCESS THAT 2526 PROVIDES AN OPPORTUNITY FOR PUBLIC INPUT. **(2)** 27 IN ADDITION TO ANY OTHER REQUIREMENTS UNDER STATE OR 28 LOCAL LAW, THE COMMUNITY ENGAGEMENT PROCESS SHALL INCLUDE:
- 29 **(I)** NOTICE TO:
- 30 1. EACH OWNER OF PROPERTY, RESIDENT, AND 31 BUSINESS WITHIN ONE-QUARTER MILE OF A BOUNDARY OF THE PROJECT AREA; AND

1 2	2. EACH OWNER OF ADJACENT PROPERTY WITHIN 1 MILE DOWNSTREAM OF A BOUNDARY OF THE PROJECT AREA;
3 4	(II) THE POSTING OF A WRITTEN DESCRIPTION OF THE PROJECT THAT IS:
5 6	1. POSTED ON FOUR LOCATIONS OF THE PROJECT AREA; AND
7	2. CLEARLY VISIBLE AND LEGIBLE TO THE PUBLIC;
8	(III) A 60-DAY PUBLIC COMMENT PERIOD; AND
9 10	(IV) AT LEAST TWO PUBLIC MEETINGS THAT ALLOW FOR BOTH IN-PERSON AND VIRTUAL ATTENDANCE, INCLUDING:
11 12	1. An initial meeting on the 30% project design documents; and
13 14 15	2. A MEETING THAT TAKES PLACE BEFORE ANY FINAL APPROVAL OF THE PROJECT THAT INCLUDES A DESCRIPTION OF THE INFORMATION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION, INCLUDING THE TREE MAP.
16 17 18 19	(D) THE DEPARTMENT SHALL MAINTAIN ON ITS WEBSITE INFORMATION ON ALL STREAM RESTORATION PROJECTS AUTHORIZED BY THE DEPARTMENT, INCLUDING INFORMATION ON PROJECT PLANNING THROUGH POST–RESTORATION MONITORING THAT, AT A MINIMUM, PROVIDES:
20 21	(1) A DESCRIPTION OF THE POLLUTION REDUCTION CREDITS AWARDED TO A PROJECT; AND
22 23 24	(2) THE RESULTS OF PROJECT MONITORING, INCLUDING A DESCRIPTION OF ANY TREES THAT WERE REMOVED IN EXCESS OF WHAT WAS SPECIFIED IN THE PLAN SUBMITTED UNDER SUBSECTION (B)(3) OF THIS SECTION.
25 26 27 28	(E) (1) THE DEPARTMENT SHALL ADOPT REGULATIONS TO MODIFY THE PROTOCOL FOR DETERMINING HOW POLLUTION REDUCTION CREDITS ARE AWARDED TO STREAM RESTORATION PROJECTS THAT ACCOUNT FOR TREE LOSS AND A RESPECTIVE DECREASE IN CREDIT ALLOCATION BASED ON ACRES OR

NUMBER OF TREES REMOVED.

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- 1 (2) ON OR BEFORE DECEMBER 31, 2025, THE DEPARTMENT SHALL 2 ADJUST POLLUTION REDUCTION CREDIT CALCULATIONS TO QUANTIFY THE IMPACT 3 OF TREE REMOVAL RESULTING FROM A STREAM RESTORATION PROJECT.
- 4 (3) FOR A PROJECT ASSOCIATED WITH A LOCAL MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT, THE POLLUTION REDUCTION CREDITS ACTUALLY AWARDED SHALL BE ADJUSTED POSTCONSTRUCTION TO ACCOUNT FOR ANY TREES REMOVED IN EXCESS OF WHAT WAS SPECIFIED IN THE PLAN SUBMITTED UNDER SUBSECTION (B)(3) OF THIS SECTION.

#### Article - Natural Resources

10 5-1602.

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- 11 (a) Except as provided in subsection (b) of this section, this subtitle shall apply to 12 any public or private subdivision plan or application for a grading or sediment control 13 permit by any person, including a unit of State or local government on areas 40,000 square 14 feet or greater.
- 15 (b) The provisions of this subtitle do not apply to:
- 16 (11) The cutting or clearing of trees to comply with the requirements of:
- 17 (i) 14 C.F.R. § 77.25 relating to objects affecting navigable airspace, 18 provided that the Federal Aviation Administration has determined that the trees are a 19 hazard to aviation; or
- 20 (ii) Subject to subsection (c) of this section, § 5–703 of the Transportation Article relating to obstructions to air navigation, provided that, if a dispute 22 arises regarding the cutting or clearing of trees, the Maryland Aviation Administration 23 makes the final determination whether the trees should be cut or cleared; AND
- [(12) Any stream restoration project for which the applicant for a grading or sediment control permit has executed a binding maintenance agreement of at least 5 years with the affected property owner; and]
- [(13)] (12) Maintenance or retrofitting of a stormwater management structure that may include clearing of vegetation or removal and trimming of trees, so long as the maintenance or retrofitting is within the original limits of disturbance for construction of the existing structure, or within any maintenance easement for access to the structure.

#### 32 SECTION 2. AND BE IT FURTHER ENACTED, That:

33 (a) On or before March 31, 2025, the Department of the Environment shall survey peer–reviewed scientific literature on the impact of trees on water quality.

- 1 (b) On or before December 31, 2025, the Department of the Environment shall:
- 2 (1) create pollution reduction credit calculations for stream restoration 3 projects informed by the survey of peer—reviewed scientific literature conducted in 4 accordance with subsection (a) of this section; and
- 5 (2) submit a report of its findings and recommendations to the Governor 6 and, in accordance with § 2–1257 of the State Government Article, the Senate Education, 7 Energy, and the Environment Committee and the House Environment and Transportation 8 Committee.
- 9 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect 10 October 1, 2024.