

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1284 (Delegate Terrasa, *et al.*)
Environment and Transportation

Wetlands and Waterways Program - Stream Restoration Projects

This bill (1) establishes additional requirements for a person applying for a wetlands and waterways authorization for a specified stream restoration project; (2) establishes additional requirements for the Maryland Department of the Environment (MDE) that must be met prior to issuing any such authorization; (3) requires MDE to maintain specified information relating to stream restoration projects it authorizes on its website; (4) establishes other requirements for MDE related to calculating pollution reduction credits awarded to stream restoration projects to account for tree removal/loss; (5) repeals an existing provision that exempts stream restoration projects from being subject to application fees under the Wetlands and Waterways Program; and (6) repeals an existing provision that exempts certain stream restoration projects from the requirements of the Forest Conservation Act (FCA).

Fiscal Summary

State Effect: State expenditures (multiple fund types) increase significantly for State agencies that undertake stream restoration projects, as discussed below. General fund expenditures for MDE’s Wetlands and Waterways Program increase significantly, potentially by more than \$1.0 million annually, beginning in FY 2025. Special fund revenues increase minimally beginning in FY 2025, as discussed below.

Local Effect: Significant increase in expenditures for local governments that undertake stream restoration projects. Local revenues are not anticipated to be materially affected.
This bill imposes a mandate on a unit of local government.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Stream Restoration Project Application Requirements

The following requirements apply to a person applying for a wetlands and waterways authorization for a stream restoration project associated with achieving local Municipal Separate Storm Sewer System (MS4) permit targets, Chesapeake Bay Total Maximum Daily Load (TMDL) goals, compensatory mitigation goals, or other restoration goals. A person applying for a wetlands and waterways authorization for a stream restoration project must include in the authorization application:

- specific objectives of the project, including a description of how the project will improve or align with specified measurable and quantifiable goals;
- a plan for monitoring biological uplift, as specified;
- a plan for minimizing tree removal, including a map of specified trees within the project area that illustrates which trees will be removed and a plan for accounting for any additional trees lost or removed during the project process;
- measurable and quantifiable standards for determining stream restoration success;
- a plan for addressing related upland best management practices; and
- a plan for addressing each of the potential unintended impacts associated with stream and floodplain restoration projects listed in Table 19 of the Chesapeake Bay Program's "A Unified Guide for Crediting Stream and Floodplain Restoration Projects in the Chesapeake Bay Watershed."

Requirements for the Maryland Department of the Environment

Before MDE may issue a wetlands and waterways authorization for a stream restoration project, it must conduct a community engagement process that provides an opportunity for public input. In addition to any other requirements under State or local law, the community engagement process must include (1) notice to specified individuals; (2) the posting of a written description of the project that meets specified requirements; (3) a 60-day public comment period; and (4) at least two public meetings that allow for both in-person and virtual attendance, as specified.

MDE must maintain on its website information on all stream restoration projects it authorizes, including information on project planning through post-restoration monitoring that, at a minimum, provides (1) a description of the pollution reduction credits awarded to the project and (2) the results of project monitoring, including a description of any trees that were removed in excess of what was specified in the project plan.

By March 31, 2025, MDE must survey peer-reviewed scientific literature on the impact of trees on water quality. By December 31, 2025, MDE must (1) create pollution reduction credit calculations for stream restoration projects informed by the survey of peer-reviewed scientific literature and (2) submit a report of its findings to the Governor and specified committees of the General Assembly.

MDE must also 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. By December 31, 2025, MDE must adjust pollution reduction credit calculations to quantify the impact of tree removal resulting from a stream restoration project. For a project associated with a local MS4 permit, the pollution reduction credits actually awarded must be adjusted postconstruction, as specified.

Wetlands and Waterways Program – Application Fees

The bill repeals an existing provision that exempts a stream restoration project in which the primary effect is to enhance the State’s wetland or water resources from the requirement to pay an application fee to obtain a wetlands license from the Board of Public Works (BPW) or a wetlands authorization from MDE.

Forest Conservation Act Requirements

The bill repeals an existing provision that exempts – from the requirements of FCA – any stream restoration project for which the applicant for a grading or sediment control permit has executed a binding maintenance agreement of at least five years with the affected property owner.

Current Law:

Wetlands Management – Generally

Wetlands in the State are protected, and the Wetlands and Waterways Program within MDE administers a statewide program for the management, conservation, and protection of Maryland’s tidal wetlands and nontidal wetlands and waterways. Pursuant to statute and MDE regulations, and subject to certain exceptions, a person may not dredge, fill, or construct or reconstruct structures in:

- State wetlands, without a license issued by BPW (or MDE, as MDE is delegated authority to authorize certain activities in State wetlands); or
- private wetlands, without a permit issued by MDE.

Application fees for wetlands and waterways permits and licenses are set in statute and range from \$250 (for certain shoreline stabilization projects) to \$7,500 multiplied by the impact area in acres (for major projects with an impact of one acre or more). The application fee for minor projects is \$750.

Certain projects and activities are exempt from the requirement to pay the application fees, including, among others, *stream restoration*, vegetative shoreline stabilization, wetland creation, or other projects in which the primary effect is to enhance the State's wetland or water resources.

Forest Conservation Act

The Forest Service within the Department of Natural Resources administers FCA, but it is primarily implemented on the local level. FCA establishes minimum forest conservation requirements for land development, and local governments with planning and zoning authority (with the exception of Allegany and Garrett counties and their municipalities) are required to develop local forest conservation programs that meet or are more stringent than the requirements of FCA. FCA applies to any public or private subdivision plan or application for a grading or sediment control permit by any person, including a unit of State or local government, on areas 40,000 square feet (0.9 acres) or greater, subject to certain exceptions. The exceptions include any stream restoration project for which the applicant for a grading or sediment control permit has executed a binding maintenance agreement of at least five years with the affected property owner.

A proposed construction activity goes through a process of evaluation of existing vegetation on a site and development of a forest conservation plan for the site defining how forest area will be retained and/or afforestation (establishment of tree cover in open areas) or reforestation (creation of specified forest area) will be undertaken. If afforestation or reforestation requirements cannot be reasonably accomplished on site or off site (which can include use of off-site forest mitigation banks), payment may be made into the applicable forest conservation fund (fee-in-lieu payments) to be spent by the State or the local government on reforestation and afforestation, maintenance of existing forest, and achieving urban canopy goals.

Chapters 541 and 542 of 2023 made various changes to FCA, including changes to the reforestation requirements under the act, which take effect July 1, 2024. Under the new requirements, if forest is removed, reforestation must be undertaken at a ratio of one acre planted for every one acre removed, unless the forest removed is in a priority funding area and not identified as a priority for retention, in which case the area of forest removed must be reforested at a ratio of one-half acre planted for every one acre removed. The changes also establish that, in addition to other requirements, all unforested riparian buffers on a site must be afforested and reforested, except under specified circumstances.

Chapters 541 and 542 also allow local jurisdictions to establish specified alternative afforestation, reforestation, and preservation requirements.

Total Maximum Daily Load and Municipal Separate Storm Sewer System Permits

TMDLs are a requirement under the federal Clean Water Act (CWA). A TMDL (1) establishes the maximum amount of an impairing substance or stressor that a water body can assimilate and still meet water quality standards and (2) allocates that load among pollution contributors.

Surface water discharges in the State are regulated through combined State and federal permits under the National Pollutant Discharge Elimination System (NPDES), which is a component of CWA. Among other things, NPDES regulates stormwater discharges from MS4s. There are 10 jurisdictions in Maryland that hold NPDES Phase I MS4 permits (Anne Arundel, Baltimore, Carroll, Charles, Frederick, Harford, Howard, Montgomery, and Prince George's counties and Baltimore City). Additionally, the State Highway Administration (SHA) holds a Phase I MS4 permit.

State/Local Fiscal Effect:

Maryland Department of the Environment

MDE advises that general fund expenditures increase by nearly \$1.4 million in fiscal 2025, and by more than \$1.2 million annually thereafter, to hire 13 employees to increase its capacity to review, permit, and assess stream restoration projects under the enhanced and more complex processes and evaluations required by the bill. For fiscal 2025, MDE's estimate also includes contractual costs to upgrade an existing database and costs to purchase vehicles and supplies.

The Department of Legislative Services (DLS) concurs that the bill establishes substantial new responsibilities for MDE and that general fund expenditures increase significantly for MDE to hire staff, upgrade its database, and purchase vehicles and supplies. However, without actual experience under the bill, a reliable estimate of the increase in costs – primarily costs to hire staff – cannot be made at this time. Nevertheless, DLS anticipates that general fund expenditures increase significantly, potentially by more than \$1.0 million annually, beginning in fiscal 2025.

Special fund revenues to the Wetlands and Waterways Program Fund increase minimally due to the bill's repeal of the provision that exempts stream restoration projects from application fees for wetlands authorizations issued under the program. MDE advises that most stream restoration projects are conducted by the State and local governments, and

that, under the bill, those entities continue to be exempt from the application fees pursuant to § 5-203.1(b)(2)(i) of the Environment Article.

Regarding the bill's requirement for MDE to adopt regulations to modify the protocol for determining how pollution reduction credits are awarded to stream restoration projects, MDE advises that it does not have the authority to modify those calculations, as they are determined and set by the Chesapeake Bay Program (CBP) through an expert panel process. Thus, MDE may not be able to implement this requirement or the related requirement to conduct a survey and report on this topic.

Stream Restoration Project Costs

Costs related to stream restoration projects undertaken by affected State and local governments increase significantly beginning in fiscal 2025 due to (1) a likely increase in wetlands and waterways project application review times for MDE; (2) the need to conduct additional planning and analysis for project applications; (3) costs associated with forest delineation analyses, reforestation, and afforestation, pursuant to FCA requirements; and (4) any additional projects that may be required for entities implementing stream restoration projects to meet TMDL goals and MS4 permit targets (to the extent CBP modifies the pollution reduction credits that are awarded to stream restoration projects, as discussed in the preceding section).

A limited survey of State agencies and local governments gleaned the following information regarding costs that are likely incurred under the bill:

- the Maryland Transportation Authority anticipates an increase of 10% in its stream restoration project costs;
- the Maryland Transit Administration anticipates significant additional costs to conduct stream restoration projects related to (1) additional efforts for the development of pre- and post-construction data; (2) additional and more detailed surveys for potentially affected trees over a larger area; and (3) additional reports and analyses needed to inform the project application process;
- the Maryland-National Capital Park and Planning Commission (M-NCPPC) anticipates a need to hire several additional staff to handle the additional project requirements; M-NCPPC also anticipates that additional projects will be required to meet its MS4 permit targets; and
- Prince George's County reports the potential for project delays, among other effects.

Based on information submitted in a prior year for legislation with similar provisions, it is anticipated that SHA also incurs significant costs.

Small Business Effect: Small businesses that conduct stream monitoring, assessments, sampling, and remedial measures for stream restoration projects, as well as small businesses that conduct forest delineation analyses and other forestry-related services, may see an increase in the demand for their services.

To the extent any small businesses apply for wetlands authorizations from the Wetlands and Waterway Program for stream restoration activities that are currently exempt from application fees, they are subject to such fees under the bill.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years; however, legislation with similar provisions has been proposed. For example, see HB 942 of 2023.

Designated Cross File: None.

Information Source(s): Maryland Department of the Environment; Board of Public Works; Department of Natural Resources; Maryland Department of Transportation; Maryland Association of Counties; Maryland-National Capital Park and Planning Commission; Howard and Prince George's counties; City of Bowie; Department of Legislative Services

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