

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
 Enrolled - Revised

House Bill 1165

(Delegate Love, *et al.*)

Environment and Transportation

Education, Energy, and the Environment

Watershed, Stream, and Floodplain Restoration - Chesapeake and Atlantic Coastal Bays Restoration and Stream and Floodplain Restoration Funding (Whole Watershed Act)

This bill establishes the Whole Watershed Restoration Partnership to accelerate restoration of the Chesapeake and Atlantic Coastal Bays and their watersheds. The partnership provides grants and technical assistance to eligible projects over a period of five years. The Whole Watershed Fund (WWF) is established in the Department of Natural Resources (DNR) to provide funding for approved projects and is generally authorized to receive funding from specified State agricultural and environmental special funds. The bill also establishes new application and evaluation criteria for stream restoration projects. **The bill generally takes effect July 1, 2024. Provisions related to stream restoration project requirements take effect July 1, 2025.**

Fiscal Summary

State Effect: The effect on overall State finances in any particular fiscal year due to authorized and required funding for WWF is unknown but largely dependent on the extent to which funds transferred to WWF are a reallocation of existing spending or are provided from fund balance, as discussed below. Transferred funds could easily exceed \$5.0 million annually. General fund expenditures for DNR increase by at least \$200,000 in FY 2025 and by at least similar amounts annually thereafter. The FY 2025 budget as passed by the General Assembly includes \$200,000 in general funds and two positions for DNR, contingent on the enactment of this bill or its cross file. General/special fund expenditures for MDE increase beginning in FY 2026 for administrative expenses, including new permanent staff, as discussed below. State expenditures (all funds) increase, potentially significantly, for State agencies that undertake stream restoration projects beginning in FY 2026. Other potential effects are discussed below. **This bill establishes a mandated distribution from FY 2026 through 2030.**

Local Effect: Local governments are affected by any reallocation of funding that occurs due to the bill and additional costs and/or operational delays for stream restoration projects. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Whole Watershed Restoration Partnership

The Whole Watershed Restoration Partnership is established to accelerate restoration of the Chesapeake and Atlantic Coastal Bays and their watersheds by equitably focusing assistance on actions and areas that are cost-effective, likely to demonstrate a rapid systemic response to restoration activity, and supported by the local government.

State Management Team to Administer Partnership

The Secretary of Natural Resources must establish a State Management Team to administer the partnership. The State Management Team must include:

- one representative each from DNR, MDE, the Maryland Department of Agriculture (MDA), and the Maryland Department of Planning, designated by the relevant department secretary;
- one representative of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, designated by the chair of the commission; and
- the Chief Resilience Officer, or the Chief Resilience Officer's designee.

The DNR representative must chair the State Management Team. The State Management Team must coordinate with other entities as necessary to carry out its functions and duties. The partnership must employ staff in accordance with the State budget. State agencies may provide staff or other assistance to the partnership.

Project Grants

By October 1, 2024, and every five years thereafter, the State Management Team must issue a request for proposals for projects that meet specified criteria for location, benefits, and local government support. By March 1, 2025, and every five years thereafter, the State Management Team may approve up to five projects to receive assistance.

The State Management Team must evaluate a proposed project based on whether the proposed project meets a variety of specified criteria, such as whether the project:

- is located in a watershed in which habitat restoration and pollution reduction will (1) result in the greatest improvements to shallow water habitat and living resources; (2) achieve rapid de-listing of impaired streams identified under specified federal law; or (3) generate rapidly improving conditions in the local ecosystem;
- emphasizes actions that are expected to provide the greatest, most cost-effective, and measurable amount of pollution reduction; and
- supports land use policies, conservation programs, and restoration protocols at the local level that will sustain project actions and outcomes.

The State Management Team must work to ensure that the projects approved meet certain location requirements. The State Management Team may require siting, design, construction, maintenance, and operation principles and standards for a project that are in addition to those required by law or regulation if the team determines that those principles and standards are necessary to preserve the benefits of the project.

For a period of five years after approving a project, the State Management Team must:

- assist the project sponsor in developing an implementation and financing plan, including measurable outcomes, for the duration of the project;
- award implementation grants from WWF and other appropriate State funds and accounts for up to 50% of project costs, in accordance with the implementation and financing plan, and with consideration given to the progress of the project;
- award operations grants of \$20,000 to the project sponsor for project administration costs in accordance with the mandated distribution established by the bill under the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund (2010 Trust Fund);
- provide for coordinated and transparent State permitting to the extent allowed by State and federal law, including the use of the permit tracking dashboard established by the Secretary of Natural Resources under the bill;
- provide funding to the project sponsor to support water quality monitoring at the project site; and
- meet with the project sponsor and participating local governments at least six times each calendar year to review and facilitate progress on the project.

The bill establishes additional requirements for project sponsors related to water quality monitoring, community engagement, performance measurement, and progress reporting. By November 1, 2025, and each November 1 thereafter, the State Management Team must report to the General Assembly on the status of each approved project.

Permit Tracking Dashboard

The Secretary of Natural Resources must establish a permit tracking dashboard that provides publicly available information on the permit schedules and requirements for actions that require a State permit. The permit tracking dashboard must be made available to the public on DNR's website.

Whole Watershed Fund

WWF is established as a special, nonlapsing fund in DNR to fund the projects approved by the State Management Team under the bill and may only be used to support actions associated with an approved project, including (1) to satisfy match requirements of any federal source or (2) matching with county, municipal, or private funds or in-kind support for a project. Expenditures from WWF may be made only in accordance with the State budget. Any remaining funds must be available for use in subsequent fiscal years. The bill specifies requirements for related contracts and the treatment of funds when projects are partially financed with other State funds.

In addition to money appropriated in the State budget to the fund, interest earnings, and any other money from any other source accepted for the benefit of the fund, WWF consists of revenue distributed to the fund from:

- 2010 Trust Fund established under § 8-2A-02 of the Natural Resources Article;
- the Bay Restoration Fund (BRF) established under § 9-1605.2 of the Environment Article (specifically, the Wastewater Account, after funding eligible costs for wastewater treatment plants under the account each year);
- the Clean Water Commerce Account (CWCA) established under § 9-1605.4 of the Environment Article;
- the Maryland Agricultural Land Preservation Fund established under § 2-505 of the Agriculture Article;
- the Maryland Agricultural Water Quality Cost-Share (MACS) Program established under § 8-702 of the Agriculture Article; and
- the Waterway Improvement Fund (WIF) established under § 8-707 of the Natural Resources Article.

Related and conforming changes are made to the provisions establishing each of the funding sources listed above. Generally, the provisions incorporate a related purpose and authorize funding to be provided to WWF; however, the bill establishes one mandated distribution from 2010 Trust Fund. In each fiscal year from 2026 through 2030, inclusive, up to \$100,000 from the fund must be used to fund the operations grants for approved projects under the bill, at a rate of \$20,000 per project sponsor each fiscal year.

Generally, money transferred to WWF from one of the sources listed above must be subject to the conditions specified in the originating fund or account.

Stream Restoration Projects

Generally, an applicant seeking an authorization for a stream and floodplain restoration project in the State is subject to additional requirements related to public notice and application review by MDE. MDE must evaluate each application for specified criteria and provide for five years of monitoring after project completion.

Stream restoration project provisions take effect July 1, 2025.

Public Notice

When the project design is 30% complete, a project applicant must (1) mail written notice to any residence or business within a radius of 200 feet of the proposed project area's boundary and (2) post notice as points of public access to the project, as specified.

Generally, when the project design is 60% complete, a project applicant must (1) hold an in-person public meeting that includes an option for virtual attendance; (2) take meeting minutes and record the meeting; (3) present the project design report and plans, along with other related information and documents; and (4) post the documents and meeting minutes on the project applicant's website. However, the in-person meeting requirement does not apply if (1) the project applicant is an individual; (2) the proposed project is sited on the individual's property; and (3) no residence, other than the individual's residence, or business is located within a radius of 200 feet from the project boundary.

Application and Review by the Maryland Department of the Environment

A project applicant must submit to MDE all relevant documents as part of the application and review process, including (1) the project design report and drawings, as specified; (2) the forest stand delineation; (3) responses to MDE's Stream Restoration Authorization Checklist; (4) the meeting minutes, and if feasible, the recording from the required public meeting; and (5) any other documents or information requested by MDE. Generally, the applicant must post notice of the application, its date of submission, and a copy of the application on its website within 24 hours after submitting the application; however, the requirement does not apply if the same criteria for a public notice exemption, described above, are met.

MDE may authorize a stream and floodplain restoration project in accordance with the following requirements. Prior to the authorization of any stream and floodplain restoration project in the State, MDE must:

- assess documentation submitted by the project applicant for degradation criteria related to (1) an existing biological function-based parameter and (2) a physical parameter, including an existing geomorphologic or hydraulic function-based parameter;
- assess whether the project applicant incorporated the following co-benefits, as appropriate, into the application: (1) the creation or restoration of wildlife habitat, riparian buffers, and wetland restoration; (2) the restoration of aquatic resources, such as freshwater mussels, fish passage, or oyster reefs; (3) carbon sequestration; (4) climate change mitigation, adaptation, or resilience; (5) improving and protecting public health; and (6) recreational opportunities and public access to waterways and natural habitats;
- assess documentation of community notifications conducted by the project applicant prior to the submission of the application, as specified, including (1) whether the project applicant considered the project’s compatibility with local land use and (2) whether and how the project applicant considered and responded to relevant public input, including any resulting project modifications;
- assess whether the applicant incorporated, to the extent practicable, recognized best management practices to (1) maximize ecological uplift; (2) minimize impacts to wildlife habitats, tree loss and removal, earth disturbance, and disturbance to native vegetation; (3) avoid impacts to large noninvasive native plant communities and specimen trees; (4) use existing areas suitable for material staging areas to avoid forest removal; (5) limit construction access road widths; (6) limit the impacts of ingress and egress points to minimize forest impacts; and (7) where appropriate, prioritize the removal of nonnative and invasive trees and vegetation; and
- establish a plan to provide for at least five years of monitoring, as described below.

On completion of a stream and floodplain restoration project, MDE must provide for at least five years of monitoring per the design and permit associated with the design for each authorized project. The monitoring must include an assessment of stream stability, stream and floodplain function, and vegetation viability within the affected project area.

Annual Reporting

By December 1, 2024, and each December 1 thereafter, MDE must report to the Senate Committee on Education, Energy, and the Environment and the House Environment and Transportation Committee on any changes made to the Stream Restoration Authorization Checklist since December 1, 2023. (This requirement is assumed to apply beginning December 1, 2025, given the provision’s effective date.)

Current Law:

Chesapeake and Atlantic Coastal Bays 2010 Trust Fund

The 2010 Trust Fund was established in 2008 and is funded with a portion of revenues from the motor fuel tax and the sales and use tax on short-term vehicle rentals. The trust fund is used primarily for nonpoint source pollution control projects to help meet Chesapeake Bay restoration goals and to improve the health of the Atlantic Coastal Bays and their tributaries.

Bay Restoration Fund

Chapter 428 of 2004 established BRF. The primary purpose of the fund is to support upgrades to Maryland's 67 major publicly owned wastewater treatment plants with enhanced nutrient removal technology; funds are also used for septic system upgrade grants, among other things, and the Cover Crop Program within MDA. As a revenue source for the fund, Chapter 428 established a bay restoration fee on users of wastewater facilities, septic systems, and sewage holding tanks. Chapter 150 of 2012 doubled the fee for most users (until July 1, 2030). Fee revenue generated from users of wastewater facilities is deposited into MDE's Wastewater Account, to be used for eligible uses, subject to specified funding priorities.

Clean Water Commerce Account

Chapters 694 and 695 of 2021 created CWCA. MDE is required to transfer \$20.0 million each fiscal year from BRF into the account to be used to purchase environmental outcomes to help the State achieve water quality goals. Specified percentages of the funding must be used to procure environmental outcomes from specified types of practices or projects, and any unencumbered funds not used to purchase environmental outcomes according to the percentages are no longer subject to the percentage requirements and available for use consistent with the CWCA statute in subsequent fiscal years.

Maryland Agricultural Land Preservation Fund

The Maryland Agricultural Land Preservation Foundation was established by the General Assembly to preserve productive agricultural land and woodland, limit the extent of urban development, and protect agricultural land and woodland as open space. The foundation, with the assistance and cooperation of landowners and local governments, purchases development rights easements as a means of protecting agricultural land and woodland production activities. In addition to funding from the State transfer tax, which has traditionally been allocated toward the capital costs of purchasing easements, the foundation receives funding from the agricultural land transfer tax and surcharge, which is

primarily used for the foundation's operating expenses. Funds accrue to a related special fund.

Maryland Agricultural Water Quality Cost-Share Program

The MACS Program was established in 1982 to provide financial assistance to farmers for the installation of best management practices that control and reduce pollution caused by agricultural activities. Under this voluntary program, the State provides grants to farmers to cover up to 100% of the cost of installing best management practices on their farms to prevent soil erosion, manage nutrients, and safeguard water quality in streams, rivers, and the Chesapeake Bay.

Waterway Improvement Fund

WIF finances projects and activities that promote, develop, and maintain Maryland's waterways for the benefit of the boating public. With certain exceptions, a local government and WIF must jointly finance projects to construct marine facilities beneficial to the boating public. The contribution of WIF must be limited to no more than 50% of the cost of each project. WIF may, however, finance completely any construction project beneficial to the boating public, which costs \$250,000 or less, regardless of its location.

Other types of projects that may be financed solely by WIF include projects for dredging and marking channels and harbors, construction of jetties and breakwaters, and clearing debris, aquatic vegetation, and obstructions in navigable waters, as well as construction of marine facilities located within lands owned by DNR and construction of pump-out stations for use by the general boating public at public and private marinas.

Wetlands and Waterways Program

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. Generally, a person must obtain a permit or license before working in wetlands in the State. Regulations define the criteria for evaluating tidal wetlands licenses and permits, as well as the property information that permit and license applicants must provide as part of the application process. The Board of Public Works (BPW) has the authority to determine whether to issue a license to dredge, fill, or alter State wetlands; MDE must assist BPW in making such a determination and, in some cases, BPW delegates the authority to issue such a license to MDE. Authorizations granted to work in privately owned wetlands are issued by MDE. Application fees for wetlands and waterways authorizations are paid into the Wetlands and Waterways Program Fund.

Total Maximum Daily Load and Municipal Separate Storm Sewer System Permit

Total Maximum Daily Loads (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 National Pollutant Discharge Elimination System (NPDES), which is a component of CWA. Among other things, NPDES regulates stormwater discharges from Municipal Separate Storm Sewer System (MS4) permits. 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 holds a Phase I MS4 permit.

State Fiscal Effect: Fiscal effects for establishing the Whole Watershed Restoration Partnership and requirements for stream and floodplain restoration projects are described separately below.

Whole Watershed Restoration Partnership

Provisions establishing and funding the Whole Watershed Restoration Partnership have an unknown effect on overall State finances in any particular fiscal year, largely dependent on the extent to which funds transferred to WWF from MDA, MDE, and DNR are a reallocation of existing spending or are provided from fund balance. Reallocated funding generally does not affect overall State expenditures in a particular year, it just alters the uses and recipients. Funding provided from accrued fund balance increases overall State expenditures in a particular year but eventually leads to reduced spending in future years under the original programs.

The decision to use fund balance or to reallocate existing spending is also dependent upon the amount of required funding for projects under the partnership, which is also at this point unknown. At a minimum, the bill requires \$100,000 annually to be distributed from the 2010 Trust Fund from fiscal 2026 through 2030. Depending on the size of the projects, transferred funds could easily exceed \$5.0 million annually.

The Department of Legislative Services (DLS) cannot advise on the extent to which the affected special funds have, or will have in the future, sufficient fund balance to fund any transfers, but notes that many of the affected special funds are linked through various ongoing transfers or provide funding for purposes [similar](#) to those of the partnership.

In either case, special fund revenues and expenditures for WWF increase correspondingly as transferred funds are received and used for authorized purposes, which does not appear to include DNR administrative expenses, as discussed below.

Administrative Expenses

WWF does not appear to allow payment of the partnership's administrative expenses, such as those of the State Management Team, partnership staff, and costs to develop a permit tracking dashboard. The bill does not identify another funding source for such costs but does allow State agencies to provide staff or other assistance to the partnership. Accordingly, this estimate assumes general fund expenditures increase to the extent that assistance provided by other State agencies is insufficient. Based on information provided by DNR, administrative costs for the partnership are approximately \$200,000 annually beginning in fiscal 2025, independent of the bill's requirement to establish a permit tracking dashboard. The fiscal 2025 budget as passed by the General Assembly includes \$200,000 and two positions for DNR, contingent on enactment of this bill or its cross file.

Accordingly, general fund expenditures for DNR increase by at least \$200,000 in fiscal 2025 and by at least \$178,000 annually thereafter for ongoing costs associated with the contingent positions. Nevertheless, *total* administrative costs for DNR cannot be determined at this time.

Other agencies on the partnership may also have additional expenditures and/or operational effects associated with their responsibilities, but the amount and extent is unknown at this time.

New Requirements for Stream Restoration Projects

Maryland Department of the Environment

MDE advises that it requires additional staff to review additional stream restoration project documentation and post-project monitoring, both of which are more extensive under the bill. Based on information provided by MDE, the department's administrative costs total approximately \$285,000 to \$325,000 annually for three additional staff. DLS concurs that the bill establishes substantial new responsibilities for MDE related to stream restoration project approval, evaluation, and monitoring; however, without actual experience under the bill, total administrative costs for MDE cannot be determined at this time. Still, general/special fund expenditures for MDE are assumed to increase beginning in fiscal 2026, concurrent with the effective date of the stream restoration project provisions.

Stream Restoration Project Costs

Costs related to stream restoration projects undertaken by affected State agencies increase, potentially significantly, beginning in fiscal 2026 due to (1) a likely increase in wetlands and waterways project application review times for MDE; (2) the likely need to conduct additional public notice, planning, and analysis for project applications; (3) potential additional requirements for projects, such as incorporating co-benefits and best management practices specified in the bill; and (4) ongoing monitoring for at least five years after project completion.

Certain entities that are permitted by MDE utilize stream restoration projects to meet permit requirements (including for MS4 permits) and to meet other environmental and restoration goals (including TMDL goals). Thus, increased stream restoration project costs result in increased compliance costs for affected permit holders and entities working to achieve various environmental goals. Affected agencies likely include the Maryland Department of Transportation and the Maryland Transportation Authority.

Local Fiscal Effect: Local governments are affected by any reallocation of funding that occurs due to the bill (which may alter local expenditures for matching funds); the funding sources for WWF are used to fund a variety of programs and projects that directly or indirectly benefit local governments. Local governments also experience potentially significant cost increases and/or operational delays for stream restoration projects as described above for State agencies. The effect on any particular local government is unknown but could be significant.

Small Business Effect: Small businesses experience cost increases and/or operational delays associated with the bill's public notice, project evaluation, and approval requirements related to stream restoration projects, similar to State and local governments. Small businesses may also be affected by the funding of WWF, since many of the potential funding sources benefit small businesses.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 969 (Senator Elfreth, *et al.*) - Education, Energy, and the Environment.

Information Source(s): Maryland Department of the Environment; Department of Natural Resources; Maryland Department of Agriculture; Maryland Department of Labor;

Maryland Department of Planning; Maryland Department of Emergency Management; Office of the Attorney General (Consumer Protection Division); Governor's Office; Office of Administrative Hearings; Carroll, Harford, and Queen Anne's counties; towns of Bel Air and Leonardtown; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services

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