

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 729 (Delegate Hill, *et al.*)
 Environment and Transportation

Department of the Environment - Nontidal Wetlands - Protection of Vernal Pools
 (Vernal Pool Wetlands Protection Act of 2024)

This bill requires the Maryland Department of the Environment (MDE) to adopt regulations to (1) establish protections related to the preservation of vernal pools in the State; (2) establish protections for 100-foot buffers around vernal pools in the State; and (3) define vernal pools as seasonal wetlands that support at least one amphibian species. In adopting the regulations, MDE must develop a plan for identifying vernal pools in the State, including the number and location of such vernal pools. By October 1, 2025, MDE must report the plan to the Governor and the General Assembly.

Fiscal Summary

State Effect: General fund expenditures for MDE increase by \$395,400 in FY 2025; future years reflect annualization, inflation, and ongoing costs. Although not reflected in the table below, (1) State expenditures (all/multiple funds) for various State agencies may be affected due to the regulations adopted under the bill and (2) special fund revenues may also be affected, as discussed below.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	395,400	470,900	491,900	513,400	535,900
Net Effect	(\$395,400)	(\$470,900)	(\$491,900)	(\$513,400)	(\$535,900)

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

Local Effect: Local government operations and expenditures may be affected due to the regulations adopted under the bill, as discussed below. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Wetlands – 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 the Board of Public Works (or MDE, as MDE is delegated authority to authorize certain activities in State wetlands); or
- private wetlands, without a permit issued by MDE.

Although State law does not include provisions that specifically address vernal pools, MDE 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.

Authorized Activities on State and Private Wetlands

For State wetlands, statute specifies the activities and operations that may be undertaken without a license, including (1) specified dredging and filling activities; (2) activities approved by the Maryland Department of Agriculture; (3) approved improvements to wildlife habitats or agricultural drainage ditches; (4) routine maintenance or repair of existing bulkheads, as specified; (5) certain aquaculture activities occurring under a lease issued by the Department of Natural Resources; and (6) the installation of specified equipment related to the cultivation of shellfish.

For private wetlands, statute specifies the activities that are expressly authorized to be undertaken, including (1) the conservation of soil, vegetation, water, fish, shellfish, and wildlife; (2) trapping, hunting, fishing, and catching shellfish, if otherwise legally permitted; (3) the exercise of riparian rights to improve land bounding on navigable water, as specified; (4) the reclamation of land, under specified circumstances; (5) the routine maintenance or repair of existing bulkheads, as specified; and (6) the installation of specified equipment related to the cultivation of shellfish.

State Expenditures:

Maryland Department of the Environment

MDE advises that many, but not all, vernal pools in the State are already regulated under current law and regulations that address nontidal wetlands, allowing certain activities to be undertaken with a license or permit and others to be undertaken without a license or permit. However, the bill requires the “preservation” of vernal pools and the establishment of buffers around vernal pools, which MDE advises implies that no impacts to these features are allowed under the bill.

Because MDE staff in its Wetlands and Waterways Program are fully subscribed, MDE requires additional staff to implement the bill. Accordingly, general fund expenditures increase by \$395,423 in fiscal 2025, which accounts for the bill’s October 1, 2024 effective date. This estimate reflects the cost of hiring three natural resource planners, one biologist, and one assistant Attorney General to develop and implement the required regulations (including the development of a plan for identifying vernal pools in the State) and to implement the plan in future years. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Specific responsibilities for the new staff include (1) developing, implementing, and enforcing the required regulations; (2) developing the vernal pool identification plan; and (3) conducting the work necessary (which is likely to include survey and ground-work throughout the State) to identify, map, and establish protections for vernal pools in the State. MDE anticipates a substantial amount of ongoing work for the office since (1) many vernal pools are likely to be on private land (likely resulting in legal issues) and (2) based on the broad definition of vernal pools required to be adopted by MDE, vernal pools could change from year to year and new vernal pools could be established.

Positions	5.0
Salaries and Fringe Benefits	\$359,143
Operating Expenses	<u>36,280</u>
Total FY 2025 MDE Expenditures	\$395,423

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

This analysis assumes that the new staff are able to *implement* the plan for identifying vernal pools over multiple years, as the bill only requires the plan to be *developed*, but not fully *implemented*, by October 1, 2025. However, to the extent that the plan for identifying vernal pools must be implemented more expeditiously, MDE may require temporary additional contractual support, further increasing expenditures.

Other State Agencies

As noted above, the regulations adopted by MDE must preserve and establish buffers around vernal pools identified in the State. Many such vernal pools are likely to exist on State-owned land; for example, the Maryland Department of Transportation, the Maryland Transportation Authority, and the University System of Maryland (specifically, Frostburg State University) have already identified areas that could be considered vernal pools and might be affected by the regulations adopted by MDE under the bill. The extent to which other State agencies may be affected is unknown.

Although the content of the regulations cannot be predicted in advance, for any affected State agencies, land management activities surrounding vernal pools are likely affected, as the regulations could prohibit standard upkeep processes (such as mowing and tree removal) in vernal pools and in the buffers. Accordingly, State operations and expenditures (all/multiple funds) may be affected. Without actual experience under the bill, and until the required regulations are adopted, any such impact cannot be predicted.

State Revenues: Special fund revenues to the Wetlands and Waterways Program Fund increase to the extent that the bill results in vernal pools that are not currently considered wetlands being defined as such and ultimately resulting in an increase in application fees for wetlands and waterways authorizations for projects in those areas.

On the other hand, special fund revenues to the fund could also decrease to the extent that any projects in vernal pools that would otherwise already be required to obtain a wetlands authorization are prohibited under the regulations adopted pursuant to the bill.

The net effect on special fund revenues is unknown. Application fees for wetlands and waterways authorizations 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.

Local Expenditures: Similar to the effect discussed above for State agencies, local governments that own land containing identified vernal pools may be affected by the regulations adopted under the bill. Without actual experience under the bill, and until the required regulations are adopted, any such impact cannot be predicted.

Small Business Effect: Similar to the effect described above for State agencies and local governments, small businesses that own land containing identified vernal pools may be affected by the regulations adopted under the bill. Without actual experience under the bill, and until the required regulations are adopted, any such impact cannot be predicted.

Small businesses that provide environmental consulting services may experience in an increase in the demand for their services due to the additional regulatory requirements.

Additional Information

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

Designated Cross File: None.

Information Source(s): Maryland Department of the Environment; Board of Public Works; Maryland Department of Transportation; University System of Maryland; Interagency Commission on School Construction; Maryland Association of Counties; Maryland Municipal League; Howard and Prince George's counties; Department of Legislative Services

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Analysis by: Richard L. Duncan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510