

## Chapter 465

## (House Bill 869)

AN ACT concerning

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) the Department of Natural Resources;

(2) representatives of:

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

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

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

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

(3) if able to participate, representatives from:

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

(ii) the University of Maryland Palmer Lab; and

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

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

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

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

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

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

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

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

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

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

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

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

(d) On or before June 1, 2024, the Department of the Environment shall report on the findings and recommendations in accordance with this section to the Governor and, 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~~

~~(H) 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~~

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

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

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

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

Approved by the Governor, May 16, 2022.