

Chapter 164

(Senate Bill 523)

AN ACT concerning

**Department of ~~the Environment~~ Natural Resources – Water Resources –
~~Protection~~ Identification of Vernal Pools
(Jack Cover Vernal Pools Act of 2026)
~~(Vernal Pool Wetlands Protection Act of 2026)~~**

FOR the purpose of requiring the Department of ~~the Environment to adopt regulations in a certain manner~~ Natural Resources in coordination with the Department of the Environment to identify and protect certain vernal pools in the State in a certain manner; requiring the Department, ~~when issuing a certain permit, to protect certain vernal pools that are located within the geographic area covered by the permit of~~ Natural Resources to create and maintain a certain list of vernal pools in the State in a certain manner; requiring the Department of the Environment to designate staff to receive training in vernal pool identification and to notify the Department of Natural Resources under certain circumstances; and generally relating to the ~~regulatory protection of water resources and~~ identification of vernal pools in the State.

BY adding to

Article – ~~Environment~~ Natural Resources
Section ~~5-205~~ 1-1002
Annotated Code of Maryland
(~~2013~~ 2023 Replacement Volume and 2025 Supplement)

~~BY repealing and reenacting, without amendments,~~

~~Article – Environment~~
~~Section 5-901(a), (b), (f), and (m)~~
~~Annotated Code of Maryland~~
(~~2013~~ 2023 Replacement Volume and 2025 Supplement)

Preamble

~~WHEREAS, Vernal pools are unique, small-scale ecosystems that contribute significantly to the biodiversity of Maryland by providing habitat for species that cannot reproduce in alternative habitats, including the wood frog, mole salamanders, and fairy shrimp; and~~

~~WHEREAS, Vernal pools provide a significant amount of ecosystem services as they occur frequently throughout Maryland and have the capacity to replenish groundwater and filter stormwater flows; and~~

~~WHEREAS, Nontidal wetlands that meet the three federal wetland delineation criteria of hydrology, hydric soils, and hydrophytic vegetation, including vernal pools that satisfy those criteria, are regulated and protected by the State; and~~

~~WHEREAS, Vernal pools that do not meet all three federal wetland delineation criteria are not afforded the regulatory protections applicable to nontidal wetlands in the State and may suffer impairments or losses without regulatory review or approval; now, therefore,~~

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

~~Article — Environment~~

~~5-205.~~

~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(2) “AGRICULTURAL ACTIVITY” HAS THE MEANING STATED IN § 5-901 OF THIS TITLE.~~

~~(3) “FORESTRY ACTIVITY” HAS THE MEANING STATED IN § 5-901 OF THIS TITLE.~~

~~(4) “NONTIDAL WETLAND” HAS THE MEANING STATED IN § 5-901 OF THIS TITLE.~~

~~(5) “OBLIGATE SPECIES” MEANS AN ANIMAL SPECIES THAT DEPENDS ON VERNAL POOLS AS A NECESSARY PART OF ITS LIFE CYCLE.~~

~~(6) “QUALIFIED VERNAL POOL” MEANS A CONFINED DEPRESSION THAT:~~

~~(i) HAS SURFACE WATER FOR PART OF THE YEAR;~~

~~(ii) PROVIDES A PERSISTENT OR BREEDING HABITAT FOR OBLIGATE SPECIES, INCLUDING NATIVE AMPHIBIANS AND INVERTEBRATES; AND~~

~~(iii) DOES NOT MEET THE CRITERIA FOR PROTECTION AS A NONTIDAL WETLAND UNDER FEDERAL OR STATE LAW, INCLUDING THE FEDERAL WETLAND DELINEATION CRITERIA OF HYDROLOGY, HYDRIC SOILS, AND HYDROPHYTIC VEGETATION.~~

~~(7) (i) "REGULATED ACTIVITY" MEANS ANY OF THE FOLLOWING ACTIVITIES IN A QUALIFIED VERNAL POOL OR WITHIN A BUFFER AROUND A QUALIFIED VERNAL POOL:~~

~~1. THE REMOVAL, EXCAVATION, OR DREDGING OF SOIL, SAND, GRAVEL, MINERALS, ORGANIC MATTER, OR MATERIALS OF ANY KIND;~~

~~2. THE CHANGING OF EXISTING DRAINAGE CHARACTERISTICS, SEDIMENTATION PATTERNS, FLOW PATTERNS, OR FLOOD RETENTION CHARACTERISTICS;~~

~~3. THE DISTURBANCE OF THE WATER LEVEL OR WATER TABLE BY DRAINAGE, IMPOUNDMENT, OR OTHER MEANS;~~

~~4. THE DUMPING, DISCHARGING OF MATERIAL, OR FILLING WITH MATERIAL, INCLUDING THE DRIVING OF PILES AND PLACING OF OBSTRUCTIONS;~~

~~5. THE GRADING OR REMOVAL OF MATERIAL THAT WOULD ALTER EXISTING TOPOGRAPHY; AND~~

~~6. THE DESTRUCTION OR REMOVAL OF PLANT LIFE THAT WOULD ALTER THE CHARACTER OF A QUALIFIED VERNAL POOL.~~

~~(ii) "REGULATED ACTIVITY" DOES NOT INCLUDE AN AGRICULTURAL ACTIVITY OR FORESTRY ACTIVITY AS DEFINED IN THIS SECTION.~~

~~(b) THE DEPARTMENT SHALL ADOPT REGULATIONS TO:~~

~~(1) ESTABLISH AND MAINTAIN A LIST OF QUALIFIED VERNAL POOLS IN THE STATE;~~

~~(2) ESTABLISH PROTECTIONS RELATED TO THE PRESERVATION OF QUALIFIED VERNAL POOLS IN THE STATE;~~

~~(3) ESTABLISH PROTECTIONS FOR BUFFERS AROUND QUALIFIED VERNAL POOLS IN THE STATE; AND~~

~~(4) REQUIRE THAT A PERSON CONDUCTING A REGULATED ACTIVITY RESULTING IN IMPAIRMENTS OR LOSSES TO A QUALIFIED VERNAL POOL OR A BUFFER AROUND A QUALIFIED VERNAL POOL;~~

~~(I) AVOID IMPAIRMENTS AND LOSSES TO THE MAXIMUM EXTENT PRACTICABLE;~~

~~(II) MINIMIZE IMPAIRMENTS AND LOSSES TO THE MAXIMUM EXTENT PRACTICABLE WHERE AVOIDANCE IS NOT POSSIBLE; AND~~

~~(III) PROVIDE COMPENSATION OR OTHER MITIGATION AS DETERMINED BY THE DEPARTMENT FOR ANY REMAINING UNAVOIDABLE IMPAIRMENTS AND LOSSES.~~

~~(C) THE REGULATIONS ADOPTED UNDER SUBSECTION (B) OF THIS SECTION SHALL APPLY ONLY TO QUALIFIED VERNAL POOLS THAT HAVE BEEN IDENTIFIED OR DOCUMENTED BY:~~

~~(1) THE DEPARTMENT;~~

~~(2) A PERSON USING IDENTIFICATION METHODS APPROVED BY THE DEPARTMENT, INCLUDING MAPPING OR OTHER SCIENTIFIC INFORMATION; OR~~

~~(3) A CERTIFIED WETLAND DELINEATOR DURING A SITE ASSESSMENT CONDUCTED BEFORE THE ISSUANCE OF A PERMIT FOR A REGULATED ACTIVITY.~~

~~(D) (1) IN DEVELOPING THE REGULATIONS UNDER SUBSECTION (B) OF THIS SECTION, THE DEPARTMENT SHALL, TO THE EXTENT PRACTICABLE:~~

~~(I) ENSURE THAT THE BUFFER SPECIFICATIONS FOR QUALIFIED VERNAL POOLS BE CONSISTENT WITH THE BUFFER SPECIFICATIONS FOR NONTIDAL WETLANDS UNDER § 5-906 OF THIS TITLE; AND~~

~~(II) ENSURE THAT THE COMPENSATION AND MITIGATION REQUIREMENTS FOR IMPAIRMENTS AND LOSSES WITHIN QUALIFIED VERNAL POOLS BE CONSISTENT WITH THE COMPENSATION AND MITIGATION REQUIREMENTS FOR IMPAIRMENTS AND LOSSES WITHIN NONTIDAL WETLANDS UNDER §§ 5-909 AND 5-910 OF THIS TITLE.~~

~~(2) IN ADDITION TO THE REQUIREMENTS UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE DEPARTMENT MAY:~~

~~(I) USE MAPPING OR OTHER SCIENTIFIC INFORMATION TO IDENTIFY ADDITIONAL QUALIFIED VERNAL POOLS FOR INCLUSION ON THE DEPARTMENT'S LIST OF QUALIFIED VERNAL POOLS; AND~~

~~(H) CONSULT WITH ANY STAKEHOLDER GROUP AS APPROPRIATE, INCLUDING THE DEPARTMENT OF NATURAL RESOURCES AND THE UNIVERSITY OF MARYLAND.~~

~~(E) IN ISSUING A PERMIT FOR A REGULATED ACTIVITY, THE DEPARTMENT SHALL PROVIDE PROTECTIONS FOR ANY QUALIFIED VERNAL POOLS THAT ARE:~~

~~(1) LISTED BY THE DEPARTMENT IN ACCORDANCE WITH SUBSECTIONS (B) AND (C) OF THIS SECTION; AND~~

~~(2) LOCATED WITHIN THE GEOGRAPHIC AREA COVERED BY THE PERMIT.~~

~~5-901.~~

~~(a) In this subtitle the following words have the meanings indicated.~~

~~(b) (1) "Agricultural activity" means aquaculture and farming activities.~~

~~(2) "Agricultural activity" includes:~~

~~(i) Plowing, tillage, cropping, seeding, cultivating, and harvesting for the production of food and fiber products; and~~

~~(ii) The grazing of livestock.~~

~~(f) "Forestry activity" means planting, cultivating, thinning, harvesting, or any other activity undertaken to use forest resources or to improve their quality or productivity.~~

~~(m) (1) "Nontidal wetland" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.~~

~~(2) The determination of whether an area is a nontidal wetland shall be made in accordance with the publication known as the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands", published in 1989 and as may be amended.~~

~~(3) "Nontidal wetlands" do not include tidal wetlands regulated under Title 16 of this article.~~

Article – Natural Resources

1-1002.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “FACULTATIVE SPECIES” MEANS AN ANIMAL SPECIES THAT USES VERNAL POOLS IRREGULARLY.

(3) “OBLIGATE SPECIES” MEANS AN ANIMAL SPECIES THAT DEPENDS ON VERNAL POOLS AS A NECESSARY PART OF ITS LIFE CYCLE.

(4) “TYPICAL YEAR” MEANS A YEAR IN WHICH RAINFALL TOTALS MEET OR EXCEED THE AVERAGE YEARLY RAINFALL FROM THE PREVIOUS 30 YEARS FOR THE LOCATION WITHIN WHICH THE VERNAL POOL IS LOCATED.

(5) “VERNAL POOL” MEANS A CONFINED DEPRESSION THAT:

(I) HAS SURFACE WATER FOR AT LEAST 2 CONSECUTIVE MONTHS BETWEEN NOVEMBER AND MAY IN A TYPICAL YEAR;

(II) EXPERIENCES A DECREASE IN WATER LEVEL TO 6 INCHES OR LESS BETWEEN JUNE AND SEPTEMBER IN A TYPICAL YEAR;

(III) PROVIDES A PERSISTENT OR BREEDING HABITAT FOR VARIOUS ANIMAL SPECIES, INCLUDING NATIVE AMPHIBIANS AND INVERTEBRATES THAT ARE FACULTATIVE SPECIES OR OBLIGATE SPECIES;

(IV) CONTAINS LESS THAN 30% AERIAL COVER OF EMERGENT VEGETATION WHEN FULL;

(V) IS PREDOMINANTLY OR PARTIALLY SHADED BY WOODY VEGETATION;

(VI) IS LESS THAN 5 ACRES IN SIZE; AND

(VII) MAY HAVE INTERMITTENT, TEMPORARY CONNECTIONS TO OTHER BODIES OF WATER.

(B) THE DEPARTMENT SHALL:

(1) IN COORDINATION WITH THE DEPARTMENT OF THE ENVIRONMENT, CREATE AND MAINTAIN A LIST OF VERNAL POOLS IN THE STATE;

(2) ESTABLISH CRITERIA AND PROCEDURES FOR IDENTIFYING AND INCLUDING VERNAL POOLS ON THE LIST, INCLUDING:

(I) VERNAL POOLS IDENTIFIED BY THE DEPARTMENT IN CARRYING OUT ITS DUTIES SET FORTH IN THIS ARTICLE;

(II) LOCATIONS THE DEPARTMENT DETERMINES MEET THE DEFINITION OF A VERNAL POOL UNDER SUBSECTION (A) OF THIS SECTION; AND

(III) VERNAL POOLS IDENTIFIED BY THE DEPARTMENT OF THE ENVIRONMENT IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION;

(3) AUTHORIZE:

(I) USING MAPPING OR OTHER SCIENTIFIC INFORMATION TO IDENTIFY ADDITIONAL VERNAL POOLS FOR INCLUSION ON THE LIST; AND

(II) CONSULTING WITH ANY STAKEHOLDER GROUP AS APPROPRIATE, INCLUDING THE DEPARTMENT OF THE ENVIRONMENT AND THE UNIVERSITY OF MARYLAND, TO IDENTIFY VERNAL POOLS FOR INCLUSION ON THE LIST; AND

(4) PROVIDE FOR PUBLICATION OF THE LIST OF VERNAL POOLS ON THE DEPARTMENT'S WEBSITE.

(C) (1) THE DEPARTMENT OF THE ENVIRONMENT SHALL DESIGNATE STAFF TO RECEIVE TRAINING IN VERNAL POOL IDENTIFICATION.

(2) THE DEPARTMENT SHALL PROVIDE VERNAL POOL IDENTIFICATION TRAINING TO THE STAFF DESIGNATED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(3) IF, IN CARRYING OUT RESPONSIBILITIES UNDER TITLE 5, SUBTITLE 9 OF THE ENVIRONMENT ARTICLE, STAFF TRAINED UNDER THIS SUBSECTION IDENTIFY A LOCATION THAT MAY QUALIFY AS A VERNAL POOL, THE DEPARTMENT OF THE ENVIRONMENT SHALL NOTIFY THE DEPARTMENT OF THE LOCATION FOR POSSIBLE INCLUSION ON THE LIST ESTABLISHED UNDER SUBSECTION (B) OF THIS SECTION.

(4) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE AUTHORITY OF THE DEPARTMENT OF THE ENVIRONMENT TO REGULATE VERNAL POOLS THAT MEET THE DEFINITION OF NONTIDAL WETLANDS UNDER TITLE 5, SUBTITLE 9 OF THE ENVIRONMENT ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2026.

Approved by the Governor, April 28, 2026.