

Department of Legislative Services
 Maryland General Assembly
 2026 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 523 (Senator M. Washington)
 Education, Energy, and the Environment

Department of the Environment - Water Resources - Protection of Vernal Pools
(Vernal Pool Wetlands Protection Act of 2026)

This bill requires the Maryland Department of the Environment (MDE) to adopt regulations to (1) establish and maintain a list of “qualified vernal pools” in the State and (2) establish protections related to the preservation of qualified vernal pools – and buffers around qualified vernal pools – in the State. The regulations also must 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) take specified actions. The bill establishes requirements for MDE in developing the regulations and requires MDE, in issuing a permit for a regulated activity, to provide protections for any qualified vernal pools that are listed by MDE in accordance with the bill and located within the geographic area covered by the permit.

Fiscal Summary

State Effect: General fund expenditures for MDE increase by \$1.1 million in FY 2027; future years reflect annualization, inflation, and ongoing costs. State expenditures (multiple funds) for various State agencies (as landowners) may increase beginning as early as FY 2027 due to the new regulatory program. Special fund revenues from compensatory payments may increase beginning as early as FY 2027, as discussed below.

(in dollars)	FY 2027	FY 2028	FY 2029	FY 2030	FY 2031
SF Revenue	-	-	-	-	-
GF Expenditure	\$1,092,900	\$1,175,000	\$1,222,500	\$1,276,800	\$1,331,400
GF/SF/FF Exp.	-	-	-	-	-
Net Effect	(-)	(-)	(-)	(-)	(-)

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

Local Effect: Local expenditures may increase beginning as early as FY 2027. Local revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Required Regulations

The regulations must require that a person conducting a regulated activity that results in impairments or losses to a qualified vernal pool or a buffer around a qualified vernal pool must (1) avoid impairments and losses to the maximum extent practicable; (2) minimize impairments and losses to the maximum extent practicable where avoidance is not possible; and (3) provide compensation or other mitigation as determined by MDE for any remaining unavoidable impairments and losses.

The regulations only apply to qualified vernal pools that have been identified or documented by MDE, a person using MDE-approved identification methods (as specified), or a certified wetland delineator during a site assessment conducted before the issuance of a permit for a regulated activity.

In developing the required regulations, MDE must, to the extent practicable, ensure that (1) the buffer specifications for qualified vernal pools be consistent with the buffer specifications for nontidal wetlands under existing statute, and (2) 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 existing statute.

In addition, MDE may (1) use mapping or other scientific information to identify additional qualified vernal pools for inclusion on its list and (2) consult with any stakeholder group, as appropriate, including the Department of Natural Resources (DNR) and the University of Maryland.

Key Definitions

“Qualified vernal pool” means a confined depression that (1) has surface water for part of the year; (2) provides a persistent or breeding habitat for obligate species, including native amphibians and invertebrates; and (3) 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.

“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. The term does not include an agricultural activity or forestry activity as defined in the Environment Article.

Current Law: 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.

State Regulation of Nontidal Wetlands

In General: A person must obtain a permit from MDE before conducting a regulated activity in nontidal wetlands or within a nontidal wetland buffer or expanded buffer. During the permit application review process, MDE works with an applicant to prevent wetland loss by requiring an evaluation of project designs that will avoid wetland impacts. Based on this evaluation of alternatives, if MDE finds that impacts are unavoidable, the applicant must utilize the project design that will minimize the impacts and provide appropriate mitigation for those impacts.

Mitigation means that an applicant must replace lost wetland acreage and function. Mitigation can be accomplished by creating new wetlands, restoring relic wetlands, enhancing degraded wetlands, purchasing credits from a mitigation bank, or by completing a combination of these options. MDE may also accept monetary compensation if it is determined that other mitigation options for nontidal wetland losses are not feasible. Any monetary compensation is paid into the Nontidal Wetland Compensation Fund.

Specified agricultural and forestry activities are exempt from nontidal wetlands approval and mitigation requirements. Further, activities in isolated nontidal wetlands that are less than one acre and have no significant plant or wildlife value are exempt from the nontidal wetlands permit requirements.

Buffer Requirements: The standard buffer for nontidal wetlands is a regulated area, 25 feet in width, surrounding a nontidal wetland, measured from the outer edge of the nontidal wetland. MDE is required to designate by regulation nontidal wetlands for which the buffer is to be expanded beyond 25 feet (but not more than 100 feet) to assure adequate protections for the nontidal wetland and associated aquatic ecosystem.

Key Definitions: A “regulated activity” means any of the following activities in a nontidal wetland or within a 25-foot buffer of the nontidal wetland: (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 nontidal wetland. Agricultural and forestry activities are excluded from the term.

“Agricultural activity” means aquaculture and farming activities and includes (1) plowing, tillage, cropping, seeding, cultivating, and harvesting for the production of food and fiber products, and (2) the grazing of livestock. “Forestry activity” means planting, cultivating, thinning, harvesting, or any other activity undertaken to use forest resources or to improve their quality or productivity.

State Fiscal Effect:

Maryland Department of the Environment

Administrative Costs: MDE general fund expenditures increase by \$1,092,878 in fiscal 2027, which accounts for the bill’s October 1, 2026 effective date. This estimate reflects the cost of hiring 12 employees (five natural resource planners, three conservation associates, one assistant Attorney General, one program manager, one regulatory and compliance engineer, and one environmental compliance specialist) to (1) conduct the work necessary (which is likely to include surveys, ground-work, and mapping throughout the State) to establish and maintain a list of qualified vernal pools in the State; (2) establish protections for qualified vernal pools and their buffers; (3) develop regulations and implement a regulatory program to preserve and protect qualified vernal pools and buffers around qualified vernal pools in the State; (4) develop and implement a permitting process for regulated activities that affect qualified vernal pools and their buffers; and (5) establish and administer required mitigation and compensation provisions for unavoidable impairments and losses to qualified vernal pools and their buffers. It includes salaries, fringe benefits, one-time start-up costs (including the purchase of three vehicles), and

ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- MDE staff in its Wetlands and Waterways Program are fully subscribed and do not have the necessary expertise to develop effective regulations and a permitting process specific to qualified vernal pools and their buffers;
- qualified vernal pools are explicitly *not* regulated under existing nontidal wetland laws and are not subject to existing nontidal wetland permits – thus, MDE must develop a new permitting program for regulated activity affecting qualified vernal pools and their buffers in the State;
- the bill is silent regarding permit fees for regulated activities in qualified vernal pools and their buffers and, as such, general funds are needed; and
- MDE anticipates a substantial amount of ongoing work, as there may be thousands of qualified vernal pools in Maryland.

Positions	12.0
Salaries and Fringe Benefits	\$862,040
Purchase of Vehicles	73,779
Other Operating Expenses	<u>157,059</u>
Total FY 2027 MDE Expenditures	\$1,092,878

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

Special Fund Revenues: The bill specifies that the compensation and mitigation requirements established by MDE for impairments and losses within qualified vernal pools must be consistent with existing compensation and mitigation requirements for impairments and losses within nontidal wetlands. Those existing provisions require monetary compensation paid by an applicant instead of engaging in the creation, restoration, or enhancement of a nontidal wetland to be deposited into the Nontidal Wetlands Compensation Fund. Assuming compensatory payments for unavoidable impairments or losses to qualified vernal pools are also paid into that special fund, consistent with § 5-909 of the Environment Article, special fund revenues for the fund may increase beginning as early as fiscal 2027.

Other State Agencies

As noted above, the permitting process for regulated activity in qualified vernal pools must provide compensation or other mitigation for any unavoidable impairments and losses to qualified vernal pools. Further, the regulations adopted by MDE must establish protections related to the preservation of qualified vernal pools and for buffers around qualified vernal

pools in the State. Many such qualified vernal pools and buffers are likely to exist on State-owned land. Therefore, State agencies may be affected by the regulations and permitting process established by MDE under the bill.

Although the specific content of the regulations and permitting requirements established pursuant to the bill cannot be predicted in advance, for any affected State agencies, State expenditures (multiple fund types) may increase beginning as early as fiscal 2027 to conduct any required mitigation or provide compensation for projects resulting in unavoidable impairments and losses to qualified vernal pools. Management activities surrounding vernal pools may also be affected, as the regulations and permitting requirements could restrict development and/or prohibit standard upkeep processes (such as mowing and tree removal) in vernal pools and their buffers. Without actual experience under the bill, and until the required regulations are adopted and permitting requirements are in place, the magnitude of any such impacts cannot be predicted.

To the extent State capital projects are affected, there is no effect on total capital spending, which is established annually by the Governor and the General Assembly through the capital budget process; however, any increase in costs for affected projects reduces funding available for other capital projects.

It is assumed that DNR and the University System of Maryland can consult with MDE as needed using existing budgeted resources.

Local Expenditures: Similar to the effect discussed above for State agencies, local expenditures may increase beginning as early as fiscal 2027, and operations for local governments that own land containing qualified vernal pools may be affected by the regulations and permitting process established pursuant to the bill. Without actual experience under the bill, and until the required regulations are adopted and the permitting requirements are in place, the magnitude of any such impacts cannot be predicted.

Small Business Effect: Similar to the effect described above for State agencies and local governments, small businesses that own land containing qualified vernal pools may be affected beginning as early as fiscal 2027. Without actual experience under the bill, and until the required regulations are adopted and the permitting requirements are in place, the magnitude of any such impacts cannot be predicted.

Small businesses that provide environmental consulting, land surveying, biological assessment services, and mitigation services may experience an increase in the demand for their services.

Additional Comments: MDE and DNR jointly developed a definition of “vernal pool” in response to a requirement in the *2024 Joint Chairmen’s Report* that MDE confer with DNR

and other stakeholders to clarify the criteria for vernal pools, which should have protective status. That definition – which is similar to, but not the same as, the definition established by the bill – as well as MDE’s response, is available [here](#). According to MDE, the bill’s definition differs meaningfully from what was recommended by MDE and DNR. DNR also notes that it has been working with the U.S. Department of Agriculture’s Natural Resources Conservation Service to map vernal pools in Maryland that are at least one and a half acres in size.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 878 of 2025 and HB 729 of 2024.

Designated Cross File: HB 701 (Delegate Hill, *et al.*) - Environment and Transportation.

Information Source(s): Harford, Montgomery, and Wicomico counties; City of Frostburg; Baltimore City Community College; University System of Maryland; Morgan State University; Interagency Commission on School Construction; Maryland Department of the Environment; Department of General Services; Department of Natural Resources; Board of Public Works; Maryland Department of Transportation; Maryland Stadium Authority; Department of Legislative Services

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