**HB 1465**

# Department of Legislative Services

Maryland General Assembly
2026 Session

## FISCAL AND POLICY NOTE
**First Reader**

House Bill 1465 (Delegate Terrasa, *et al.*)
Environment and Transportation

**Environment - Stream and Floodplain Restoration Projects - Requirements and Limitations**

This bill alters provisions regarding the State's regulation of stormwater management by, among other things, requiring the Maryland Department of the Environment (MDE), in carrying out its duties under the Stormwater Management Act, to (1) prioritize stormwater management practices that capture stormwater runoff at or near the source, as specified, and (2) minimize disturbance to existing streams, floodplains, and riparian and upland forests. The bill also (1) establishes restrictions on the use of stream restoration projects to satisfy compliance with municipal separate storm sewer system (MS4) permits, total maximum daily load (TMDL) requirements, and compensatory mitigation requirements; (2) alters the required content of stormwater management plans and the approval of such plans by local approval authorities; and (3) alters the criteria MDE must use in evaluating stream restoration projects prior to authorizing such projects.

## Fiscal Summary

**State Effect:** General fund expenditures for MDE increase significantly, potentially by more than $1.0 million annually, beginning in FY 2027. State expenditures (multiple fund types) for State agencies undertaking affected projects and conducting affected compliance activities increase significantly beginning in FY 2027; to the extent any portion of such costs are funded in the capital budget, total capital spending is not affected, but less funding is available for other capital projects. State revenues are not anticipated to be affected.

**Local Effect:** Potential significant increase in expenditures for local governments undertaking affected projects and conducting affected compliance activities. Local revenues are not affected.

**Small Business Effect:** Meaningful.

## Analysis

**Bill Summary:**

*Alterations to the Maryland Stormwater Management Act*

*Duties of the Maryland Department of the Environment:* The bill specifies that in carrying out its duties under the Stormwater Management Act, which includes adopting rules and regulations that establish criteria and procedures for stormwater management in Maryland, MDE must prioritize stormwater management practices that (1) capture stormwater runoff at or near the source in order to promote infiltration and to delay the release of runoff to stream channels and (2) minimize disturbance to existing streams, floodplains, and riparian and upland forests.

Further, except as authorized under Title 18 of the Environment Article (which governs stream and floodplain restoration projects), as altered by the bill and discussed below, MDE may not approve the use of a stream restoration project that involves in-stream construction using heavy equipment to mechanically alter the dimensions, pattern, or profile of a stream, including activities that relocate channel alignment, regrade stream banks, or change streambed elevation through excavation or filling, for compliance with (1) an MS4 permit; (2) a TMDL requirement; or (3) a compensatory mitigation requirement. Additionally, completion of the construction of a stream restoration project may not by itself be used as the basis for awarding any pollution reduction or mitigation credit.

*Stormwater Management Plans:* A stormwater management plan submitted for approval to the local approval authority for a project that involves in-stream construction or the mechanical alteration of the dimensions, pattern, or profile of a stream must include an alternative analysis that (1) establishes the specific objectives of the proposed project; (2) identifies a reasonable range of "non-stream-disturbing stormwater management practices" capable of achieving the project objectives; and (3) evaluates the benefits and adverse impact of each identified alternative stormwater management practice.

A county, municipality, or soil conservation district may not approve a stormwater management plan that relies primarily on a project involving in-stream construction of the mechanical alteration of the dimensions, pattern, or profile of a stream unless the plan demonstrates that (1) alternative non-stream-disturbing stormwater management practices were evaluated in accordance with the above requirements and (2) the proposed project is necessary to address documented public safety or infrastructure challenges that cannot be reasonably addressed through non-stream-disturbing practices.

"Non-stream-disturbing stormwater management practice" means an upland or out-of-stream practice that captures and manages stormwater runoff at or near the source.

*Alterations to Stream and Floodplain Restoration Project Requirements*

Current law requires MDE to assess several factors and information prior to authorizing a stream and floodplain restoration project. The bill alters an existing requirement that MDE assess documentation of community notifications conducted by the applicant prior to submitting the application; MDE must also assess documentation of *presentations* conducted by the project applicant. The assessment for the required documentation must be for completion and consistency with the technical materials submitted to MDE. The bill makes conforming changes to MDE's required assessment review and requires MDE's review to also include any other factors MDE considers relevant.

The bill also requires MDE to (1) assess whether the proposed project is necessary to address documented stream degradation that cannot reasonably be addressed through non-stream-disturbing stormwater or watershed management practices and (2) prioritize the preservation and nondestructive management of streams and floodplains that retain intact ecological function, including mature riparian and upland forests.

The authorization of a stream or floodplain restoration project does not, by itself, qualify the project for use as (1) compensatory mitigation for construction impacts on wetlands, streams, forests, or other natural resources or (2) compliance with an MS4 permit or TMDL requirement. Moreover, MDE may only approve a stream or floodplain restoration for such a use if it determines that (1) non-stream-disturbing alternatives were evaluated and found to be "infeasible" and (2) the project produces measurable functional lift as demonstrated through postconstruction monitoring, as specified.

"Infeasible" means technically impracticable due to physical, engineering, or site-specific constraints; the term does not include consideration of costs, property ownership, or administrative convenience.

**Current Law:**

*State Stormwater Management Rules and Regulations*

The intent of the Stormwater Management Act is to reduce, as much as possible, the adverse effects of stormwater runoff. To achieve that goal, pursuant to § 4-203 of the Environment Article, MDE is in charge of implementing the Stormwater Management Act and is required to adopt rules and regulations that establish criteria and procedures for stormwater management in Maryland. In implementing the Act, MDE must consult with the Department of Natural Resources (DNR) from time to time, including during the adoption of the regulations. Statute outlines several requirements for the regulations. MDE must review and update the regulations at least once every five years. In reviewing and updating the regulations, MDE must (1) at a minimum, revise water quality and water

quantity control standards using the most recent precipitation data available and (2) as necessary, update and revise the regulations to meet the statutory requirements.

Additionally, each county and municipality must have an ordinance implementing a stormwater management program that is consistent with flood management plans and that meets certain minimum requirements. Each county or municipality may provide by ordinance for the review and approval of stormwater management plans by the local soil conservation district. Each governing body of a county or municipality may also adopt a system of charges to fund the implementation of their stormwater management programs, as specified.

MDE must provide technical assistance, training, research, and coordination in stormwater management technology to local governments. MDE is also required to inspect and review local stormwater management programs at least once every three years.

*Stormwater Management Plans Required*

Generally, a person may not develop any land for residential, commercial, industrial, or institutional use unless the person has submitted a stormwater management plan and has received approval of the plan from the applicable local approval authority. State and federal agencies are required to submit a stormwater management plan and obtain State approval from MDE prior to undertaking specified construction activity.

*Stream and Floodplain Restoration Projects*

Generally, an applicant seeking an authorization for a stream and floodplain restoration project in the State is subject to specified requirements. 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.

*Total Maximum Daily Load and Municipal Separate Storm Sewer System Permits*

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 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 (SHA) holds a Phase I MS4 permit.

**State/Local Fiscal Effect:**

*Maryland Department of the Environment*

MDE advises that general fund expenditures increase by approximately $1.3 million in fiscal 2027 – with future year costs ranging from $922,100 in fiscal 2028 to approximately $1.1 million in fiscal 2031 – to hire nine employees (three regulatory and compliance

engineers, three natural resource planners, two program managers, and one licensed forester) across several of its programs to, among other things, (1) update regulations and conduct necessary stakeholder outreach and guidance; (2) conduct expanded review of proposed stream and floodplain restoration projects; (3) assess functional uplift monitoring information and post-project completion monitoring for stream restoration projects for a longer period of time; (4) handle increased complexity in stormwater plan review; and (5) determine which projects are eligible for TMDL credit, revise TMDL tracking models, and conduct related tasks. MDE's fiscal 2027 estimate also includes $500,000 in contractual costs to incorporate the bill's changes into the State's stormwater management program.

The Department of Legislative Services (DLS) concurs that the bill establishes substantial new responsibilities for MDE and that general fund expenditures increase significantly for MDE to hire staff and for contractual support. However, without actual experience under the bill, a reliable estimate of the increase in costs cannot be made at this time. DLS anticipates, however, that general fund expenditures increase significantly, potentially by more than $1.0 million annually.

*Department of Natural Resources*

DNR anticipates that existing staff need to be redirected from existing activities in order to consult with MDE regarding the adoption of regulations under the State's stormwater management program, as current law requires DNR to do so.

In addition, although overall funding for DNR's efforts under the Whole Watershed Restoration Partnership, the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund, and other programs is not affected by the bill, DNR notes that because the bill likely results in increased project costs, fewer projects can be funded under the programs.

*Impact on the Regulated Community*

The bill has significant, cascading impacts on a variety of State agencies and local governments, with particularly significant impacts on MS4 permit holders. Although not all of the bill's impacts can be reliably predicted at this time, permitting and compliance costs for affected entities likely increase, potentially significantly for some, beginning in fiscal 2027 due to an increase in permit review times, costs to implement alternative mitigation projects, and costs associated with increased stream restoration monitoring. A limited survey of State agencies and local governments gleaned the following information regarding implementation costs that are likely incurred under the bill:

- A preliminary analysis by the Maryland Department of Transportation (MDOT) estimates additional costs totaling $160.0 million annually beginning in fiscal 2027

for SHA to design, construct, and implement alternative best practices to mitigate for impervious acres treated under SHA's MS4 permit. Because MDOT's capital program is fully subscribed, MDOT must redirect significant funds (likely tens of millions of dollars annually) from other projects in its capital program, likely resulting in the delay or cancellation of various other projects.

- The Maryland Aviation Administration estimates that Transportation Trust Fund expenditures increase by a total of $6.2 million from fiscal 2027 through fiscal 2031 to meet stormwater discharge permit conditions for a planned project.
- MDE anticipates that local governments undertaking stream and floodplain restoration projects may face increased local costs due (1) to the expanded upland alternative assessments that must be conducted under the bill and (2) longer monitoring requirements. Additionally, per-acre restoration costs likely increase for local MS4 jurisdictions to comply with permit terms.

To the extent any portion of the increased costs for any affected State projects is funded through the capital budget, 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.

**Small Business Effect:** Similar to the effect on State and local permittees described above, the bill may negatively affect small businesses required to do stream mitigation due to an increase in permit review times, costs to implement mitigation projects, and costs associated with increased stream restoration monitoring. Additionally, small businesses that construct stream restoration projects may see a decrease in the demand for their services and likely encounter increased construction costs. Small businesses under "pay for performance" contracts to achieve impervious surface restoration credits may be negatively affected due to an increase in the costs per impervious surface restoration credit.

On the other hand, small businesses that conduct stream monitoring may see an increase in the demand for their services. Similarly, small businesses that perform compliant stream restoration services or design and implement other best management practices may see an increase in the demand for their services.

## Additional Information

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

**Designated Cross File:** SB 688 (Senator M. Washington) - Education, Energy, and the Environment.

**Information Source(s):** Maryland Department of the Environment; Department of Natural Resources; Maryland Department of Transportation; Maryland Department of Agriculture; Maryland Department of Emergency Management; Department of General Services; University System of Maryland; Morgan State University; Interagency Commission on School Construction; Maryland Stadium Authority; Talbot and Wicomico counties; Maryland Association of Counties; Maryland Association of County Health Officers; Department of Legislative Services

**Fiscal Note History:** First Reader - March 1, 2026
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