The Maryland Department of the Environment
Secretary Serena McIlwain

Senate Bill 688
Environment - Stream and Floodplain Restoration Projects - Requirements and Limitations

Position: Letter of Concern
Committee: Education, Energy, and the Environment
Date: March 3, 2026
From: Alex Butler, Deputy Director of Government Relations

The Maryland Department of the Environment (MDE) offers the following **LETTER OF CONCERN** for SB 688.

Bill Summary

Senate Bill 688 proposes major changes to Maryland's stream restoration program. Broadly, the bill would: (1) require MDE to prioritize upland practices in implementing stormwater management (SWM) programs; (2) impose significant limitations on the use of stream and floodplain restoration projects for compensatory mitigation, Municipal Separate Storm Sewer System (MS4) permit credits, or Total Maximum Daily Load (TMDL) credits; and (3) establish additional monitoring requirements for stream and floodplain restoration projects seeking mitigation, MS4, or TMDL credits.

For mitigation, MS4, or TMDL credits, the bill would limit the use of the Chesapeake Bay Model and instead require at least 5 years of post-construction monitoring to verify the project's "functional lift" as demonstrated by biological, habitat, or ecological benefits.

Key Points

MDE offers the following comments regarding SB 688.

1. Chesapeake Bay TMDL Impacts: Credits for TMDLs and MS4s are determined by protocols approved by the Chesapeake Bay Program (CBP) in order to align MDE's crediting process with the Chesapeake Bay Phase 6 Model. MDE utilizes the Model to determine progress towards its Watershed Implementation Plan goals and the overall TMDL allocations for the State. By altering the credit for stream restoration, progress toward meeting TMDL goals will also be impacted. The stormwater sector makes up a significant portion of Bay TMDL's nutrient and sediment allocations. If the State can no longer rely on stream restoration as a significant method of impervious surface restoration, it will likely have to revise its strategy to meet the Bay TMDL's targeted pollution reductions in the stormwater sector.

2. MS4 Impacts: Any changes to impervious surface restoration accounting and MS4 credits will require an update to the *2021 Accounting for Stormwater Wasteload Allocations and Impervious Acres Treated*

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Guidance for National Pollutant Discharge Elimination System Stormwater Permits (2021 Accounting Document). There are currently 11 issued MS4 Phase I permits that reference the 2021 Accounting Document. Requiring a permitted jurisdiction to use a modified 2021 Accounting Document will require a major permit modification for all 11 permits, which must be approved by the United States Environmental Protection Agency (EPA) and go through the State's required public notice process.

For currently issued MS4 permits, including the 11 Phase I permits, many local jurisdictions have made financial or legal commitments towards stream restoration projects that are likely no longer eligible for credit after the bill's October 1, 2026 effective date. Finally, given the bill's 5-year monitoring and functional lift requirements, it is doubtful that any local jurisdiction could qualify for MS4 credits under their current MS4 permit's 6-year term. This will jeopardize their compliance with their MS4 permits.

3. SWM Impacts: The bill's upland SWM provisions create a new statutory section within SWM law that may conflict with or duplicate existing statutory and regulatory provisions. Several of the bill's requirements mirror or potentially contradict existing provisions requiring Environmental Site Design (ESD) to the maximum extent practicable (MEP). The ESD to the MEP standard is already clearly defined and implemented through existing regulations. Adding parallel statutory language risks creating confusion for regulated entities and reviewing authorities and complicates consistent statewide implementation.

4. Functional Lift Monitoring: Currently stream and floodplain restoration projects are monitored for a period of 5 years for stream stability, stream and floodplain function, and vegetation viability. The functional lift improvements required under SB 688 can take much longer to be observed (possibly 10 years or longer) and may not be achievable under certain conditions, even with restorative actions or uplands alternatives.

5. Fiscal and Permit Impacts: Per the bill's fiscal note, SB 688 would mandate MDE to perform additional new duties, including: (1) in-stream construction assessments; (2) functional lift assessments; (3) uplands SWM prioritization; and (4) review of project community notifications and presentations. This will result in the need for additional positions and expenditures. Stream restoration projects are currently exempt from permit fees and the bill does not authorize MDE to charge a fee for any of these new functions. Given the complex and technical nature of these functions, permit reviews and issuances will take longer.

6. Whole Watershed Act Implementation: The Maryland General Assembly passed the Whole Watershed Act (HB 1165/SB 969) in 2024, which made substantial changes to the State's stream restoration process. MDE, local governments, and stream restoration practitioners are currently implementing that Act's requirements. The new stream restoration requirements under SB 688 would significantly disrupt or even negate those implementation efforts.

7. ACOE Wetlands Mitigation Requirements: The United States Army Corps of Engineers (ACOE) generally does not allow upland practices for purposes of wetlands mitigation because of their indirect relationship to the project subject to mitigation. SB 688 will generate conflict where the ACOE only authorizes in-stream projects for wetlands mitigation but MDE can only authorize uplands practices.

MDE appreciates the opportunity to offer this **LETTER OF CONCERN** for SB 688 and is available for questions.