

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 942 (Delegate Terrasa, *et al.*)
Environment and Transportation

Wetlands and Waterways Program - Authorizations for Stream Restoration
Projects

This bill requires the Maryland Department of the Environment (MDE), by October 1, 2024, to revise project eligibility criteria, standards for review, and requirements for applicants for wetlands and waterways authorizations for stream restoration projects associated with achieving local Municipal Separate Storm Sewer System (MS4) permit targets, Chesapeake Bay Total Maximum Daily Load (TMDL) goals, mitigation goals, or other restoration goals. Before MDE may issue a wetlands and waterways authorization for a stream restoration project associated with achieving those targets and goals, MDE must provide public notice of the application for the authorization and hold a public information meeting on the application. MDE must also (1) incentivize the use of alternatives to stream restorations that are less destructive to the environment; (2) require stream restoration projects to meet certain requirements; and (3) monitor and evaluate approved projects. **The bill takes effect July 1, 2023.**

Fiscal Summary

State Effect: State expenditures (multiple fund types) for State agencies undertaking affected projects increase significantly, potentially by hundreds of millions of dollars annually in total, beginning in FY 2024. General fund expenditures for MDE increase significantly, potentially by more than \$1.0 million annually, beginning in FY 2024. State revenues are not affected.

Local Effect: Potential significant increase in expenditures for local governments undertaking affected projects. Local revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The criteria, standards for review, and requirements must be based on the best available science on several specified topics, including stream morphology, geology, watershed management, and wildlife corridors.

MDE must incentivize the use of alternatives to stream restorations that are less destructive to the environment, as specified, and require stream restoration projects to (1) be located in the same watershed as the wetland or stream that mitigation is required (for a project that is undertaken expressly for the purpose of providing credits for wetland or stream impacts or losses resulting from future activities); (2) require net biological uplift of instream biology as a stated goal; and (3) minimize tree removal and protect remaining trees, as specified. MDE must also monitor and evaluate approved projects for 10 years after project completion to ensure stated goals are achieved before any relevant mitigation or pollution reduction credits are issued for the project.

Before MDE may issue a wetlands and waterways authorization for a stream restoration project associated with achieving local MS4 permit targets, TMDL goals, mitigation goals, or other restoration goals, MDE must provide public notice of the application for the wetlands and waterways authorization, including, among other things, information on the geographic extent of the stream restoration project and the estimated amount of tree removal associated with the project. MDE must also hold a public information meeting on the application before issuing such an authorization.

Current Law:

Approvals Generally Required for Projects in Wetlands

Wetlands in the State are protected, and the Wetlands and Waterways Program within MDE administers a statewide program for the management, conservation, and protection of Maryland's tidal wetlands and nontidal wetlands and waterways. Generally, a person must obtain a permit or license before working in wetlands in the State. Regulations define the criteria for evaluating tidal wetlands licenses and permits, as well as the property information that permit and license applicants must provide as part of the application process. The Board of Public Works (BPW) has the authority to determine whether to issue a license to dredge, fill, or alter State wetlands; MDE must assist BPW in making such a determination and, in some cases, BPW delegates the authority to issue such a license to MDE. Authorizations granted to work in privately owned wetlands are issued by MDE.

Wetlands and Waterways Program Fees

Application fees for wetlands and waterways authorizations range from \$250 to \$7,500 (multiplied by the impact area in acres). However, there are several fee exemptions, including with respect to applications for (1) stream restoration, vegetative shoreline stabilization, wetland creation, or another project in which the primary effect is to enhance the State's wetland or water resources; (2) performance of agricultural best management practices contained in an approved soil conservation and water quality plan; and (3) performance of forestry best management practices contained in an approved erosion and sediment control plan, as specified. Application fees are paid into the Wetlands and Waterways Program Fund.

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 the National Pollutant Discharge Elimination System (NPDES), which is a component of CWA. Among other things, NPDES regulates stormwater discharges from MS4s. 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 \$2.3 million in fiscal 2024, and by more than \$1.8 million annually thereafter, to hire 20 employees (12 natural resources planners, 4 regulatory and compliance engineers, 2 environmental compliance specialists, 1 regulatory and compliance engineer supervisor, and 1 forester) to (1) revise its criteria, and standards for review, and requirements for applicants for wetlands and waterways authorizations for affected stream restoration projects; (2) ensure affected applications meet the revised standards, criteria, and requirements; (3) prioritize alternatives to stream restoration projects through credit allotment; (4) provide public notice and hold public informational meetings; and (5) conduct site visits and monitor projects post-construction. For fiscal 2024, MDE's estimate also includes contractual costs to upgrade an existing database and conduct employee training and costs to purchase vehicles and supplies.

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, upgrade its database, and purchase vehicles and supplies. However, without actual experience under the bill, a reliable estimate of the increase in costs – primarily costs to hire staff – cannot be made at this time. DLS anticipates, however, that general fund expenditures increase significantly, potentially by more than \$1.0 million annually, beginning in fiscal 2024.

Because stream restoration projects are statutorily exempted from wetlands and waterways permit fees, State revenues are not affected.

Impact on Affected Permittees

Permitting and compliance costs for affected entities increase, potentially significantly for some, beginning in fiscal 2024 due to an increase in permit review times, costs to implement mitigation projects, and costs associated with increasing stream restoration monitoring. Affected entities include State agencies and local governments. The impacts are particularly meaningful for the MS4 jurisdictions. A limited survey of State agencies and local governments gleaned the following information regarding implementation costs that are likely incurred under the bill:

- The Maryland Department of Transportation estimates that Transportation Trust Fund expenditures increase by up to \$180.0 million annually beginning in fiscal 2024 for SHA to construct and implement alternative best management practices (BMPs) to mitigate for impervious acres treated under its MS4 permit and to monitor stream restoration sites as required by the bill. The Maryland Transit Administration also anticipates an increase in costs for stream restoration monitoring.
- The Maryland Transportation Authority (MDTA) estimates that its nonbudgeted expenditures increase beginning in fiscal 2024 to incorporate additional monitoring into several stream restoration projects that are in the planning and design phase. MDTA estimates that stream restoration monitoring costs range from \$50,000 to \$150,000 annually per project.
- Charles County advises that although it cannot provide a reliable estimate of the bill's fiscal impact, the county has approximately \$9.2 million worth of planned stream restoration projects related to its MS4 permit. Under the bill, the county needs to shift its compliance strategy; the bill's impact on county expenditures will depend on the costs of alternative projects.

Small Business: 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 impacted due to an increase in the costs per impervious surface restoration credit.

On the other hand, small businesses that conduct stream monitoring, assessments, sampling, and remedial measures may see an increase in the demand for their services. Similarly, small businesses that perform compliant stream restoration services or build other BMPs may see an increase in the demand for their services.

Additional Information

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

Designated Cross File: None.

Information Source(s): Charles and Garrett counties; City of Laurel; Town of La Plata; Maryland Department of the Environment; Board of Public Works; Maryland Department of Transportation; Department of Legislative Services

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