

Department of Planning and Budget 2023 Fiscal Impact Statement

1. **Bill Number:** HB1628

House of Origin Introduced Substitute Engrossed

Second House In Committee Substitute Enrolled

2. **Patron:** Coyner

3. **Committee:** Appropriations

4. **Title:** Wetland and Stream Replacement Fund; availability of credits; use of funds.

5. **Summary:** Permits the Department of Environmental Quality (DEQ) to use the Wetland and Stream Replacement Fund (the Fund) for purposes other than the purchase of mitigation bank credits, as set out in the bill, if the Department makes a determination within two years after the collection of moneys for a specific impact that mitigation bank credits for such impact will not be available within three years. Currently, the Department can use such funds for other specified purposes if after three years no mitigation bank credits are available for purchase.

6. **Budget Amendment Necessary:** Yes, Item 378, HB1400/SB800, as introduced

7. **Fiscal Impact Estimates:** Preliminary. See item 8.

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2024	\$450,000	0.0	General fund
2025	\$153,750	0.0	General fund

8. **Fiscal Implications:** It is anticipated that this bill will have a general fund expenditure impact on DEQ in FY 2024 and FY 2025, to operationalize the Fund and after FY 2025, it is anticipated that the department will be able to recover any ongoing costs from the Fund. According to DEQ, the Fund was established but never operationalized, as the U.S. Army Corps of Engineers (USACE) previously indicated that the state-law imposed restraints on the Fund are inconsistent with the federal Mitigation Rule. DEQ states that the intent of this bill is to align state-law imposed restraints on the Fund with the federal Mitigation Rule. However, before the Fund can serve as an option for entities obtaining permits that authorize impacts to wetlands that require compensation, the Fund must be approved by USACE. The fiscal impact identified in this statement describes resources needed for DEQ to conduct that approval process and operationalize the Fund.

For alignment between the Fund and USACE guidelines to be confirmed, DEQ anticipates that \$450,000 from the general fund in FY 2024 will be needed for a third-party legal team,

along with an environmental consultant, qualified to work in Virginia on Section 404 of the Clean Water Act, Section 401 of the Clean Water Act, and Virginia Water Protection (VWP) Permit Program that have detailed knowledge of compensatory mitigation requirements. This amount also includes the cost of developing a market information system to project future shortages to be targeted by the Fund, as well as the development of fiscal and procurement procedures. A budget amendment for \$450,000, from the general fund, is needed in FY 2024.

Additionally, to establish and administer the Fund, DEQ will need an Environmental Manager with significant experience in Section 404 of the Clean Water Act, Section 401 of the Clean Water Act, and VWP Permit Program, as well as knowledge of compensation requirements, project management, and contract and procurement procedures beginning in FY 2025. DEQ recommends that salary levels be determined at the average of a Pay Band 5 plus 25 percent. For this purpose, a budget amendment for \$153,750 from the general fund will be needed in FY 2025. Once the Fund is established and revenues are received, moneys in the Fund may be sufficient to cover the cost of this position, as well as other administration costs.

According to DEQ, projects that frequently require compensation for the loss of wetland and stream functions include Virginia Department of Transportation (VDOT) highway projects, energy development projects, economic development projects, colleges and universities constructing new facilities, local governments (e.g., school construction projects), residential developments, commercial real estate developments, and industrial developments (e.g., data centers). Information on the potential fiscal impact from this bill on VDOT is not available at this time and is likely indeterminate.

DEQ cannot determine the revenue impact that may result from this bill, or the disbursements that may be made from the Fund once it is cleared by USACE to receive revenues. Moneys that would be deposited into the Fund, once established after approval by the USACE, would come from the wetland impact compensation component of specific (VWP) permits. Compensation is calculated to be sufficient to ensure no net loss of existing wetland acreage. Once received, funds are to be used to purchase mitigation bank credits, or, pursuant to this bill, for an expanded scope of purposes if within two years after collection DEQ determines that mitigation bank credits will not be available within the next year

9. Specific Agency or Political Subdivisions Affected: Department of Environmental Quality; State Water Control Board; state agencies that apply for a Virginia Water Permit; localities

10. Technical Amendment Necessary: No.

11. Other Comments: None.