

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 903 (Delegate Fraser-Hidalgo)  
Environment and Transportation

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Watershed Protection and Restoration Programs - Impervious Surface -  
Definition

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This bill establishes that “impervious surface” does not include ballasted railroad tracks for purposes of provisions of State law relating to stormwater management.

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Fiscal Summary

**State Effect:** Transportation Trust Fund (TTF) expenditures may decrease, as discussed below. State revenues are not affected.

**Local Effect:** Municipal and county revenues from stormwater fees and charges decrease in any local jurisdiction that imposes fees based on the amount of impervious surface and has ballasted railroad tracks located within its jurisdiction. Local expenditures are not directly affected.

**Small Business Effect:** None.

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Analysis

**Current Law:** “Impervious surface” means a surface that does not allow stormwater to infiltrate into the ground, and includes rooftops, driveways, sidewalks, or pavement.

*Authority to Adopt a System of Charges to Fund Implementation of Stormwater Management Programs under § 4-204 of the Environment Article*

The General Assembly first enacted the Stormwater Management Act in 1982 and has amended it several times since. Stormwater management initially focused on urban flood

prevention, later evolved into resource management, and, more recently, has become an environmental and regulatory function. According to the Office of the Attorney General, under the Stormwater Management Act, the legislature found that the management of stormwater runoff is necessary to reduce stream channel erosion, pollution, siltation and sedimentation, and local flooding in order to protect the State's water and land resources. The intent of the Stormwater Management Act is to reduce, as much as possible, the adverse effects of stormwater runoff. To achieve that goal, the Act requires each county and municipality to have an ordinance implementing a stormwater management program consistent with flood management plans and that meets certain minimum requirements. A key provision of the Act is the authorization for each county and municipality to adopt a "system of charges" to fund the implementation of stormwater management programs under § 4-204 of the Environment Article.

### *National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Permits*

The federal Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States. The National Pollutant Discharge Elimination System (NPDES), a component of CWA, regulates stormwater discharges from Municipal Separate Storm Sewer Systems (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).

According to the Maryland Department of the Environment (MDE), the Maryland Transit Administration (MTA) and the Washington Metropolitan Area Transit Authority (WMATA), both of which own railroad tracks, also hold NPDES Phase I MS4 permits. Under these permits, MTA and WMATA are required to establish baselines of impervious surface and are responsible for restoring 20% of the impervious surface that is not currently managed with stormwater best management practices.

### *Local Stormwater Remediation Fees under § 4-202.1 of the Environment Article*

In the 2012 legislative session, the General Assembly passed legislation, House Bill 987 (Chapter 151), which required the 10 jurisdictions to establish a local stormwater remediation fee to assist in financing the implementation of the local MS4 permits, including the requirement of each permit to meet the stormwater-related targets under the Chesapeake Bay Total Maximum Daily Load (TMDL). Chapter 124 of 2015 made significant changes to the stormwater remediation fee provisions under Chapter 151. Notably, Chapter 124 repealed the *requirement* for those jurisdictions subject to a NPDES Phase I MS4 permit to collect a stormwater remediation fee if certain conditions are met. Instead, such jurisdictions are *authorized* to collect a fee. However, such

jurisdictions must still meet the requirements established under Chapter 151 to create a local watershed protection and restoration program and fund.

The structure and amount of the fees established pursuant to Chapter 151 vary greatly by jurisdiction. However, statute authorizes the fee to be set based on (1) a flat rate; (2) an amount that is graduated, based on the amount of impervious surface on each property; or (3) another method of calculation selected by the county or municipality.

### *Stormwater Management Plans*

The appropriate approval authority must approve a sediment control plan before a person begins any land clearing, grubbing, topsoil stripping, soil movement, grading, cutting and filling, transporting, or other disturbing of land for any purpose; MDE is the approval authority for proposed earth changes undertaken by a unit of the State or federal government. In addition, a State or federal agency may not undertake any land clearing, soil movement, or construction activity involving soil movement unless the agency obtains a stormwater management plan from MDE.

**Background:** Track ballast forms the trackbed upon which railroad ties are laid. It is packed between, below, and around the ties. The ballast is used to bear the load of the railroad ties, facilitate drainage of water, and keep down vegetation that might interfere with the track structure.

Currently available information suggests that most or all of the railroad tracks in the State are owned by MTA, WMATA, or large private businesses (such as Amtrak, CSX, and Norfolk Southern).

MDE is the approval agency for stormwater management and erosion and sediment control plans for new and redevelopment projects on State and federal properties, including for MTA, WMATA, and Amtrak. However, MTA was delegated approval authority for stormwater management for the Purple Line project. During the approval process of the delegation agreement between MDE and MTA, ballasted track was discussed. MDE reports that there were three decisions related to ballasted track: (1) ballasted track on compacted sub-ballast constructed on an existing impervious surface is considered impervious; (2) ballasted track on compacted sub-ballast constructed on existing pervious surface is considered pervious; and (3) ballasted track on compacted sub-ballast constructed on existing impervious surface that is removed as part of the project receives 50% impervious surface removal credit.

**State Expenditures:** TTF expenditures decrease to the extent that the change in the definition of impervious surface decreases (1) the amount of stormwater restoration that MTA must conduct; (2) the amount of stormwater management activities that MTA must

conduct related to new construction; and/or (3) the amount of any stormwater fees MTA is required to pay to local jurisdictions.

As noted above, MTA is subject to a Phase II MS4 permit. Under this permit, MTA must restore 20% of the impervious surface that is identified in the impervious surface baseline. Thus, TTF expenditures decrease to the extent that MTA owns ballasted railroad tracks that are covered by the permit because less impervious surface needs to be restored. Although a precise estimate of the decrease in TTF expenditures cannot be determined at this time, according to MDE, the bill may significantly reduce the amount of restoration required by MTA. Any decrease in TTF expenditures may be partially offset by an increase in TTF expenditures for MTA to recalculate the baseline impervious surface for the purposes of its MS4 permit.

Stormwater management costs for MTA may also decrease related to stormwater management permits associated with new construction.

TTF expenditures decrease further to the extent MTA is currently subject to local stormwater fees that are based on the amount of impervious surface. The extent to which MTA is currently subject to any such fees is unknown.

**Local Revenues:** Revenues decrease for municipalities and counties with established stormwater remediation fees under § 4-202.1 or systems of charges under § 4-204 that are calculated based on the amount of impervious surface and have ballasted railroad tracks located within their jurisdictions. Private railroads are subject to these local fees and charges, and State and federal agencies are subject to the local fees under certain circumstances. A reliable estimate of the decrease in local revenues cannot be made due to a lack of available information. However, Montgomery County advises, for example, that it currently receives approximately \$29,000 annually in water quality protection charge revenues from ballasted railroad tracks in the county.

**Additional Comments:** As an owner of railroad tracks, WMATA is likely affected in the same way that MTA is affected, as discussed above.

This estimate does not account for any possible increase in State or local government expenditures to meet federal pollution reduction requirements under the Chesapeake Bay TMDL.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Kent, Montgomery, Washington, and Worcester counties; Maryland Association of Counties; cities of Salisbury, and Westminster; Maryland Municipal League; Town of Leonardtown; Maryland Department of the Environment; Maryland Department of Transportation; Trains.com; Department of Legislative Services

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