

Department of Legislative Services  
 Maryland General Assembly  
 2019 Session

FISCAL AND POLICY NOTE  
 Third Reader - Revised

House Bill 703

(Delegate Lafferty, *et al.*)

Environment and Transportation

Education, Health, and Environmental Affairs

Environmental Violations - Reporting Requirements

This bill requires each jurisdiction that is delegated authority to enforce sediment and erosion control laws and regulations under Subtitle 1 of Title 4 of the Environment Article to submit an annual report to the Maryland Department of the Environment (MDE) by January 1 of each year. The report must provide information related to specified environmental violations. MDE must post the information collected under the bill on its website. By March 1 of each year, MDE must report to the Governor and the General Assembly, as specified. MDE must also provide technical assistance to local jurisdictions if requested.

Fiscal Summary

**State Effect:** General fund expenditures increase by \$107,900 in FY 2020. Future years reflect annualization and ongoing costs. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	107,900	46,000	40,300	41,700	43,100
Net Effect	(\$107,900)	(\$46,000)	(\$40,300)	(\$41,700)	(\$43,100)

*Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** Expenditures may increase for some affected local jurisdictions to compile the required information and submit the required reports. There is no impact on local revenues. **The bill may impose a mandate on a unit of local government.**

**Small Business Effect:** None.

## Analysis

**Bill Summary:** The report from each delegated authority must include the total number of cases alleging violations of (1) sediment and erosion control laws and regulations; (2) building and grading permits; (3) sediment and erosion control laws and regulations in the Chesapeake Bay Critical Area and the Atlantic Coastal Bays Critical Area (the Critical Areas); and (4) building and grading permits in the Critical Areas. On request of a delegated authority, MDE must provide technical assistance to the jurisdiction to meet the bill's reporting requirements.

The information reported to MDE on these cases must include (1) the number and nature of formal complaints issued by the jurisdiction and whether the complaint was in the Critical Area, stop work orders issued by the jurisdiction, and alleged violations reported by citizens; (2) the number of court proceedings involving an alleged violation, including the final disposition of each proceeding; (3) the dollar amounts of fines and civil/criminal penalties imposed and collected as a result of a violation; (4) whether the jurisdiction provided compliance assistance, as specified; and (5) the number of inspectors and other staff assigned to inspection and enforcement of the environmental laws, regulations, and ordinances affected by the bill, including the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program laws; sensitive area ordinances; 100-year flood plain ordinances; sediment and erosion control laws and regulations; and building and grading permits.

“Compliance assistance” means an action taken by a jurisdiction with delegated authority that (1) corrects a violation before a formal enforcement action is necessary or (2) was voluntarily taken to prevent future violations. “Sensitive area” means an area of critical concern, and includes buffers, habitat protection areas, modified buffer areas, nontidal wetlands, tidal wetlands, 100-year flood plains, and stream buffers, as defined in regulation.

### **Current Law/Background:**

#### *Chesapeake Bay Critical Area Protection Program*

Chapter 794 of 1984 established the Chesapeake Bay Critical Area Protection Program in order to minimize damage to water quality and wildlife habitat by fostering more sensitive development activity along the shoreline areas of the Chesapeake Bay and its tributaries. The goals of the program include the protection of water quality, the conservation of habitat, and the accommodation of future growth and development without adverse environmental impacts. Chapter 794 identified the Critical Area as all land within 1,000 feet of the mean high water line of tidal waters or the landward edge of tidal wetlands and all waters of and lands under the Chesapeake Bay and its tributaries. In 2002, the

affected area was expanded to include the State's coastal bays. The responsibility of implementing and enforcing the Critical Area regulations is delegated to each local government.

### *MDE's Sediment Control Program*

MDE's Sediment, Stormwater, and Dam Safety Program is responsible for developing erosion and sediment control and stormwater management regulations. Among other duties, the program is the approval authority for erosion and sediment control and stormwater management plans for construction activity by State and federal agencies. The program also oversees the delegation of enforcement authority for these activities. The Judiciary advises that 23 local jurisdictions have delegated authority to enforce erosion and sediment control laws under Subtitle 1 of Title 4 of the Environment Article.

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, the appropriate approval authority must review and approve the proposed earth change and the sediment control plan. The approval authority is (1) the appropriate soil conservation district; (2) a municipal corporation in Montgomery County (under specified conditions); (3) any municipality not within a soil conservation district; (4) MDE for State or federal plans and for abandoned mine reclamation projects conducted by MDE; or (5) MDE for large redevelopment sites.

A county or municipality may only issue grading and building permits to a developer who has submitted a grading and sediment control plan approved by the appropriate approval authority.

### *Recent Audit Report Raises Concern about Enforcement*

A May 2018 audit report conducted by the Office of Legislative Audits (OLA) raised issues relating to enforcement within certain MDE programs. With respect to MDE's Erosion and Sediment Control Program, OLA found that inspections of certain construction sites were not performed as required by State regulations and that MDE lacked a formal plan for inspecting all sites. MDE's response to the audit findings can be found in the OLA [audit report](#).

### **State Expenditures:**

#### *Maryland Department of the Environment*

General fund expenditures for MDE increase by \$55,098 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date. This estimate reflects the cost of hiring

one natural resources planner to (1) compile and review the reports submitted by local governments; (2) post the information on MDE’s website; (3) provide technical assistance to local jurisdictions, if requested; and (4) complete the required annual reports. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. Existing staff cannot absorb the additional workload associated with gathering and submitting the required information and reports and providing any necessary technical assistance.

Position	1.0
Salary and Fringe Benefits	\$49,739
Operating Expenses	<u>5,359</u>
<b>Total FY 2020 MDE Administrative Costs</b>	<b>\$55,098</b>

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses. This analysis assumes that, after the first year, once MDE has gained experience compiling the required reports, uploading the information to its website, and submitting the first annual report, the natural resources planner is able to transition from a full-time basis to a part-time basis.

### *Judiciary*

The Judiciary maintains records from environmental violation proceedings, and anticipates that affected local jurisdictions will request court data and case records from the Judiciary. In anticipation of such requests, the Judiciary advises that it needs to make changes to its existing computer system, requiring 483.6 hours of computer reprogramming. Thus, general fund expenditures for the Judiciary increase by \$52,788 in fiscal 2020 only.

**Local Expenditures:** Local governments that are delegated authority to enforce erosion and sediment control laws and regulations are affected by the bill’s reporting requirements. However, the magnitude of the impact is unknown, since it depends on the sophistication of current tracking methods utilized by affected jurisdictions. For some jurisdictions, compiling the required information and submitting the required annual report is minimal. However, for other jurisdictions, compiling the information may require manual or automated systems that do not exist and, for these jurisdictions, expenditures increase. The bill, however, authorizes delegated authorities to request technical assistance from MDE. Accordingly, the extent of the bill’s impact on affected jurisdictions is unknown.

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## **Additional Information**

**Prior Introductions:** HB 1381 of 2018, a similar bill, passed the House with amendments but received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee.

**Cross File:** SB 505 (Senator Elfreth, *et al.*) - Education, Health, and Environmental Affairs.

**Information Source(s):** Montgomery County; Judiciary (Administrative Office of the Courts); Maryland Department of the Environment; Department of Natural Resources; Maryland Department of Planning; Department of Legislative Services

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