

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE

House Bill 1457 (Delegate Hucker)  
Rules and Executive Nominations

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Environment - Stormwater Management - Stormwater User Charge

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This bill requires each county and municipality to establish a stormwater user charge, the purpose of which is to generate sufficient revenues to fund specified local stormwater management activities. The charge must be a flat fee for all residential property owners and based on impervious surface area for commercial properties.

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Fiscal Summary

**State Effect:** Potential increase in expenditures for the Maryland Department of Planning or the State Department of Assessments and Taxation to the extent that State agency resources are utilized to quantify the areas of impervious surfaces for commercial properties.

**Local Effect:** Local revenues increase significantly on an annual basis beginning in FY 2010 or 2011 depending on when the stormwater user charge is implemented by each jurisdiction. Local expenditures increase commensurately to fund all local stormwater management activities, including administrative costs. **This bill imposes a mandate on a unit of local government.**

**Small Business Effect:** Potential meaningful.

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Analysis

**Bill Summary:** The bill requires that the stormwater user charge be used for the following:

- stormwater management planning;

- stormwater management permitting, inspection, and enforcement activities;
- grants to encourage stormwater abatement practices, including the use of green roofs, rain barrels, and pervious pavers;
- operation and maintenance of stormwater management systems and facilities;
- administrative activities related to stormwater management programs and activities;
- capital improvements for stormwater management; and
- any other stormwater management activity that a county or municipality is required to conduct.

“Impervious surface” is defined, for purposes of the bill, as structures, buildings, dwelling units, roads, parking lots, driveways, and areas covered with gravel, stone, shell, impermeable decking or pavers, or any other impervious material.

A county or municipality must set a commercial stormwater user charge that is greater than the residential stormwater user charge.

**Current Law:** State law requires each county and municipality to adopt ordinances necessary to implement a stormwater management program and to restrict the development of any land unless the landowner has submitted a stormwater management plan consistent with the local ordinance. The county or municipality has the authority to approve or disapprove stormwater management plans.

In general, a person may not develop any land for residential, commercial, industrial, or institutional use without submitting, and getting approval of, a stormwater management plan from the county or municipality that has jurisdiction. The developer must certify that all land development will be done according to the approved plan. A State or federal agency may not undertake any construction activity unless the agency has submitted and obtained approval of a stormwater management plan from MDE.

Criminal, civil, and administrative penalties apply to violations of the State’s stormwater management provisions. Every three years, MDE is required to review the stormwater management programs in the counties and municipalities and monitor their implementation. MDE is also required to provide technical assistance, training, research, and coordination services to local governments in the preparation and implementation of their stormwater management programs.

Chapters 121 and 122 of 2007, among other things, require MDE to establish regulatory requirements regarding the use of environmental site design in stormwater management practices. MDE recently proposed regulations to implement the Stormwater

Management Act of 2007. These proposed regulations require the use of “environmental site design” to the maximum extent practicable in stormwater management practices. “Environmental site design” means using small-scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of impervious surfaces from land development.

In January 2009, the Maryland General Assembly's Joint Committee on Administrative, Executive and Legislative Review (AELR) requested that MDE delay final adoption of the regulations. The purpose of the requested delay is to provide the committee with an opportunity to examine more closely a number of issues that have arisen about these proposed regulations. MDE is currently working with AELR to provide the requested information.

**Background:** Since 1984, MDE has administered the Stormwater Pollution Control Cost Share Program to provide competitive grants to local governments for stormwater management retrofits. In addition, Chapters 120 and 121 of 2008 established a Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund within MDE to provide financial assistance for urban and suburban stormwater management practices and stream/wetland restoration. Chapters 120 and 121 direct funds from the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund to this fund; MDE is also authorized to issue revenue bonds for the benefit of the fund.

Chapters 121 and 122 of 2007 required MDE to evaluate options for a stormwater management fee system and an appropriate fee schedule necessary to improve enforcement of stormwater management laws. In its May 2008 report developed in response to that charge, MDE noted that Maryland’s stormwater management program is implemented locally with little financial support from the State, and that it does not have the authority under current law to assess fees or charges at the State level. In 1992, the General Assembly enacted enabling legislation that allows localities to develop a “system of charges” to finance stormwater programs. According to MDE, to date, only three local jurisdictions (Montgomery and Prince George’s counties, and the City of Takoma Park) have developed a stormwater user charge, although several others (Anne Arundel, Carroll, and Howard counties, the Baltimore Metropolitan Council (BMC), and Baltimore City) have explored the creation of local dedicated funding sources for stormwater management. In the report, MDE noted its continuing support of the development of a system of charges by local governments to provide the funding needed to meet local obligations under State and federal law.

**Local Fiscal Effect:** Local government revenues increase significantly from collection of the stormwater user charge imposed on residential and commercial properties. However, the Department of Legislative Services (DLS) advises that the amount of local revenues generated by the bill cannot be estimated because the bill does not specify or

mandate the amount of the charge. Instead, the bill requires that the charge be sufficient to cover the cost of all stormwater management activities in the jurisdiction, as well as the cost of the seven new stormwater management activities specified. All revenues collected are offset by the mandated expenditures, including administrative costs associated with stormwater management activities and the collection of the stormwater management charge.

Although a reliable estimate of the local revenues generated by the bill cannot be provided at this time, the experience of Montgomery County in financing stormwater management activities may be instructive. In 2002, Montgomery County established the Water Quality Protection Charge (WQPC) with a proposed rate of \$12.75 per Equivalent Residential Unit (ERU). The WQPC rate is determined by the costs of structural maintenance for residential and associated nonresidential stormwater facilities divided by the number of ERUs. In the initial years, the collection of charges generated approximately \$4.0 million in revenues for the county. The fee has subsequently been raised to \$25.23 per ERU and was scheduled to be increased again in 2008 to \$35.50 per ERU to provide \$7.01 million for stormwater facility inspection and maintenance, street-sweeping, facility retrofits, and monitoring.

Montgomery County implements a relatively extensive stormwater management program, and other counties and municipalities may opt to charge \$10 or less under the bill. There were 94 municipalities with 2,500 people or less in Maryland in 2008. For small municipalities such as these, with fewer than 1,000 households the stormwater user charge may generate revenues of \$10,000 or less. The median county population in Maryland is approximately 100,000. Assuming 40,000 for the median county and an average stormwater user charge of \$10, revenues increase by \$400,000.

A stormwater user charge of \$10 per residence represents about 2.4% of average county expenditures for public works, and about 0.3% of average county expenditures overall. A charge of \$35.50 represents about 8.5% of average county expenditures for public works, and about 1.0% of average county expenditures overall.

**Small Business Effect:** Any small businesses involved in the planning, design, and/or construction of stormwater management projects may benefit to the extent the additional revenue source for stormwater-related grants results in an increase in the number of such projects undertaken.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** SB 672 (Senator Raskin, *et al.*) - Education, Health, and Environmental Affairs.

**Information Source(s):** Montgomery County, City of College Park, City of Rockville, Department of Natural Resources, Maryland Department of the Environment, Maryland Association of Counties, Maryland Municipal League, Department of Legislative Services

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