

Department of Legislative Services  
 Maryland General Assembly  
 2011 Session

FISCAL AND POLICY NOTE

House Bill 370 (Delegate Clagett)  
 Environmental Matters

**Stormwater Management - Watershed Management Plans - Technical Assistance**

This bill requires the Maryland Department of the Environment (MDE), with assistance from the Department of Natural Resources (DNR), to provide technical assistance to local governments in developing watershed management plans for the purpose of implementing an alternative stormwater management policy for redevelopment projects.

**Fiscal Summary**

**State Effect:** General fund expenditures increase by about \$145,300 in FY 2012, which reflects the October 1, 2011 effective date, for MDE and DNR to hire additional staff. Future years reflect annualization, inflation, and ongoing salaries and operating expenses. Revenues are not affected.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	145,300	156,700	164,400	172,500	181,100
Net Effect	(\$145,300)	(\$156,700)	(\$164,400)	(\$172,500)	(\$181,100)

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

**Local Effect:** Local government expenditures may decrease minimally to the extent that technical assistance provided by MDE and DNR replaces services that would otherwise be procured through private consultants. Local government workloads may also decrease minimally.

**Small Business Effect:** Potential meaningful.

## Analysis

**Current Law:** 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 with 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.

A local government or other entity responsible for review of stormwater management plans must require that stormwater management be addressed for redevelopment projects. "Redevelopment" is defined in regulation as any construction, alteration, or improvement performed on sites where existing land use is commercial, industrial, institutional, or multifamily residential and the existing site impervious area exceeds 40%.

Regulations pertaining to redevelopment projects include structured criteria for addressing stormwater management. This involves either reducing impervious surface area at the project site, meeting advanced stormwater management principles known as "environmental site design" (ESD), or a combination of these two processes. However, if the project's developer satisfactorily demonstrates to the approving agency that the application of these approaches is not feasible, alternative stormwater management measures may be used, which include more traditional, structural stormwater practices. Finally, an approving agency may develop alternative provisions that differ from these general redevelopment rules as part of an overall "watershed management plan."

Watershed management plans developed for the purposes of implementing different stormwater management policies for waivers and redevelopment must follow a series of technical criteria prescribed by regulation that address numerous scientific and environmental assessments.

The Water Management Administration at MDE is responsible for implementing and supervising the stormwater management program, which includes assisting local jurisdictions with improving and maintaining their technical capabilities for utilizing State stormwater standards and reviewing proposed stormwater management plans. Every three years, the administration must inspect and review each local stormwater management program and evaluate the effectiveness of the program. To be acceptable, a local program must have, among other things, the ability to review the installation and maintenance of stormwater management, as well as inspection and enforcement procedures. MDE is required to provide technical assistance, training, research, and

coordination services to local governments in the preparation and implementation of their stormwater management programs.

**Background:** According to MDE, while nitrogen loading to the Chesapeake Bay from agricultural and wastewater sources in Maryland has been decreasing since 1985, stormwater runoff has been increasing from newly developed impervious surfaces. The State began reducing the adverse effects of stormwater runoff in 1982 with the passage of the Stormwater Management Act. State regulations followed in 1983, which required each county and municipality to adopt ordinances necessary to implement a stormwater management program. Maryland's stormwater management regulations were significantly strengthened in 2000 with the adoption of the Stormwater Design Manual in State regulations.

Chapters 121 and 122 of 2007 further enhanced the State's stormwater management program by requiring ESD, a new form of management practice that involves using small-scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources. ESD is widely considered to be the leading and most stringent stormwater management framework employed in the United States today.

Specifically, Chapters 121 and 122 required MDE to promulgate regulations that require (1) the implementation of ESD to the maximum extent practicable; (2) the review and modification (if necessary) of planning and zoning or public works ordinances to remove impediments to ESD implementation; and (3) a demonstration by developers that ESD has been implemented to the maximum extent practicable in a project. The law also established a comprehensive process for approving grading and sediment control plans as well as stormwater management plans to take into account the cumulative impact of both plans.

MDE was required by Chapters 121 and 122 to seek the input of each county and municipality that operates a stormwater management program and work with interested parties to address any reasonable concern during the creation of the ESD regulations and model ordinances. Nevertheless, after the regulations were adopted on May 4, 2009, numerous concerns were raised by local jurisdictions, developers, and others. In general, the concerns related to the need for grandfathering of certain projects that have reached an advanced stage in the development process, the cost and feasibility of ESD, potential conflicts between the regulations' more stringent requirements for redevelopment projects and the State's ongoing smart growth efforts, and the costs of long-term maintenance for ESD practices.

To address some of these concerns, in March 2010 MDE submitted emergency regulations to the General Assembly's Administrative, Executive, and Legislative

Review (AELR) Committee. On the grandfathering issue, the emergency regulations allowed local governments to incorporate waiver provisions into their ordinances for projects that have completed part of the development review process but have not received final approval by May 4, 2010. A grandfathered project that receives an administrative waiver may proceed with the development under the previous stormwater regulations in effect as of May 4, 2009. The emergency regulations also provided local governments with greater flexibility in addressing the new requirements for redevelopment projects by providing for alternative stormwater management measures under specified conditions. The AELR Committee approved the emergency regulations on April 6, 2010.

**State Expenditures:** General fund expenditures increase by \$145,251 in fiscal 2012, which accounts for the bill’s October 1, 2011 effective date. This estimate reflects the cost for MDE and DNR to hire one engineer each to provide the technical assistance required under the bill. It includes salaries, fringe benefits, one-time start-up costs (including the purchase of an additional automobile for MDE), and ongoing operating expenses.

	<u>MDE</u>	<u>DNR</u>
Positions	1	1
Salaries and Fringe Benefits	\$56,180	\$53,357
Start-up Costs and Operating Expenses	<u>29,550</u>	<u>6,164</u>
<b>Total FY 2012 State Expenditures</b>	<b>\$85,730</b>	<b>\$59,521</b>

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover as well as 1% annual increases in ongoing operating expenses.

Currently, the stormwater management program at MDE is staffed by two full-time employees. MDE advises that current staff cannot provide the technical assistance required under the bill. DNR advises that it does not currently employ staff with the technical knowledge of stormwater management facilities necessary to assist MDE in providing assistance to local governments as required by the bill.

**Local Expenditures:** Local government expenditures decrease minimally for any jurisdiction that avails itself of the technical assistance provided by MDE and DNR under the bill to the extent it eliminates or reduces the need to contract with private consultants. It is unknown how many jurisdictions might utilize the technical assistance provided under the bill. For example, several jurisdictions indicate that the bill will have no impact, and Montgomery County indicates that it does not anticipate using the alternative stormwater management policies that may qualify for technical assistance under the bill.

However, the Town of Leonardtown indicated that technical assistance provided by the State will reduce its need for outside contractual assistance. Similarly, the City of Frederick indicated that any technical assistance provided by the State will reduce the workloads of the city's staff, and the City of Bowie indicated that such assistance will be beneficial as watershed management plans are the preferred approach to stormwater management for redevelopment projects.

**Small Business Effect:** To the extent the technical assistance provided under the bill causes local governments and developers to rely more on alternative watershed management plans in satisfying stormwater management regulations, developers may realize significant savings, depending on the project. However, stormwater management contractors may be negatively affected to the extent assistance provided by MDE and DNR under the bill displaces the demand for their services.

---

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Cecil, Charles, Montgomery, and St. Mary's counties; Towns of Bel Air and Leonardtown; Cities of Bowie, Frederick, and Rockville; Department of Natural Resources, Maryland Department of the Environment, Department of Legislative Services

**Fiscal Note History:** First Reader - February 21, 2011  
ncs/lgc

---

Analysis by: Evan M. Isaacson

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510