

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1335 (Delegate Hershey)
Environmental Matters

Zoning, Construction, and Stormwater - Permits and Variances - Solar Panels

This bill specifies that, for the purposes of issuing a permit or variance relating to zoning, construction, or stormwater for a project to install a solar panel, any calculation relating to impervious surface of the project required by the State or local governing authority issuing the permit or variance may include only the base of the solar panel.

Fiscal Summary

State Effect: The bill does not directly affect State finances.

Local Effect: The bill is not expected to have a significant impact on local governments.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background:

Regulation of Impervious Surface

The Maryland Department of Planning indicates that regulating impervious surface on a property, either by establishing a maximum allowable area or a ratio of impervious surface to the total lot area, is a common zoning performance standard used by local governments to manage stormwater and open space/green areas. Local governments typically set higher impervious surface area and ratio standards for industrial and commercial zoning districts compared to residential zoning districts due to the size of the buildings and parking lots relative to their lot area. Inclusion of impervious surface standards in a zoning ordinance depends on the community. Each jurisdiction sets its

own standards to reflect the character of the community, as well as typically specifying how impervious surface should be measured.

With respect to stormwater management, counties and municipalities are required to implement stormwater management programs that meet requirements established by the Maryland Department of the Environment (MDE). MDE establishes technical requirements and provides a model ordinance, and counties are required to adopt an ordinance that meets the regulatory requirements. A municipality can either adopt its own ordinance or rely on the county program.

Pursuant to Chapters 121 and 122 of 2007, MDE recently adopted regulations that require the implementation of “environmental site design” to the maximum extent practicable for new development and similar, but less stringent measures for redevelopment. Environmental site design is defined in State law and includes “minimizing use of impervious surfaces, such as paved surfaces, concrete channels, roofs, and pipes.” Under the MDE regulations, the term “impervious area” is defined as any surface that does not allow stormwater to infiltrate into the ground. The level of imperviousness of a site affects the extent of environmental site design practices that must be implemented.

MDE indicates that impervious surfaces prevent rainwater from naturally soaking into the ground (groundwater recharge) and slowly seeping into streams (groundwater discharge) and stormwater runoff volume and velocity can increase in areas covered by impervious surfaces.

Information is not readily available regarding the extent to which local governments may currently include the surface of solar panels and not only the base of the solar panels in calculations relating to the impervious surface of a project to install a solar panel for the purpose of a permit or variance relating to zoning, construction, or stormwater.

Solar Development and Zoning, Generally

With respect to the interaction of zoning restrictions and solar energy development in general, the American Law of Zoning, a treatise on zoning, planning, and subdivision control policy in the United States, discusses ways that states and local jurisdictions have sought to facilitate installation of solar energy systems through zoning-related laws and regulations. Some states, for example, have enacted laws specifically preserving the right to install and use solar panels in spite of local ordinances or other community or property-based restrictions, while some local jurisdictions have relaxed zoning requirements that otherwise would prevent installation of solar panels.

In Maryland, Chapter 138 of 2008 established that a “restriction on use” regarding land use may not impose or act to impose unreasonable limitations on the installation of a

solar collector system on the roof or exterior walls of improvements, as long as the property owner owns or has the right to exclusive use of the roof or exterior walls.

The American Law of Zoning also noted a law in New Jersey enacted in 2010 that, similar to this bill, exempts solar panels, with the exception of the base of the panels, from zoning limitations on impervious cover.

Small Business Effect: Small businesses involved with solar installations may benefit to the extent the bill creates more certainty in permitting/approval processes for installations, prevents an impervious surface zoning restriction from being a barrier or limitation to a project, or lessens costs to comply with stormwater management requirements. However, due in part to uncertainty of whether, and to what extent, local governments currently include solar panels in impervious surface calculations, it is uncertain whether small businesses will be meaningfully impacted by the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Planning; Maryland Department of the Environment; Office of the Attorney General; Department of Housing and Community Development; State Department of Assessments and Taxation; Maryland Energy Administration; Maryland Association of Counties; Maryland Municipal League; City of Bowie; Baltimore, Carroll, and Montgomery counties; Maryland Clean Energy Center; Maryland DC Virginia Solar Energy Industries Association; Salkin, Patricia E., *American Law of Zoning* (5th ed.); Department of Legislative Services

Fiscal Note History: First Reader - March 21, 2011
mc/lgc

Analysis by: Scott D. Kennedy

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