

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 987

(Delegate Hucker, *et al.*)

Environmental Matters

Education, Health, and Environmental Affairs

Stormwater Management - Watershed Protection and Restoration Program

This bill requires a county or municipal corporation that is subject to a specified federal permit, by July 1, 2013, to adopt and implement local laws or ordinances necessary to establish an annual stormwater remediation fee and a local watershed protection and restoration fund to provide financial assistance for the implementation of local stormwater management plans. However, the bill exempts a jurisdiction that has enacted and implemented a similar watershed protection and restoration program by July 1, 2012, that is consistent with the bill. Additionally, property owned by the State, a local government, or a volunteer fire department is exempt from the fee. The bill also establishes specified reporting requirements for local governments. The Maryland Department of the Environment (MDE) is authorized to adopt regulations to implement and enforce the bill.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: To the extent that local stormwater remediation fees assist the State in achieving federal Chesapeake Bay restoration mandates, State expenditures (all funds) that would otherwise support these efforts may be reduced or redirected. MDE can implement the bill with existing resources. Revenues are not affected.

Local Effect: Local revenues to local watershed protection and restoration funds may increase significantly, likely in FY 2013 or 2014 for jurisdictions subject to specified federal permits, depending on when the stormwater remediation fee is implemented by each jurisdiction. However, a jurisdiction that currently administers a similar fee consistent with the requirements of the bill is exempt. Local expenditures from local watershed protection and restoration funds increase commensurately to fund local stormwater management activities and reasonable administrative costs, including to

establish a hardship exemption from the fee. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill only applies to a county or municipal corporation subject to a National Pollutant Discharge Elimination System Phase I municipal separate storm sewer system permit (NPDES Phase I MS4 permit). A county or municipality subject to a Phase I MS4 permit must determine the method, frequency, and enforcement of the collection of the stormwater remediation fee. A stormwater remediation fee established under the bill is separate from any existing or future stormwater management charges that a jurisdiction establishes for new development, including fees for permitting, review of stormwater management plans, inspection, or monitoring.

The stormwater remediation fee must be based on the share of stormwater management services related to the property and provided by the county or municipality. The fee may be a flat rate, graduated based on the amount of impervious surface on each property, or based on another method of calculation. A county or municipal corporation must establish a procedure for a property owner to appeal a stormwater remediation fee. In addition, a county or municipal corporation must establish an exemption based on financial hardship, which may include an exemption as part of a system of offsets as discussed below.

A county or municipal corporation must establish MDE-approved policies that reduce a portion of a fee to account for on-site and off-site systems, facilities, services, or activities that reduce the quantity or improve the quality of stormwater discharged from a property. These policies must include various guidelines, methods, and procedures specified by the bill, including guidelines relating to properties with existing advanced stormwater best management practices and agricultural activities or facilities that are otherwise exempt from local stormwater management. To monitor or verify the effectiveness of on-site systems, facilities, services, or activities, a county or municipality may (1) conduct on-site inspections; (2) authorize a third party, certified by MDE, to conduct inspections; or (3) require a property owner to hire a certified inspector, who must provide inspection results to the jurisdiction.

Before a county may impose a stormwater remediation fee on a property located within a municipality, the county must (1) notify the municipality of the county's intent to impose a stormwater remediation fee on property within the municipality; and (2) provide the municipality reasonable time to pass an ordinance authorizing the imposition of a

municipal fee instead of a county fee. If a county currently imposes a stormwater remediation fee on property located within a municipality and the municipality decides to implement its own fee under the bill or current law, the municipality must notify the county of the municipality's intent to impose its own fee and provide the county with reasonable time to discontinue collection of its fee before the municipal fee takes effect. A property may not be assessed a stormwater remediation fee by both a county and a municipal corporation.

Fee revenue from each jurisdiction must be deposited into its local watershed protection and restoration fund established under the bill, and it may not revert or be transferred to a local general fund. Each fund must also consist of interest or other investment income and any other money made available to the fund. Money in each fund is intended to be used only to support additional (not existing or ongoing) efforts for:

- capital improvements for stormwater management, including stream and wetland restoration projects;
- operation and maintenance of stormwater management systems and facilities;
- public education and outreach relating to stormwater management or stream and wetland restoration;
- stormwater management planning, including mapping and assessment of impervious surfaces;
- stormwater management monitoring, inspection, and enforcement activities to carry out the purposes of the watershed protection and restoration fund;
- review of stormwater management plans and permit applications for new development, *only if* fees established under current law to support these activities associated with new development are also deposited into the new watershed protection and restoration fund;
- grants to nonprofit organizations for specified watershed restoration and rehabilitation projects; and
- reasonable administrative costs.

A watershed protection and restoration fund established under the bill may also be used as an environmental fund with money from other sources as long as the stormwater remediation fee revenues are used only for the purposes described above.

Beginning on July 1, 2014, and every two years thereafter, a county or municipal corporation subject to the bill is required to make a publicly available report on the number of properties subject to a stormwater remediation fee, the amount of money deposited into the watershed protection and restoration fund for the previous two fiscal years, and the percentage of funds spent on each of the purposes authorized by the bill.

The bill also alters the definition of “environmental site design” (ESD) by specifying that “impervious surface” means a surface that does not allow stormwater to infiltrate into the ground, which includes rooftops, driveways, sidewalks, or pavement.

Current Law: Generally, unless a particular activity is exempt, a person may not develop any land without an approved final stormwater management plan from the approving agency (generally, a county or municipality). The owner/developer must certify that all land development will be done according to the approved plan. Current regulations exempt, among other activities, additions or modifications to existing single-family detached residential structures under specified conditions and any developments that do not disturb over 5,000 square feet of land area.

MDE is required to adopt regulations establishing criteria and procedures for stormwater management in Maryland. Each county and municipality is required to adopt ordinances necessary to implement a stormwater management program. Every three years, MDE is required to review local programs and evaluate their effectiveness. 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. Additionally, the governing body of a county or municipality may adopt a system of charges to fund the implementation of stormwater management programs.

Background:

Stormwater Management in Maryland

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 attempted to further enhance the State’s stormwater management program by requiring a new form of management practice known as ESD. ESD 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. Emergency regulations to implement Chapters 121 and 122 were approved in April 2010.

Role of Stormwater Management in Meeting Federal Bay Restoration Requirements

In December 2010, the U.S. Environmental Protection Agency (EPA) established the Total Maximum Daily Load for the Chesapeake Bay (bay TMDL) that (1) sets the maximum amount of pollution the bay can receive and still attain water quality standards; and (2) identifies specific pollution reduction requirements. **Exhibit 1** illustrates Maryland’s pollution reduction goals in the TMDL. All pollution reduction measures must be in place by 2025, with at least 60% of the actions complete by 2017.

In 2010, each bay jurisdiction submitted a Phase I Watershed Implementation Plan (WIP) that details how the jurisdiction will achieve its individual pollution reduction goals under the TMDL. The Phase I WIP focused on the following three approaches for bridging the remaining loading gap: (1) developing new technology and approaches before 2017; (2) increasing the scope of implementation of existing strategies such as upgrading wastewater treatment plants, upgrading septic systems, and increasing the number and efficiency of stormwater runoff controls; and (3) improving regulatory requirements. The Phase I WIP establishes that all nutrient impacts from future growth must be offset if the TMDL is to be met.

Exhibit 1
Maryland’s Pollution Reduction Goals in the Bay TMDL
(Million Pounds per Year)

<u>Pollutant</u>	<u>2010 Loads</u>	<u>Bay TMDL Target Load</u>	<u>Percent Reduction</u>
Nitrogen	52.76	41.17	22.0%
Phosphorus	3.30	2.81	14.9%
Sediment	1,376	1,350	1.9%

TMDL: Total Maximum Daily Load

Note: Target loads as revised by EPA in August 2011.

Source: Maryland Department of the Environment; U.S. Environmental Protection Agency

On March 30, 2012, after consideration of all comments received on the draft Phase II WIP during the public comment period, Maryland submitted to EPA the State’s final Phase II WIP, which provides implementation strategies for the five major basins in Maryland (the Potomac River basin, Eastern Shore, Western Shore, the Patuxent River basin, and Maryland’s portion of the Susquehanna River basin). Maryland’s Phase II WIP builds on existing State-directed restoration efforts and identifies strategy options to

reduce nitrogen and phosphorus from all major sources, including stormwater runoff. Of the major sources of nutrient pollution in Maryland, stormwater runoff contributes about 18.0% of the nitrogen and 21.8% of the phosphorus entering the bay from Maryland sources, and it will be required to contribute just under 17% of the nitrogen reduction and just under 45% of the phosphorus reduction under Maryland's Phase II WIP.

Anticipated Costs of Implementing Stormwater Management Controls in the WIP

To determine the cost of implementing the bay TMDL, MDE began investigating the potential cost of local stormwater control measures in early spring 2011. As part of this investigation, MDE commissioned a study by the University of Maryland Center for Environmental Science and the Johns Hopkins University to examine costs related to stormwater best management practices (BMPs) and assess revenue-generating options for Maryland counties. The study was completed in October 2011 and provided estimated costs of various stormwater BMPs, including the average unit cost over 20 years.

Exhibit 2 shows the most recent estimated cost of implementing the Phase II WIP from all sectors. Among other things, the exhibit illustrates that stormwater BMPs likely represent the largest costs to local governments in implementing the TMDL.

The cost of implementing local stormwater management controls was also addressed in the work of the Task Force on Sustainable Growth and Wastewater Disposal, which was established by Governor O'Malley under Executive Order 01.01.2011.05. During the course of its work, the task force explored increasing the existing bay restoration fee in order to not only cover the existing shortfall in the Bay Restoration Fund for wastewater treatment plant upgrades, but also to help fund other WIP requirements associated with developed land BMPs, including stormwater management. Under one recommendation, the task force envisioned transferring 15% to 25% of the gross bay restoration fee revenue generated within each local jurisdiction to local governments for the implementation of approved stormwater BMPs.

Legislative Services advises, however, that the Administration's legislation that has been enacted to increase the bay restoration fee (Chapter 150 of 2012) would not result in an increase in revenue sufficient to support that recommendation in the near term.

Exhibit 2
Estimated Phase II WIP Costs for Interim and Final Targets Under the Bay TMDL
(\$ in Millions)

<u>Source Sector</u>	<u>Cost of 2017 Strategy</u> <u>2010-2017</u>	<u>Cost of 2025 Strategy</u> <u>2010-2025</u>
Agriculture	\$498	\$928
Municipal Wastewater	2,368	2,368
Major Municipal Plants	2,306	2,306
Minor Municipal Plants	62	62
Stormwater	2,518	7,772
Maryland Department of Transportation	467	1,500
Local Government	2,051	6,272
Septic Systems	896	3,723
Septic System Upgrades	428	2,459
Septic System Connections	443	1,176
Septic System Pumping	25	88
Total	\$6,280	\$14,791

Notes: Exhibit does not reflect costs associated with controlling combined sewer and sanitary overflows or the implementation of the Healthy Air Act. Exhibit reflects the final Phase II WIP estimates submitted to EPA on March 30, 2012.

Source: *Phase II Watershed Implementation Plan*; Maryland Department of the Environment

Current Financing of Stormwater Management

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 adopted enabling legislation that allows localities to develop a “system of charges” to finance stormwater programs. Legislative Services is aware of seven local jurisdictions (Charles, Montgomery, and Prince George’s counties and the cities of Annapolis, Frederick, Rockville, and Takoma Park) that have developed programs to raise revenues dedicated for stormwater management to date, although several others have explored the creation of dedicated stormwater revenue sources.

In the May 2008 report, MDE noted its continuing support for the development of a system of charges by local governments to provide the funding needed to meet local obligations under State and federal law. Bills were introduced in the 2007, 2009, 2010, and 2011 sessions to generate local funding for stormwater management. These bills would have established fees based on the amount of impervious surface on certain types of property. In turn, the fees would have generally been used to fund the remediation, upgrade, and expansion of stormwater management systems statewide.

State funding for stormwater management projects is also available from several sources. Chapter 6 of the 2007 special session established a Chesapeake Bay 2010 Trust Fund to be used to implement the State's tributary strategy. The fund is financed with a portion of existing revenues from the motor fuel tax and the sales and use tax on short-term vehicle rentals. Subsequently, Chapters 120 and 121 of 2008 established a framework for how the trust fund money must be spent by specifying that it be used for nonpoint source pollution control projects and by expanding it to apply to the Atlantic Coastal Bays. In fiscal 2012, \$7.28 million from the fund was used to support Local Implementation Grants for high-priority local stormwater and other nonpoint source pollution control projects. While no funding has been included in the fiscal 2013 budget for Local Implementation Grants, an increase of roughly the same amount has been included in the budget for the Natural Filters program within the Department of Natural Resources, which supports the creation of riparian buffers and wetlands in priority watersheds within 15 counties. Maryland also provides ongoing support for stormwater management through a portion of expenditures from the Water Quality Revolving Loan Fund, which is capitalized by federal funds.

Phase I MS4 Permits

NPDES stormwater regulations were published in 1990. According to MDE, Phase I of these regulations requires large urban jurisdictions to control pollution in stormwater to the maximum extent practicable (MEP). For permitting purposes, municipalities with populations of greater than 250,000 are considered "large" and those with populations of between 100,000 and 250,000 are considered "medium." Municipalities with less than 100,000 are handled separately under Phase II NPDES stormwater rules. After receiving applications from Phase I municipalities in 1991 and 1992, MDE began issuing NPDES municipal stormwater permits in 1993. These permits are updated every five years. The State, including the State Highway Administration, and federal agencies are also subject to these permits. MS4 permit requirements and conditions are written to account for various pollutant load allocations required by EPA-approved TMDLs.

Local Fiscal Effect: Currently, 10 local jurisdictions in Maryland are subject to a Phase I MS4 permit: Anne Arundel, Baltimore, Carroll, Charles, Frederick, Harford, Howard, Montgomery, and Prince George's counties and Baltimore City. However,

Montgomery County administers a Water Quality Protection Charge that is used to fund the county's stormwater management activities and is assumed to be exempt from the bill, although modifications to Montgomery County laws may be necessary to ensure full consistency with the bill to qualify for the exemption. Although other local jurisdictions may have various revenue sources that are used to support stormwater management activities, for purposes of this analysis, it is assumed that only Montgomery County has, or will have, a fee and program that is consistent with the bill's requirements by July 1, 2012.

Thus, for the other jurisdictions subject to the bill, local government revenues increase from the collection of the stormwater remediation fee established as a result of this bill. Legislative Services advises that the amount of local revenues generated by the bill cannot be estimated as the bill does not specify or mandate the amount of the charge for each jurisdiction.

However, *for illustrative purposes only*, assuming an average residential stormwater remediation fee of \$60 annually, local revenues may increase statewide by roughly \$86.7 million annually beginning in the first full year of implementation. This is based on property data from the State Department of Assessments and Taxation (SDAT) and the following information and assumptions:

- an annual residential fee of \$60 is assessed on detached single-family residential properties, with a \$30 fee for apartments, condominiums, and townhouses;
- SDAT data indicate that the statewide average number of units per apartment is about 38;
- the average collection of stormwater fees from nonresidential properties generates seven times more revenue per property;
- Montgomery County is assumed to be exempt due to its current administration of a similar fee and fund;
- the estimate does not account for any offset or adjustment policies that may be adopted by local governments and approved by MDE, or any foregone revenue resulting from hardship exemption programs; and
- the estimate does not account for local fee revenues paid by property owners located in municipalities that are within counties that are subject to Phase I MS4 permits, as it is unclear whether, or how many, property owners will be subject to a fee.

Under the illustrative scenario, about 75% of revenue is collected from residential properties and 25% from nonresidential properties. Of the residential revenue collected, about 84% is derived from detached, single-family properties, and about 16% is from

other properties, classified as apartments, townhouses, or condominiums within SDAT data.

Legislative Services advises that, as noted above, total stormwater-related costs for local governments to comply with the Phase II WIP are estimated to be about \$6.3 billion through 2025, or about \$482 million annually between calendar 2013 and 2025. However, this estimate was based on local jurisdictions generally, whereas this bill applies only to jurisdictions subject to Phase I MS4 permits, and the fiscal and policy note assumes that Montgomery County is exempt. Nevertheless, it is likely that a fee of greater than that described in the example above will be necessary to *fully* fund the preliminary cost estimates for local stormwater management activities needed under the WIP. It is unlikely that jurisdictions will attempt to pay for all WIP-related stormwater activities solely through a stormwater remediation or similar fee, however, due to significant anticipated future costs.

Many local governments have recently begun developing plans to implement the WIP and examining the methods for and associated costs of doing so. For example, Howard County estimates that the stormwater management costs of compliance with its MS4 permit and the WIP are between \$30 million and \$40 million per year. Additionally, several other jurisdictions subject to the bill have advised that preliminary analyses of future costs to comply with stormwater management requirements associated with the bay TMDL or a Phase I MS4 permit range from over \$10 million to over \$60 million annually, though actual costs may vary significantly depending on the actual permit requirements mandated.

It is assumed that all revenues collected result in corresponding expenditures from local watershed protection and restoration funds for the uses specified in the bill, including reasonable administrative costs to establish and administer the fund and establish a hardship exemption. Such costs may include significant additional resources necessary for inspections or monitoring of on-site facilities or activities that reduce the quantity or improve the quality of stormwater discharges, which may be the basis for a fee reduction for a specific property.

In jurisdictions that have a charter limit on their property taxes, establishing a stormwater remediation fee may necessitate an offsetting reduction in some other property tax, to the extent the fees established under the bill are considered property taxes.

Additional Comments: Legislative Services advises that net revenues generated by local stormwater remediation fees under the bill may reduce future local expenditures that may otherwise be necessary to achieve the mandates of the State WIP and the bay TMDL. In the absence of a dedicated funding source such as a stormwater remediation

fee, it is assumed that local governments will need to generate additional revenue through an increase in other fees, charges, or taxes to comply with the WIP.

For contextual purposes, Legislative Services advises that the stormwater fee discussed in the illustrative example above represents about 11.1% of the current average of county water and sewer charge revenues, based on a survey of the most recent financial reports for four counties and the anticipated revenues for each county under the bill. The average water and sewer revenue per capita for these four counties is about \$221, while the average per capita fee generated in the scenario described above for these four counties is about \$25.

Additional Information

Prior Introductions: Similar legislation was introduced in the 2011, 2010, and 2009 sessions. HB 1064 of 2011 and HB 999 of 2010 received hearings in the House Environmental Matters Committee, but no further action was taken on either bill. SB 686 of 2010 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken on it. SB 672 of 2009, passed with amendments on second reading in the Senate but failed on third reading. Its cross file, HB 1457, was referred to the House Rules and Executive Nominations Committee, but no further action was taken.

Cross File: Although SB 614 (Senator Raskin, *et al.* – Education, Health, and Environmental Affairs) is designated as a cross file, it is different.

Information Source(s): Anne Arundel, Baltimore, Calvert, Charles, Frederick, Harford, Howard, and Montgomery counties; Baltimore City; the City of Salisbury; State Department of Assessments and Taxation; Maryland Department of Planning; Maryland Department of the Environment; Department of Legislative Services

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