

Department of Legislative Services
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2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 434 (Frederick County Delegation)
Environmental Matters

Frederick County - Stormwater Management - Watershed Protection and
Restoration Program - Exemption

This bill exempts Frederick County from the requirement of Chapter 151 of 2012 (HB 987) to adopt and implement local laws by July 1, 2013, for the purpose of establishing an annual stormwater remediation fee and a local watershed protection and restoration fund.

The bill takes effect July 1, 2013.

Fiscal Summary

State Effect: The bill is not anticipated to directly affect State operations or finances.

Local Effect: Local government revenues decrease, potentially significantly, for Frederick County and potentially for the municipal corporations within the county, beginning in FY 2014 as the county would no longer collect stormwater remediation fees from local residents and business entities that it otherwise would collect. Frederick County administrative expenditures decrease by at least \$23,500 beginning in FY 2014 as the county would no longer need to hire one part-time administrative professional to implement Chapter 151 of 2012. However, long-term stormwater management expenditures do not necessarily decrease under the bill, as Frederick County remains subject to State and federal laws that require additional stormwater management controls.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law:

Chapter 151 of 2012

Chapter 151 requires 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) to collect a stormwater remediation fee separate from any existing or future stormwater charges of the jurisdiction. The 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. Chapter 151 establishes provisions related to appeals, exemptions for financial hardship, and policies to reduce the fee to account for systems or activities that reduce the quantity or improve the quality of stormwater discharged from a property.

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. A property may not be assessed a stormwater remediation fee by both a county and a municipal corporation.

Fee revenues from each jurisdiction must be deposited into its local watershed protection and restoration fund and may not revert or be transferred to a local general 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.

Beginning on July 1, 2014, and every two years thereafter, a jurisdiction must 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 under Chapter 151.

Other Stormwater Management Requirements

Under the bill, Frederick County remains subject to other generally applicable stormwater management laws. 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 is 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.

Each county and municipality is required to adopt ordinances necessary to implement a stormwater management program. Every three years, the Maryland Department of the Environment (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. Finally, MDE is required to adopt regulations establishing criteria and procedures for stormwater management in Maryland. Pursuant to legislation enacted in 2007, in 2010, MDE adopted emergency regulations that require environmental site design (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.

Background:

Stormwater Management a Key Component of Bay Restoration Efforts

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. Due to the continuing concerns regarding the impact of stormwater runoff on the health of the Chesapeake Bay, stormwater management controls are a key component of the State's efforts to restore the bay. More information on the State's bay restoration efforts, including an overview of the requirements to reduce nutrient and sediment loading under the federal Chesapeake Bay Total Maximum Daily Load (TMDL) and the State's Watershed Implementation Plan (WIP), may be found in **Appendix – Chesapeake Bay Restoration Policy and Status**.

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 about 17% of the nitrogen reduction and about 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 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 1 shows the most recent estimated cost of implementing the Phase II WIP from all sectors. Among other things, the exhibit illustrates that the cost of local stormwater BMPs likely represent the largest costs in implementing the State's TMDL.

Exhibit 1
Maryland's Estimated Phase II WIP Implementation Costs
(\$ in Millions)

<u>Source Sector</u>	<u>2010-2017 Cost</u>	<u>Total 2010-2025 Cost</u>
Agriculture	\$498	\$928
Municipal Wastewater	2,368	2,368
Major Municipal Plants	2,306	2,306
Minor Municipal Plants	62	62
Stormwater	2,546	7,388
Maryland Department of Transportation	467	1,500
Local Government	2,079	5,888
Septic Systems	824	3,719
Upgrades	562	2,358
Connections	237	1,273
Pumping	25	88
Total	\$6,236	\$14,403

Note: The exhibit does not reflect costs associated with controlling combined sewer and sanitary overflows or the implementation of the Healthy Air Act. The exhibit reflects the final Phase II WIP estimate released October 26, 2012.

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

Using this preliminary estimate of statewide stormwater costs to implement the WIP of about \$5.89 billion between 2010 and 2025, the cost for stormwater is about \$184 annually per household, or a little more than \$15 per month per household, if distributed evenly among all households statewide. It is important to note that this would not represent direct charges to each residence, as some portion of the cost would be paid by commercial and industrial entities. If one-quarter of the fee were paid by the commercial and industrial sectors, the residential fee would be about \$11.50 per month per household.

For context, based on a survey of the most recent financial reports for the 23 counties and Baltimore City, the average annual water and sewer charge per household for these jurisdictions is about \$63 per month, or about \$753 annually.

According to a national survey conducted by Western Kentucky University in 2012, the mean stormwater utility fee among the 1,354 local jurisdictions surveyed was \$4.20 per month per household. Maryland ranked twenty-fourth among states in terms of the number of local stormwater utilities statewide, with six jurisdictions counted in the

survey. The survey author estimated that there may be between 1,500 and 2,000 local stormwater utility fees nationwide. Notable monthly residential stormwater utility fees monthly include \$13.48 per household in Philadelphia, and about \$7.72 per household in Montgomery County (although this rate may increase under recently proposed local legislation).

Local Fiscal Effect:

Local Watershed Protection and Restoration Fund and Stormwater Management Costs

A reliable estimate of the reduction in local stormwater remediation fee revenues within Frederick County cannot be made because Chapter 151 did not specify or mandate the level that a jurisdiction must establish for its stormwater remediation fee. Further, Frederick County advises that it has not yet developed an estimate of costs to implement its next NPDES Phase I MS4 permit, which could serve as a proxy for the county's future funding needs for stormwater management. However, *for illustrative purposes only*, using the preliminary estimate of the statewide cost for local stormwater management in the Phase II WIP discussed above, if Frederick County were to impose a stormwater remediation fee system that generated the equivalent of \$184 annually for each household in the county, then county revenues decrease by about \$15.6 million annually under the bill. This illustrative example is based on the 2010 Census count of 84,800 households in the county.

Local expenditures that otherwise would have been spent from the watershed protection and restoration fund in Frederick County decrease correspondingly. However, because the county remains subject to existing State and federal stormwater requirements, including requirements under its Phase I MS4 permit as well as the stormwater management requirements resulting from the bay TMDL and the State's Phase II WIP, overall local expenditures for stormwater management in Frederick County do not necessarily decrease.

Local Administrative Expenditures

Frederick County administrative expenditures decrease as a result of the bill, however, as the county will no longer need to implement Chapter 151. Specifically, the county advises that under Chapter 151, additional resources are needed to (1) handle appeals filed by property owners regarding the levy of a fee; (2) process any offset credits or hardship claims; and (3) assist in the preparation of the required annual report. The county advises that to handle these administrative activities, a part-time administrative professional is needed at a cost of at least \$23,500 annually, which reflects a salary and fringe benefits but does not reflect any additional equipment or operating costs. Thus, local administrative expenditures decrease accordingly.

Small Business Effect: Small businesses in Frederick County may realize a meaningfully beneficial savings to the extent that the fee otherwise imposed pursuant to Chapter 151 would have resulted in a significant fee on commercial or industrial entities. Small business contractors that specialize in constructing or installing stormwater controls may incur a meaningful reduction in profits to the extent that the bill results in less stormwater management controls being implemented than otherwise would occur. However, any such impacts may only be temporary, as the State's WIP will likely still require significant stormwater management controls in the future in Frederick County.

Additional Comments: As noted in the fiscal and policy note for HB 987 of 2012 (enacted as Chapter 151), the establishment of a stormwater remediation fee may reduce future local expenditures that may otherwise be necessary to achieve the mandates of the State WIP and bay TMDL. In the absence of a dedicated funding source such as a stormwater remediation fee, it is assumed that, under the bill, Frederick County may need to generate additional revenue through an increase in other fees, charges, or taxes to comply with the WIP.

Additional Information

Prior Introductions: None.

Cross File: SB 317 (Senator Brinkley) - Education, Health, and Environmental Affairs.

Information Source(s): Frederick County, Maryland Department of the Environment, Western Kentucky University, Department of Legislative Services

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Appendix – Chesapeake Bay Restoration Policy and Status

Past efforts to restore the Chesapeake Bay watershed, which includes parts of Delaware, the District of Columbia, Maryland, New York, Pennsylvania, Virginia, and West Virginia, have resulted in insufficient progress and continued poor water quality. However, a regional restoration initiative, required by the federal government and characterized by accountability measures and shorter term program evaluation, is underway.

Policy Framework

The current bay restoration policy framework is primarily guided by an executive order, two-year goal milestone setting, and a Chesapeake Bay Total Maximum Daily Load (TMDL). In May 2009, President Barack Obama signed an executive order that recognizes the bay as a national treasure and calls on the federal government to lead a renewed effort to restore and protect the nation's largest estuary and its watershed. Concurrent with the issuance of the executive order, bay jurisdictions committed to achieving specific, short-term bay restoration milestones in order to assess progress toward achieving nitrogen, phosphorus, and sediment pollution reduction goals. As part of this effort, pollution reduction progress and program information is submitted to the U.S. Environmental Protection Agency (EPA) every two years.

In December 2010, EPA established a Chesapeake Bay TMDL, as required under the federal Clean Water Act and in response to consent decrees in Virginia and the District of Columbia. TMDL sets the maximum amount of nutrient and sediment pollution the bay can receive and still attain water quality standards. It also identifies specific pollution reduction requirements; all reduction measures must be in place by 2025, with at least 60% of the actions completed by 2017. As shown in **Exhibit 1**, the State must establish pollution control measures by 2025 that, based on 2010 levels, will reduce nitrogen loads to the bay by 22.0%, phosphorus loads by 14.9%, and sediment loads by 1.9%.

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

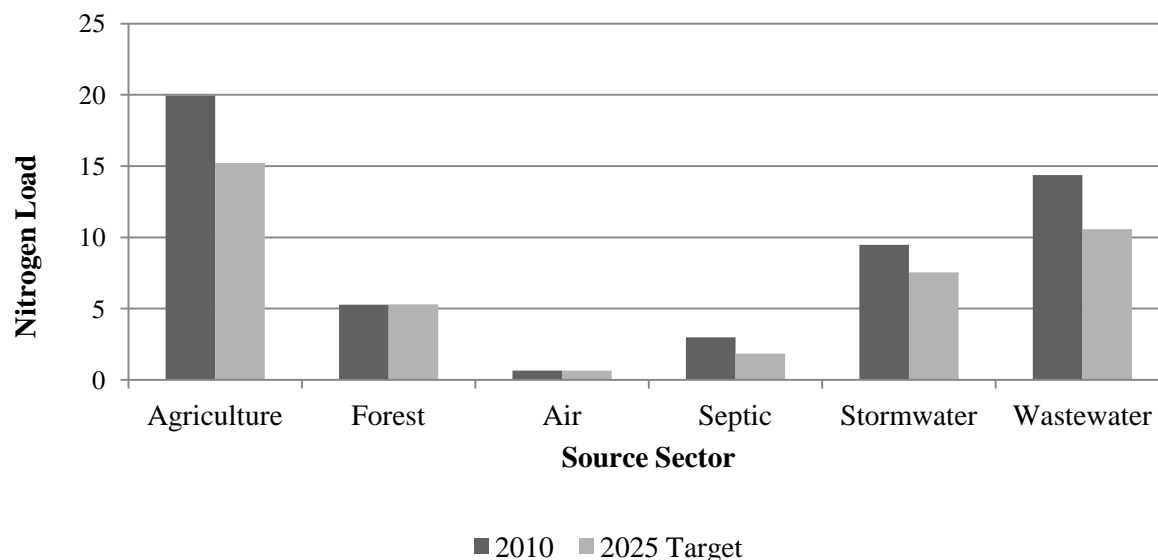
<u>Pollutant</u>	<u>2010 Loads</u>	<u>Bay TMDL Target Load</u>	<u>Percent Reduction</u>
Nitrogen	52.76	41.17	22.0%
Phosphorus	3.30	2.81	14.9%
Sediment	1,376	1,350	1.9%

TMDL: Total Maximum Daily Load

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

As part of the Chesapeake Bay TMDL, bay jurisdictions must develop watershed implementation plans (WIPs) that identify the measures being put in place to reduce pollution and restore the bay. WIPs (1) identify pollution load reductions to be achieved by various source sectors and in different geographic areas and (2) help to provide “reasonable assurance” that sources of pollution will be cleaned up, which is a basic requirement of all TMDLs. In 2010, bay jurisdictions submitted Phase I WIPs that detail how the jurisdiction plans to achieve its pollution reduction goals under TMDL. The bay jurisdictions were required to submit Phase II WIPs in early 2012 that established more detailed strategies to achieve the bay TMDL on a geographically smaller scale. **Exhibit 2** shows Maryland’s current and 2025 target nitrogen pollution loads by source sector and illustrates that agriculture, wastewater, and stormwater are the major sources of pollution and are being targeted for significant load reductions. A Phase III WIP, which must be submitted to EPA in 2017, will ensure that all practices are in place by 2025 so that water quality standards can be met.

Exhibit 2
Current and Target Nitrogen Pollution Loads by Source
(Million Pounds per Year)



Source: Maryland's Phase II Watershed Implementation Plan

EPA has the discretionary authority to ensure that the bay jurisdictions develop and implement appropriate WIPs; attain appropriate two-year milestones of progress; and provide timely and complete information as part of the TMDL process. EPA may, among other things, increase oversight of state-issued pollution permits, require additional pollution reductions, prohibit new or expanded pollution discharges, redirect or condition federal grant funds, and revise water quality standards to better protect local and downstream waters. Last summer, EPA withheld \$1.2 million in federal aid from Virginia and made allocation of the funds contingent upon the state addressing specified stormwater management issues.

Progress to Date

Maryland achieved its first set of two-year bay restoration milestone goals and is implementing strategies set forth in its WIP. The first set of two-year milestones required Maryland to reduce nitrogen loads by 3.75 million pounds and phosphorus loads by 193,000 pounds (relative to calendar 2008 load levels). In June 2012, it was announced that Maryland had met its 2009-2011 milestones and was on track to achieve its 2012-2013 milestones. While the State met and even exceeded several goals, it did not meet all of its goals. For example, Maryland committed to installing 125 agricultural water control structures, but only met 39% of that goal. Additionally, the State

committed to stormwater management retrofits to address 119,700 pounds of nutrients, but met only 88% of that goal. During the milestone period, Maryland assessed and adapted goals to reflect actual conditions and overshot its reduction goals for added security.

More Information

A December 2012 Department of Legislative Services report titled *Achieving the Chesapeake Bay Restoration Mandate in Maryland* provides more information about this issue and is available at

http://dls.state.md.us/data/polanasubare/polanasubare_natresenvntra/Achieving-the-Chesapeake-Bay-Restoration-Mandate-in-Maryland.pdf.