HB 508

Department of Legislative Services

Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 508 (Delegate Carr, *et al.*)

Environmental Matters — Education, Health, and Environmental Affairs and Budget and Taxation

Environment - Local Stormwater Management Charges - State Property

This bill repeals the exemption applicable to property owned by the State from a stormwater remediation fee established by a local government pursuant to the requirements of Chapter 151 of 2012 (HB 987). Instead, State property covered by a National Pollutant Discharge Elimination System (NPDES) municipal separate storm sewer system (MS4) permit or industrial stormwater permit may not be charged a stormwater remediation fee unless the State or a unit of State government and the local government mutually agree to be charged a fee. The bill also specifies that the systems, facilities, services, or activities that a local jurisdiction must account for in establishing policies to reduce a stormwater remediation fee established pursuant to Chapter 151 include stormwater treatment or reduction that is required to meet the total maximum daily load requirements under an NPDES industrial stormwater permit.

The bill takes effect July 1, 2014.

Fiscal Summary

State Effect: State expenditures (all funds) may increase beginning in FY 2015 to the extent the State or any units of State government agree to pay local stormwater remediation fees. Revenues are not affected.

Local Effect: Local government revenues increase for any county or municipal corporation subject to the requirements of Chapter 151 of 2012 that collects a stormwater remediation fee under an agreement with a unit of State government.

Small Business Effect: Minimal.

Analysis

Current Law: The Maryland Department of the Environment (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.

The governing body of a county or municipality may adopt a system of charges to fund the implementation of stormwater management programs. State and local governments are exempt from any such charges. This exemption is unchanged by the bill.

Chapter 151 of 2012 requires a county or municipal corporation subject to a NPDES Phase I MS4 permit to establish a stormwater remediation fee and local watershed protection and restoration fund by July 1, 2013. The fee must be 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. Property owned by the State, local governments, and specified volunteer fire departments are exempt from a stormwater remediation fee.

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.

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)

Source Sector	2010-2017 Cost	Total 2010-2025 Cost
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

Local Jurisdictions Subject to Chapter 151 of 2012

Currently, 10 local jurisdictions in Maryland are subject to a Phase I MS4 permit and, therefore, the requirements of Chapter 151: Anne Arundel, Baltimore, Carroll, Charles, Frederick, Harford, Howard, Montgomery, and Prince George's counties and Baltimore City. Although Montgomery County has a stormwater fee that is similar to the remediation fee required by Chapter 151, the county has determined that the existing local laws need to be amended to conform to Chapter 151, and that, therefore, it is not exempt from Chapter 151.

State Expenditures/Local Revenues: Although State expenditures (all funds) may increase beginning in fiscal 2015 to pay any stormwater remediation fees assessed on State property, resulting in a corresponding increase in local revenues, an estimate of the increase cannot be made at this time due to numerous uncertainties, including (1) how many units of State government will agree to pay a stormwater remediation fee; (2) the level of each stormwater remediation fee; (3) how many State facilities discharge stormwater into local stormwater infrastructure or property; (4) the extent to which State properties qualify for credits to reduce local fees; and (5) how long each unit of State government will agree to pay a local fee.

However, the increase in State expenditures and local revenues may be significant as the State owns many properties with several acres of impervious surfaces in areas subject to Chapter 151 of 2012. For example, the Department of General Services (DGS) is responsible for the statewide operation and maintenance of 56 buildings with 6.3 million square feet of space. This includes 74 acres of property within the City of Annapolis, at least 17 acres of landscaped area with 19 acres of parking lots in Baltimore City, and 47 acres of landscaped areas and 20 acres of parking lots serving 18 District Court/multi-service centers across the State.

Additionally, the Department of Natural Resources (DNR) advises that it manages 613 properties with 436 acres of impervious surfaces in the 10 jurisdictions subject to Chapter 151, although many of these properties are subject to forest buffers and wetlands and do not drain to a locally owned stormwater facility; to the extent that a significant percentage of DNR properties become subject to local stormwater remediation fees, an additional administrative position may be necessary to process the additional billing workload.

For contextual purposes, Montgomery County advises that, under its current stormwater utility fee, known as the Water Quality Protection Charge, the State would be liable to the county for about $152,000 annually. The Department of Legislative Services (DLS) advises that this estimate does not account for any credits and adjustments to the fee, or that the fee is actually proportionate to the stormwater management services provided.

DLS further advises that the Montgomery County fee may not be reflective of the average fee established by other jurisdictions subject to Chapter 151; currently, Montgomery County's fee is $92.60 per equivalent residential unit annually. Based on a survey of stormwater utility fees nationwide, typical fees range from $30 to $75 per equivalent residential unit per year, though some fees greatly exceed this amount, particularly for fees that are based on the actual extent of impervious surfaces. Several local jurisdictions subject to Chapter 151 are in the process of developing and adopting local legislation to establish a stormwater remediation fee and local watershed protection and restoration fund.

Although the amount of local stormwater remediation fees paid by the State under the bill is not known, any increase in local government revenues resulting from this bill provides additional funding for local watershed protection and restoration funds established pursuant to Chapter 151.

The Office of Facilities Planning within DGS advises that capital costs may increase for the design and construction of projects in affected areas to the extent that the bill establishes an incentive to design facilities to reduce stormwater runoff from State properties and receive a credit from the payment of a local stormwater remediation fee, rather than paying the full fee to a local jurisdiction.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Harford, Montgomery, and Talbot counties; Baltimore City; Town of Sykesville; Maryland Department of Agriculture; Baltimore City Community College; Department of Natural Resources; Department of General Services; Department of Housing and Community Development; Department of Health and Mental Hygiene; Department of Juvenile Services; Maryland Association of Counties; Maryland Municipal League; Morgan State University; Department of Public Safety and Correctional Services; Maryland Department of the Environment; University of Maryland Center for Environmental Science; Johns Hopkins 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)

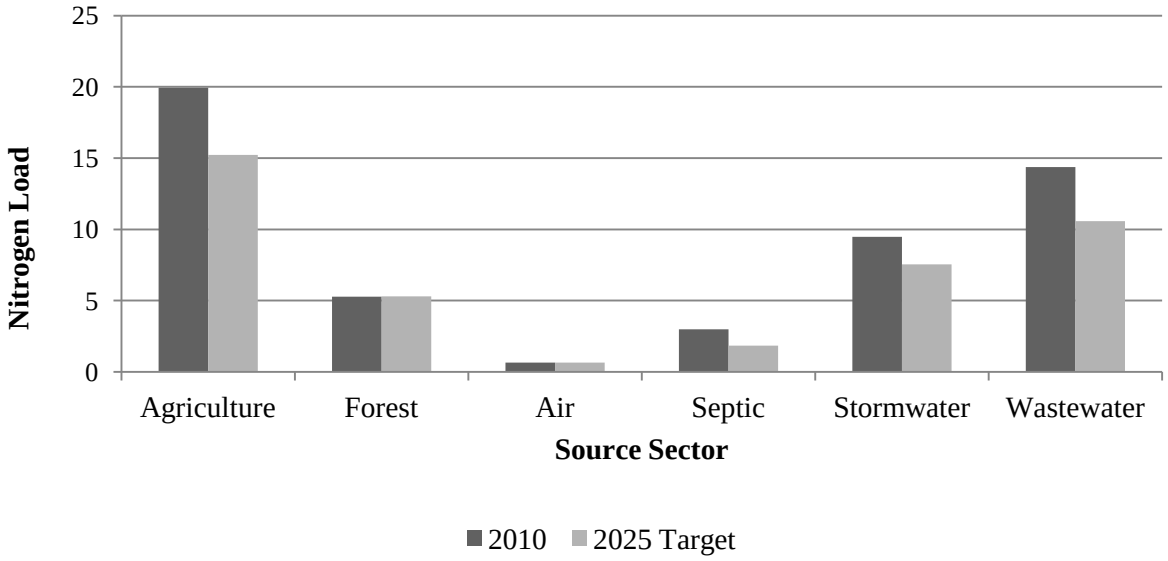
Pollutant	2010 Loads	Bay TMDL Target Load	Percent Reduction
Nitrogen	52.76	41.17	22.0%
Phosphorus	3.30	2.81	14.9%
Sediment	1,376	1,350	1.9%

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.