

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 359 (Senator Stone, *et al.*)
Education, Health, and Environmental Affairs

Watershed Protection and Restoration Programs - Impervious Surface -
Definition

This bill alters the definition of “impervious surface” within the Stormwater Management subtitle of the Environment Article by excluding gravel that is placed on top of a surface that allows stormwater to infiltrate into the ground.

Fiscal Summary

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

Local Effect: Local government expenditures may increase for one or more jurisdictions to establish new methodologies for surveying impervious surfaces, for property inspections, and/or to revise billing processes. Local revenues may decrease for jurisdictions that levy a stormwater remediation fee based on surfaces covered by gravel but that are prohibited from doing so under the bill; the number of jurisdictions affected and amount of revenue that may be foregone is unknown. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background: For purposes of State stormwater management law, “impervious surface” is defined as a surface that does not allow stormwater to infiltrate into the ground and specifically includes rooftops, driveways, sidewalks, or pavement. Maryland Department of the Environment (MDE) regulations define “infiltration” as the passage or movement of water into the soil surface. The definition of impervious surface

is important for local jurisdictions required under Chapter 151 of 2012 to establish a stormwater remediation fee and watershed protection and restoration fund, because Chapter 151 authorizes these jurisdictions to levy a fee based on the extent of impervious surface on a property. Currently, 7 of the 10 jurisdictions subject to Chapter 151 levy a fee based, at least in part, on the extent of impervious surface on a property.

The Maryland Stormwater Design Manual, produced by MDE, contains numerous standards and criteria to assist stormwater managers and those installing stormwater practices. Although the placement of gravel is not specifically listed or discussed as an approved practice, there are several references to the use of gravel within other practices designed to increase infiltration. However, the manual also notes, as a management consideration, that if gravel is compacted to the point where water no longer infiltrates, the gravel-covered surface is then impervious; any gravel driveway or parking area that is regularly used is likely to become at least partially impervious over time.

For additional information about Chapter 151 of 2012 and its implementation, see the **Appendix – Stormwater Remediation Fees in Maryland.**

Local Fiscal Effect: Local government expenditures may increase beginning in fiscal 2015 for some jurisdictions subject to Chapter 151 of 2012. The establishment of a stormwater remediation fee generally requires local jurisdictions to utilize aerial surveys and geographic information systems to determine the extent of impervious surface on properties within the jurisdiction. Requiring categorical exclusions may require the recalculation of the extent of impervious surfaces, which may necessitate a significant amount of manual processing for fee-setting and billing. Additionally, some jurisdictions may incur a significant increase in property owner appeals, requiring additional resources for billing and property inspections.

It is unclear to what extent some of the jurisdictions that have levied a stormwater remediation fee based upon the extent of impervious surfaces in the jurisdiction may possess the capability to handle any changes to its fee-setting methodology without a significant additional burden. Further, it is unclear to what extent the bill's exclusion may already be accounted for within a jurisdiction's fee-setting process. For example, the bill excludes from the definition of impervious surface gravel that is placed on top of *a surface that allows stormwater to infiltrate into the ground*. Many jurisdictions may already be excluding such surfaces from its calculation of a property's impervious surface because the surface allows stormwater to infiltrate and would be, by definition, not impervious.

Local revenues may decrease, potentially significantly, to the extent that a jurisdiction currently levies a stormwater remediation fee based on surfaces that allow infiltration, but are covered by gravel, and is prohibited from continuing to do so under the bill. The

number of jurisdictions affected by the bill's exclusion and the amount of fee revenues that may no longer be collected is unknown.

Small Business Effect: The bill may result in meaningful savings for any small business that owns a significant extent of real property covered by gravel in a jurisdiction that currently levies a stormwater remediation fee based on pervious surfaces covered by gravel. It is unclear how many such small businesses may be affected.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): City of Bowie, Maryland Department of the Environment, Department of Legislative Services

Fiscal Note History: First Reader - January 31, 2014
mm/lgc

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Appendix – Stormwater Remediation Fees in Maryland

The federal Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States. The National Pollutant Discharge Elimination System (NPDES), a component of the CWA, regulates stormwater discharges from municipal separate storm sewer systems (MS4). There are 10 jurisdictions in Maryland that hold NPDES Phase I MS4 permits (Anne Arundel, Baltimore, Carroll, Charles, Frederick, Harford, Howard, Montgomery, Prince George’s counties, and Baltimore City). In the 2012 legislative session, the General Assembly passed legislation, House Bill 987 (Chapter 151), which required these 10 jurisdictions to establish a local stormwater remediation fee to assist in financing the implementation of the local MS4 permits, including the requirement of each permit to meet the stormwater-related targets under the Chesapeake Bay Total Maximum Daily Load (TMDL).

Chapter 151 of 2012

Chapter 151 of 2012 was passed by the General Assembly in the context of a substantial projected shortfall in funding for local water quality related stormwater projects. The Phase II Watershed Implementation Plan under the bay TMDL was released in fall 2012 and estimated that the largest cost to implement the bay TMDL, by a significant margin, was attributed to local stormwater management. Thus, Chapter 151 required the 10 jurisdictions subject to a NPDES Phase I MS4 permit – representing the vast majority of the State’s population and untreated impervious surface area – to adopt local laws establishing a stormwater remediation fee and watershed protection and restoration fund by July 1, 2013.

Chapter 151 provided flexibility for each jurisdiction to decide the level and structure of the fee, how it is collected, and other details of the fee and fund. The law did require the fee to be based on the share of stormwater management services related to a property and provided by the county or municipality. The law also required fee exemptions and a system of offsets, as well as a process for property owners to appeal a fee assessment, and specified that money in each fund is intended to be used only to support additional (not existing or ongoing) efforts for stormwater management activities.

Adoption and Implementation of Local Laws

In fiscal 2014, it is estimated that the stormwater fee will generate about \$80.2 million across nine jurisdictions; if revenues from the restructured fee established by Montgomery County are counted, fiscal 2014 revenues amount to \$103.0 million. The structure and amount of the fees established pursuant to Chapter 151 vary greatly by

jurisdiction, as shown in **Exhibit 1**. For example, with respect to residential fees, four counties chose to establish a flat fee per property or per unit, while four other jurisdictions established fees based on imperviousness, type or size of property, or home size. For nonresidential properties, most counties chose to establish a rate based on the amount of impervious surface, as defined through an equivalent residential unit (ERU) or an impervious unit (IU). Jurisdictions have also established separate fees for certain types of properties, such as properties owned by religious groups or nonprofit organizations. And, in recognition of the financial burden that the new fees may cause for some property owners, several jurisdictions adopted a phased-in approach to fee collection.

Each jurisdiction has also devised a unique approach to the provision of fee exemptions, credits, and rebates. Chapter 151 specifies that property owned by the State, a local government, or a volunteer fire department is exempt from the stormwater fee; each jurisdiction also had to establish a financial hardship exemption. Some jurisdictions have chosen to establish further exemptions, such as for properties located within municipal boundaries, properties that are already subject to certain permits, properties owned by disabled veterans, and agricultural nonresidential properties. Similarly, while Chapter 151 requires jurisdictions to establish Maryland Department of the Environment-approved policies to reduce fees to account for services or activities that a property owner has invested in to reduce or treat stormwater runoff, each jurisdiction has established slightly different credits available for property owners. The significant variation in each jurisdiction's local laws, regulations, and associated programs, as well as the differing amounts of untreated impervious surfaces and overall level of local stormwater infrastructure needs in each jurisdiction, are projected to result in a wide range of revenues collected in fiscal 2014, as shown in Exhibit 1.

For additional information regarding stormwater remediation fees and the implementation of Chapter 151 of 2012 please see the Department of Legislative Services' report: *Stormwater Remediation Fees in Maryland*, available at: http://dls.state.md.us/data/polanasubare/polanasubare_natresenvntra/Stormwater-Remediation-Fees-in-MD.pdf.”

Exhibit 1
County Stormwater Fees and Estimated Revenues

<u>Local Jurisdiction</u>	<u>Residential Rate</u>	<u>Nonresidential Fee/ERU or IU</u>	<u>Nonresidential Fee Per Acre Equivalent</u>	<u>Local Estimate of Fiscal 2014 Revenues (\$ in Millions)</u>
Anne Arundel	\$34, \$85, or \$170 annually, depending on zoning district	Generally, \$85 per ERU; capped at 25% of property tax. Fees vary for specified types of properties.	\$1,259.39	\$13.9 (subject to phase-in)
Baltimore	\$21 (single-family attached); \$32 (condo); \$39 (single-family, detached, and agricultural residential).	Generally, \$69 per ERU for nonresidential property; \$20 per ERU for institutional properties.	\$1,502.81	\$24.3
Baltimore City	\$40, \$60, or \$120 depending on amount of impervious surface	Generally, \$60 per ERU; \$12 per ERU for religious nonprofits.	\$2,489.11	\$16.7 (partial collection)
Carroll	None	None	None	No fee
Charles	\$43 per property (an increase of \$29 over fiscal 2013 levels)	\$43 per property	N/A	\$1.4 (reflects \$29 increase)
Frederick	\$0.01 per property	\$0.01 per property	N/A	\$0.0
Harford	\$125 per property	\$7 per IU	\$609.86	\$1.05 (subject to phase-in)
Howard	\$15, \$45, or \$90 depending on type and size of property	\$15 per IU	\$1,306.85	\$10.8
Montgomery*	Varies, ranges from \$29.17 to \$265.20 depending on home size	\$88.40 per IU	\$1,593.22	\$22.8
Prince George's	\$20.58 per property plus \$20.90 per IU	\$20.90 per IU	\$391.68	\$12.0

ERU: equivalent residential unit
IU: impervious unit

* Montgomery County established a stormwater fee similar to the one required under Chapter 151 of 2012 prior to the enactment of legislation.

Source: Department of Legislative Services
