

**Department of Legislative Services**  
Maryland General Assembly  
2015 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 863

(Senator Miller, *et al.*)

Education, Health, and Environmental Affairs

Environment and Transportation

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**Watershed Protection and Restoration Programs - Revisions**

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This bill makes various changes to provisions relating to Chapter 151 of 2012, which required a county or municipality that is subject to a specified federal stormwater permit to collect a stormwater remediation fee and establish a local watershed protection and restoration program and fund. Among other things, the bill repeals the *requirement* for such jurisdictions to collect a stormwater remediation fee, subject to several conditions. The bill exempts Montgomery County from these provisions but establishes separate provisions pertaining to the county with similar requirements. Among other things, the bill also (1) alters the authorized uses and repayment terms applicable to the Water Quality Revolving Loan Fund (WQRLF); (2) authorizes jurisdictions to charge a stormwater remediation fee to the State under specified conditions; (3) establishes provisions that provide relief from the fee for specified organizations under certain conditions; (4) requires jurisdictions to file an annual financial assurance plan, which is subject to review and potential sanctions; and (5) makes several changes applicable to jurisdictions that have established a system of charges for stormwater management (separate from a stormwater remediation fee).

The bill takes effect July 1, 2015.

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**Fiscal Summary**

**State Effect:** General fund expenditures increase by \$204,700 in FY 2016, and by more than \$197,300 annually thereafter, for the Maryland Department of the Environment (MDE) to implement the bill. State expenditures (all funds) increase to the extent that State agencies agree to be charged a stormwater remediation fee. Revenues are not affected, as any administrative penalties imposed under the bill are to be held in escrow and dedicated for local stormwater projects.

**Local Effect:** Local stormwater remediation fee revenues may be eliminated in several jurisdictions in FY 2016; other local revenues may increase to offset the elimination of any fees if necessary to have sufficient funding for permit compliance. Local fee revenues increase to the extent the State or any other entity currently exempt must pay the fee, but decrease to the extent specified organizations no longer pay the fee. The overall level of spending from local watershed protection and restoration funds likely remains unchanged, although certain provisions of the bill may result in changes in local spending on stormwater management.

**Small Business Effect:** Meaningful.

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## Analysis

### Bill Summary:

#### *Repeal of the Mandatory Fee*

Chapter 151 of 2012 requires a county or municipality subject to a National Pollutant Discharge Elimination System Phase I municipal separate storm sewer system permit (Phase I MS4 permit) to adopt and implement local laws or ordinances that establish an annual stormwater remediation fee and a local watershed protection and restoration fund. The bill repeals the *requirement* to collect a stormwater remediation fee and, instead, *authorizes* such jurisdictions to collect a fee; *the bill does not repeal Chapter 151 of 2012 and the requirement to establish a local watershed protection and restoration program and fund.*

The bill conditions the repeal (or reduction) of a stormwater remediation fee before July 1, 2016 on the jurisdiction identifying dedicated revenues, funds, or other sources of funds to be deposited into the local watershed protection and restoration fund for meeting the requirements of its MS4 permit. Additionally, the jurisdiction must file a financial assurance plan that is determined by MDE to demonstrate good faith in identifying sufficient funds to meet 75% of the anticipated costs of the MS4 permit's "impervious surface restoration plan." These conditions are not applicable to the repeal or reduction of a fee beginning on July 1, 2016.

The bill also requires a local jurisdiction to include the following statement on any bill or in a bill insert to collect a stormwater remediation fee: "This is a local government fee established in response to federal stormwater management requirements. The federal requirements are designed to prevent local sources of pollution from reaching local waterways."

### *Financial Assurance Plans and Reporting Requirements*

Regardless of whether a local jurisdiction decides to maintain or repeal its stormwater remediation fee under the bill, each jurisdiction, including Montgomery County, is required to file a financial assurance plan with MDE by July 1, 2016 and every two years thereafter on the anniversary of the date the permit was issued. The plan must identify all local actions that will be required for the jurisdiction to comply with its Phase I MS4 permit, as well as the funding sources that will support those efforts, including a five-year projection of costs and revenues for permit compliance. The plan must also identify the specific actions and expenditures implemented in the previous fiscal years. For a first financial assurance plan filed by July 1, 2016, funding in the plan is sufficient if it includes dedicated revenues, funds, or sources of funds to meet 75% of the projected costs of compliance with the impervious surface restoration plan requirements of the MS4 permit for the following two years. A subsequent financial assurance plan may be deemed sufficient if it includes dedicated funds to meet 100% of the projected two-year costs of compliance with the impervious surface restoration plan requirements. A local jurisdiction may not file a financial assurance plan until the local governing body holds a public hearing and approves the plan. A financial assurance plan must be made publicly available on the MDE website within a specified timeframe.

MDE must make a decision whether the plan demonstrates sufficient funding within 90 days after the filing. If MDE determines that the funding is insufficient in the first plan submitted by July 1, 2016, then it must issue a warning to the jurisdiction and engage that jurisdiction in the development of a plan to meet the projected costs of compliance. For subsequent plan filings, the penalty for a finding of insufficient funding is an administrative fine of up to \$5,000 per day for a first offense, or up to \$10,000 per day for a subsequent offense, which is measured as the number of days until the plan demonstrates 100% funding of the projected costs of compliance with the MS4 permit for the following two years. Any such fines must be held by MDE in escrow to be used by the jurisdiction for stormwater management projects.

Beginning September 1, 2016, MDE must submit an annual report to the Governor and specified legislative committees that evaluates the compliance of local jurisdictions with the requirements of the bill and the requirements of Chapter 151.

Currently, each of the jurisdictions subject to Chapter 151 is required to make publicly available a *biennial* 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. This report was due July 1, 2014, and is currently due every *two* years thereafter. The bill makes this report due *annually* and adds an additional requirement to report on any other funding structure developed by a jurisdiction under the

bill's authorization, by source. The report must also specify the amount of money spent on each of several authorized uses, and identify each project funded in the previous fiscal year, plus any other information MDE deems necessary.

#### *Restriction of Funds for New and Additional Stormwater Management Only*

The bill repeals the provision stating that stormwater remediation fee and other revenues deposited into a local watershed protection and restoration fund are *intended* to be used only to support additional (not existing or ongoing) efforts and specified activities.

#### *State and Local Liability for Local Fee*

Chapter 151 specifies that property owned by the State or a local government (but not federal property) is exempt from liability for the payment of stormwater remediation fees. The bill authorizes a local jurisdiction to charge a fee to the State based on the State's share of stormwater management services provided by the local jurisdiction to the State property. However, the State may only be charged a fee by a jurisdiction under the bill if the jurisdiction also appropriates money into its own local watershed protection and restoration fund based on its own share of stormwater management services related to local government property. The bill does not specify an amount of money that must be appropriated by a jurisdiction or that may be charged to the State, which may be set by each jurisdiction.

#### *Fee Relief for Certain Organizations*

In addition to State and local property, Chapter 151 also exempted volunteer fire companies from the payment of a stormwater remediation fee. The bill expands this statewide exemption to also include veterans' organizations. However, a veterans' organization or volunteer fire department may be charged a fee if a jurisdiction determines that it is necessary to create a nondiscriminatory program for the purpose of applying the fee to federal properties. If veterans' organizations and volunteer fire departments are charged a fee under this authorization, these organizations must be provided with the opportunity to apply for an alternate compliance plan (ACP) in lieu of paying a fee.

Currently, each jurisdiction is required to establish a generally applicable financial hardship exemption, and some jurisdictions have also chosen to establish further exemptions for certain classes of properties, such as for properties owned by disabled veterans or for nonresidential agricultural properties. The bill *requires* a jurisdiction to allow a *charitable* tax-exempt organization that can demonstrate substantial financial hardship to participate in an ACP in lieu paying a fee. MDE is authorized to adopt regulations that establish and govern ACPS, except local ACPS established prior to July 1, 2015, and the bill also authorizes Bay Restoration Fund (BRF) money to be used to

fund projects associated with ACPs. The bill does not establish a priority for the use of BRF funds for ACPs, which, under current law, is to be determined by MDE through regulation.

#### *Stormwater Agreements Between Jurisdictions*

Beginning July 1, 2016, if a county funds the cost of stormwater remediation by using “general revenues” or through the issuance of bonds, it must meet with each municipality within its jurisdiction to mutually agree that the county will (1) assume responsibility for the municipality’s stormwater remediation obligation; (2) for a municipality that has already established a stormwater remediation fee or a system of charges for stormwater management, adjust the county property tax rate within the municipality to offset the fee charged by the municipality; or (3) negotiate a memorandum of understanding (MOU) to mutually agree upon “any other action.”

By December 31, 2015, a county or municipality that owns property located within a municipality or county, respectively, and has adopted a system of charges for stormwater management, must establish an MOU to agree on an amount to be paid by the county or municipality to defray the costs of providing stormwater pollution control services.

#### *Montgomery County*

The bill exempts Montgomery County from the provisions of Section 4-202.1 of the Environment Article (which established stormwater remediation fees) and establishes new provisions within Section 4-204 of the Environment Article (which predates the enactment of Section 4-202.1 and authorizes the creation of a local system of charges for stormwater management) applicable to Montgomery County.

Montgomery County may not impose a charge on a veterans’ organization or regularly organized volunteer fire department, unless the county determines that it is necessary to create a nondiscriminatory program for applying the fee to federal properties. If veterans’ organizations and volunteer fire departments are charged a fee under this authorization, these organizations must be provided with the opportunity to apply for an ACP in lieu of paying a fee. Montgomery County also may not impose a charge on roads owned by a 501(c)(4) tax-exempt homeowners association that qualify for a State or county roadway maintenance reimbursement fund.

The bill authorizes Montgomery County to charge the State based on the State’s share of stormwater management services provided by the county to State property. However, the State may only be charged a fee by Montgomery County if the county also appropriates money into its own local watershed protection and restoration fund based on its own share of stormwater management services related to local government property.

Finally, Montgomery County's system of charges may include a financial hardship program, which may include a system of offsets to account for activities that reduce the quantity or improve the quality of stormwater discharged from a property.

#### *Maryland Water Quality Financing Administration*

The bill amends the definition of "wastewater facility" and "person," as applied to funding programs administered by MDE's Water Quality Financing Administration. "Person" is amended to include a "nonprofit entity" and "wastewater facility" is amended to generally expand the definition's application to nonpoint sources of water pollution and stormwater. The bill also modifies WQRLF to allow MDE to increase the maturity and amortization schedule of its loans, from 20 years to 30 years, consistent with recent changes to federal law.

#### *Other Provisions*

Finally, the bill specifies that it is the intent of the General Assembly that money in the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund (2010 Trust Fund) be used to provide matching funds to local governments and other political subdivisions that have enacted a stormwater remediation fee (but not another system of charges for stormwater management).

The bill also amends the statute authorizing local jurisdictions to establish a system of charges for stormwater management by applying several of the requirements that currently apply to Phase I MS4 permit holders that implement watershed protection and restoration programs. Thus, the several jurisdictions that have adopted a system of charges for stormwater management must ensure that the local system of charges include policies, procedures, and guidelines to ensure that charges are based on the share of services provided, including credits and offsets, as well as for monitoring and inspections.

**Current Law/Background:** Chapter 151 of 2012 requires a jurisdiction subject to a Phase I MS4 permit to adopt and implement, by July 1, 2013, local laws or ordinances that establish an annual stormwater remediation fee and a local watershed protection and restoration fund. Chapter 151 did not require each jurisdiction to set the fee at a specific level or otherwise require the jurisdictions to collect a specific amount in revenues; each jurisdiction has discretion in setting the local stormwater remediation fee.

Fee revenues from each jurisdiction must be deposited into the local watershed protection and restoration fund and 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, but only if fees 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.

Although Chapter 151 *required* the 10 local Phase I MS4 permit holders to establish a stormwater fee, local jurisdictions maintain the *authority* to levy a system of charges (which could include stormwater remediation fees) under separate provisions of the Environment Article that precede the enactment of Chapter 151. For example, prior to Chapter 151, there were several local stormwater fees in Maryland, including the Montgomery County Water Quality Protection Charge. The Montgomery County charge was amended to comply with Chapter 151, but was otherwise similar in the structure and amount of revenue raised to the county's current fee. Additionally, the City of Salisbury recently established a fee to help finance its projected stormwater management needs and is the latest of 16 jurisdictions in Maryland to establish a stormwater fee (the Town of Oxford also recently established a stormwater fund consisting of a property tax increment). Finally, it should be noted that 2 of the 10 jurisdictions subject to Chapter 151 – Carroll and Frederick counties – already implement their Phase I MS4 permits without revenues from the stormwater remediation fee (Frederick County has collected only a one-cent fee), as other counties may do under the bill. Section 18 of the Budget Reconciliation and Financing Act of 2014 (Chapter 464) authorized Carroll and Frederick counties to establish an alternative source of funding to stormwater remediation fees, but maintained all other relevant requirements of Chapter 151, including the maintenance of a watershed protection and restoration fund.

Most jurisdictions subject to a Phase 1 MS4 permit were issued a permit by MDE in December 2014, with several other permits issued in December 2013, January 2014, and February 2015. Notably, the permit issued to Montgomery County was due to expire in

2015, and is the subject of a recent judgment by the Maryland Court of Special Appeals, which found deficiencies in the permit.

#### *State Funds for Local Stormwater Management*

The fiscal 2016 budget for the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund includes about \$2.8 million for grants to local jurisdictions to defray the costs of providing stormwater pollution control services to State facilities of less than five acres that are not subject to separate stormwater permits. According to a fact sheet by the Department of Natural Resources (DNR), which administers the trust fund, the grants provided for fiscal 2015 were distributed based on factors including the amount of impervious surface on State facilities serviced in each jurisdiction with a stormwater remediation fee and the comparative degree of local effort. The grants are to be directed to each jurisdiction's local stormwater restoration fund to be used solely for the planning, design, and construction of stormwater restoration projects.

Fiscal 2016 is the second year that such grants from the 2010 trust fund have been provided in the trust fund's budget. However, the fiscal 2016 capital budget does not include any general obligation bond funds for local stormwater management projects, which were provided from fiscal 2013 through 2015 (nearly \$100 million over these three fiscal years) and used to fund 307 projects (of which 55 have been completed).

Another potential source of additional State support for stormwater management is BRF, which, beginning in fiscal 2018, is authorized to be used to provide grants to jurisdictions that have established a system of charges for stormwater management (which are separate from stormwater remediation fees under Chapter 151 – legislation is needed to allow BRF grants to be made to the 10 jurisdictions subject to Chapter 151). Currently, MDE projects that at least \$25 million annually may be available from BRF for local stormwater grants in fiscal 2018, assuming an equal amount is also provided for additional septic system grants to local jurisdictions; this amount is also projected to increase after fiscal 2018.

Chapter 428 of 2004 established BRF, which is administered by the Water Quality Financing Administration within MDE. The main goal of BRF is to provide grants to owners of wastewater treatment plants (WWTPs) to reduce nutrient pollution to the Chesapeake Bay by upgrading the systems with enhanced nutrient removal technology. The fund is also used to support septic system upgrades and the planting of cover crops. The eligibility and priority ranking of a project supported by BRF must be determined by MDE regulations, which include consideration of several aspects of a project, including nutrient load reductions and cost-effectiveness of water quality benefits.

For additional information about Chapter 151 of 2012, stormwater remediation fee revenues, and stormwater utility fees around the United States, see the **Appendix – Stormwater Remediation Fees in Maryland**.

### *WQRLF*

WQRLF was created to provide low-interest loans to counties and municipalities to finance water quality improvement projects. The fund was established by the federal government in the Clean Water Act (CWA) of 1987 and by the State of Maryland in Sections 9-204 and 9-1604 of the Environment Article to replace the federal construction grants program that was phased out. Projects eligible for funding include WWTPs; failing septic systems; and nonpoint source projects, such as urban stormwater control projects. According to MDE, the U.S. Environmental Protection Agency recently extended the repayment period for loans made through the program from 20 years to 30 years.

### **State Fiscal Effect:**

#### *MDE Administrative Costs*

General fund expenditures increase by \$204,740 in fiscal 2016, and by more than \$197,273 annually thereafter, for MDE to hire three new staff (one internal auditor to track all data submitted in financial assurance plans, verify demonstrations of funding sufficiency, and assist in compiling evaluation reports required under the bill; one regulatory and compliance engineer to assist in making these determinations and to coordinate with each affected jurisdiction upon the effective date of the bill regarding compliance with the bill's various changes; and one administrative specialist to process all correspondence, handle information submitted under the bill and post the information online, as necessary). Current staff dedicated to writing and tracking compliance with MS4 permits are fully engaged in existing duties and cannot absorb the additional significant functions required by the bill. This estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	3
Salaries and Fringe Benefits	\$191,010
Start-up and Operating Expenses	<u>13,730</u>
<b>FY 2016 MDE Expenditures</b>	<b>\$204,740</b>

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. The estimate does not include any costs associated with additional inspections or mapping of State properties within affected jurisdictions. Any additional geographic information system usage can likely be handled with existing budgeted resources within MDE or other State agencies.

### *State Stormwater Remediation Fee Liability*

The bill authorizes local jurisdictions to charge a stormwater remediation fee (or, for Montgomery County, another form of charge) to the State based on the State's share of stormwater management provided by the local jurisdiction, if the jurisdiction also appropriates funds based on its own share of stormwater management services related to local property. Thus, State expenditures (all funds) may increase, potentially significantly, beginning in fiscal 2016. A reliable estimate of this increase in State expenditures cannot be made as it is unclear which jurisdictions repeal the local stormwater remediation fee under the bill, which jurisdictions appropriate additional funds for the share of stormwater services provided to locally owned property, how many State properties use local stormwater management services, and the rate that is charged to State properties, among several other factors.

*For illustrative purposes only, if no jurisdiction opts to repeal the local fee under the bill (except for those that have already repealed the fee or never established a fee) and all jurisdictions with a stormwater remediation fee charge each State property within the jurisdiction at the rate currently charged to nonresidential properties, then State expenditures may increase by as much as \$6 million in fiscal 2016, declining in future fiscal years as a greater portion of impervious surfaces on State properties are treated. However, this estimate likely overstates the actual State liability as it does not account for State properties that would not be subject to payment of a local fee because the properties are serviced by State stormwater management infrastructure. Additionally, this estimate is based on a preliminary survey conducted by the Maryland Department of Planning; a more precise survey must be conducted by each jurisdiction and/or the State to determine the actual extent of impervious surface on State property within each county that utilizes county (and not State or municipal) stormwater management services.*

### *BRF Expenditures to Support Local ACPs*

The bill authorizes BRF to be used to fund projects associated with ACPs available to charitable tax-exempt organizations that demonstrate substantial financial hardship (and potentially for veterans' organizations and volunteer fire departments if their exemptions are eliminated under the bill, as necessary to charge federal properties). Overall finances of the BRF Wastewater Account are generally not affected, as the bill only alters the timing and recipients of available BRF funds. Special fund expenditures from BRF only increase in any year in which the Wastewater Account is not fully subscribed, as a greater sum is provided relative to what would otherwise be provided under current law.

It is unclear in which fiscal year any additional grants are made under the bill for two reasons. First, the projected opening balance in the Wastewater Account for fiscal 2016

and 2017 is \$36.4 million and \$49.6 million, respectively, which are relatively small balances for this fund and which MDE advises are used as prudent reserves. The first year that sufficient funds are likely available to support any additional projects under the bill is fiscal 2017. Second, while the bill *authorizes* grants for local ACP programs, it does not alter the BRF statutory provisions regarding project prioritization. Current law requires MDE to establish by regulation a method for ranking projects; these regulations need to be amended to accommodate the newly authorized projects. Until the regulations are amended to specify the prioritization of the newly authorized projects, it is unclear whether or when grants can be made under the bill. MDE can handle any regulatory development with existing resources.

#### *MDE Annual Report on Local Stormwater Compliance*

The bill requires MDE to submit an annual report by September 1 each year, beginning in 2016, that evaluates the compliance of the 10 jurisdictions with the requirements of the bill and the requirements of Chapter 151. MDE can likely implement this requirement with existing resources.

#### *Administrative Penalties*

The bill authorizes MDE to impose administrative penalties of up to \$5,000 and \$10,000 for first and subsequent offenses, respectively, for jurisdictions that are not able to demonstrate sufficient funding under the bill's criteria. However, these penalties are not anticipated to materially affect State finances, as the bill requires any penalty to be held by MDE in escrow to be distributed to the offending jurisdiction for use as additional stormwater management funding.

#### *Additional State Spending to Meet TMDL Requirements*

It is assumed that additional State expenditures are not necessary to account for any reduction in stormwater spending by a local jurisdiction under the bill, as each jurisdiction remains responsible for meeting its State and federal obligations under its MS4 permit and must submit a financial assurance plan to MDE.

#### *Expanded Loan Repayments Under WQRLF*

The bill's changes to the authorized uses and expanded repayment terms under WQRLF do not significantly affect the overall finances of WQRLF. In the short term, the bill's changes may alter the timing and recipients of available funds by authorizing funds to be used for different project types and, perhaps, by attracting greater interest in WQRLF loans. In the long term, the expanded maturity of loans made under WQRLF shifts the sum of annual repayments made in the first 20 years after the effective date of the bill to later years

and increases the overall sum of interest payments. Any increase cannot be estimated at this time due to considerable uncertainty regarding the difference in interest rates charged to borrowers and how many borrowers choose to repay loans over the extended period authorized in the bill.

### **Local Fiscal Effect:**

#### *Repeal of the Stormwater Remediation Fee Mandate*

Although the 10 jurisdictions subject to Chapter 151 are no longer *required* to levy a stormwater remediation fee under the bill, it is assumed that several jurisdictions continue to do so as the local stormwater fees, funds, and enhanced stormwater programs have already been established and because additional requirements apply to jurisdictions that seek to repeal the local fee. As discussed further in the Appendix, stormwater utility fees have long been a common method for local governments to finance both traditional stormwater infrastructure maintenance and expansion, as well as federal CWA obligations. Thus, it is unclear how many jurisdictions may decide to cease collecting local stormwater fees under the bill.

While some jurisdictions may repeal their local stormwater remediation fees, these jurisdictions are, nevertheless, required to dedicate other revenue sources to these activities in order to meet their local stormwater obligations. The 10 jurisdictions remain subject to CWA requirements, including Phase I MS4 permit requirements and the nutrient reduction requirements under the Chesapeake Bay Total Maximum Daily Load (TMDL) – a federal requirement to reduce nutrient and sediment loadings into the Chesapeake Bay. Further, the bill establishes a new financial assurance plan requiring each jurisdiction to specify, in detail, the activities that it plans to comply with its MS4 permit requirements and the funding sources needed to support those activities, and subjects a jurisdiction to administrative penalties upon submission of an insufficient plan (although penalties are distributed to the jurisdiction for additional stormwater management activities).

**Exhibit 1** demonstrates current projected *capital* costs associated with local Phase I MS4 permit compliance in the 10 jurisdictions subject to the requirements of Chapter 151 to provide context regarding the planned level of local effort toward reducing nutrient loads from urban sources. Generally, planned capital spending on MS4 permits between fiscal 2015 and 2020 ranges from 5% to 10% of total capital spending identified in the most recent *Capital Improvement Program* (CIP) in most jurisdictions. Similarly, annual stormwater remediation fee revenues typically range from between 0.5% and 3.0% of local property tax revenues, and from 0.2% and 0.7% of total local revenues. More information on local stormwater remediation fee revenues is available in the Appendix.

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**Exhibit 1**  
**Projected Capital Spending of Maryland Phase I MS4 Permit Holders**  
**(\$ in Millions)**

<b><u>Jurisdiction</u></b>	<b><u>Fiscal 2015-2017</u></b>	<b><u>Fiscal 2015-2020</u></b>
Anne Arundel	\$231.3	463.9
Baltimore City	72.9	145.8
Baltimore	80.7	135.1
Carroll	9.5	20.6
Charles	9.2	20.9
Frederick	10.4	30.4
Harford	2.7	4.9
Howard	45.5	100.3
Montgomery	180.4	363.7
Prince George's	154.3	314.0
<b>Total County</b>	<b>\$796.9</b>	<b>\$1,599.5</b>
State Highway Administration	252.3	598.9
<b>Total State</b>	<b>\$1,049.2</b>	<b>\$2,198.4</b>

Source: Department of Legislative Services

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Exhibit 1 shows projected CIP spending for each holder of a Phase I MS4 permit in the State, which consists of each of the 10 jurisdictions and the State Highway Administration. It should be noted, however, that the amounts shown in Exhibit 1 may differ significantly from the amount actually spent in the future on watershed restoration and other stormwater remediation activities pursuant to the local MS4 permits, as changes are made each year to local CIPs. Further, because there is no standardized means for reporting the estimated cost of projects specifically designed to meet MS4 permit requirements within a jurisdiction's budget, the amounts shown in the exhibit may reflect different reporting methodologies or judgments regarding which planned projects are related to meeting MS4 permit requirements, as compared with traditional stormwater infrastructure spending. Additionally, some jurisdictions may finance a portion of MS4 permit costs from operating funds. It should be noted that MDE has estimated total local stormwater costs of about \$380 million per year to comply with the bay TMDL.

The Department of Legislative Services advises that not all jurisdictions have fully developed spending plans for MS4 permit compliance for the entire six-year period shown; thus, comparisons between jurisdictions are unreliable. Additionally, each jurisdiction possesses vastly different extents of impervious surfaces, levels of urbanization, and stream

miles, all of which contribute to the total cost to comply with the MS4 permit. Nevertheless, the amounts shown above may be instructive regarding the scope and magnitude of planned spending for these purposes over the next several years.

To the extent that any of the affected jurisdictions repeal their stormwater remediation fees, local stormwater management expenditures may decrease, unless the foregone fee revenues are fully replaced through other funding sources. For example, Anne Arundel County advises that the repeal of the stormwater remediation fee results in the removal of the dedicated revenue source for stormwater capital projects and requires such projects to compete with other projects in the county's CIP.

#### *New State and Local Funds*

As noted above, a reliable estimate of the State's liability for local stormwater remediation fee payments cannot be made, as it is dependent on future decisions by each of the 10 jurisdictions and several other sources of uncertainty. However, under the illustrative example provided above, local fee revenues from State payments may increase by more than \$1 million annually for several jurisdictions with relatively large expanses of State property. For most jurisdictions, any increase in fee revenues may range from \$100,000 to \$500,000 annually under the example provided above.

Any increase in the collection by a local jurisdiction of State fee revenues may be fully offset by an increase in expenditures from the jurisdiction's appropriation to account for services provided to locally owned property. For example, Montgomery County and Baltimore City each indicate that liability for local properties greatly exceeds that for State properties.

#### *Matching Funds from the 2010 Trust Fund*

The bill alters the stated legislative intent regarding the use of the 2010 Trust Fund by specifying that money in the trust fund may be used as matching funds to jurisdictions that have enacted a stormwater remediation fee (but not another system of charges for stormwater management). The impact of this change is highly uncertain for several reasons. First, the bill only alters the codified statement of intent regarding the use of funds from the 2010 Trust Fund, but does not establish a mandated set-aside of money. Second, as noted above, about \$2.8 million has been included in the 2010 Trust Fund budget in fiscal 2015 and 2016 each, and it is unclear whether the ultimate amount dedicated by DNR to be used as matching funds will be derived from this budgeted amount in fiscal 2016 (and any similar amount in future fiscal years). Finally, to the extent that separate and additional funds are dedicated for this purpose, it is unclear what percentage of the fund is dedicated by DNR to this purpose each year.

### *Relief for Veterans' Organizations and Nonprofits*

Local stormwater remediation fee revenues may decrease for some jurisdictions that retain their stormwater remediation fee under the bill, as a result of the required exemption for property owned by veterans' organizations and the requirement to establish ACPs for charitable tax-exempt organizations. However, revenues may increase for any jurisdiction that determines that the exemptions must be eliminated in order to establish a nondiscriminatory fee for purposes of charging federal properties.

A reliable estimate cannot be made without additional information regarding the number of such organizations in each jurisdiction, each organization's fee liability, and which jurisdictions repeal their fees under the bill's authority. However, these provisions are not anticipated to result in a significant decrease in stormwater remediation fee revenues. For example, according to data from the Department of Budget and Management, tax expenditures associated with property owned by veterans' organizations is a very small percentage of total State tax expenditures.

The requirement to establish an ACP is also unlikely to significantly reduce stormwater remediation fee revenues for several reasons. Many jurisdictions have already established fee reductions, exemptions, or other forms of rate relief for nonprofit organizations. Additionally, such organizations typically represent only about 1% or less of the county assessable base (Baltimore City is a notable exception). It should also be noted that the bill authorizes MDE to adopt ACP procedures, including financial hardship eligibility requirements, by regulation. Thus, the ultimate content of the ACP program is at the discretion of MDE; these regulations do not apply to any jurisdiction with an ACP established prior to July 1, 2015, however.

### *Restrictions on the Use of Funds for Existing Activities*

The bill repeals the stated intent that watershed protection and restoration fund revenues not be used for *existing* stormwater management activities. It is unclear how this change is to be interpreted, however. It is unlikely that a jurisdiction will alter its fee schedule or other appropriation to the local watershed protection and restoration fund based solely on this change, given the bill's other requirements and ongoing permit obligations.

### *County Responsibility for Municipal Property*

The bill requires certain counties that use general funds or bonds for stormwater management, to mutually agree with each municipality, beginning July 1, 2016, regarding local stormwater management obligations, property tax offsets, or other actions. It is unclear what effect this requirement may have. Many municipalities in Maryland are already subject to a Phase II MS4 permit under CWA and responsible for stormwater

management on property within their jurisdictions. Additionally, it is unclear which action counties and municipalities will agree to, whether it is an assumption of stormwater management obligations, property tax offsets, or “any other action.”

#### *Financial Assurance Plans*

Local government workloads increase for jurisdictions to complete annual (rather than biennial) and expanded stormwater remediation fee reports and to file financial assurance plans with MDE as required by the bill. The currently required biennial reports on spending of local stormwater remediation fee revenues require only minimal resources to complete, and although increasing the reporting frequency can easily be handled with existing resources, the expanded scope of information to be included in the report may cause a significant increase in associated workloads. More significantly, the new financial assurance plans required by the bill are more complex in nature and scope than the similar, currently required MS4 annual reports, and may also result in a significant increase in workloads.

The bill also requires a county or municipality that owns property located within a municipality or county, respectively, and has adopted a system of charges for stormwater management, to establish, by December 31, 2015, an MOU to agree on an amount to be paid by the county or municipality to defray the costs of providing stormwater pollution control services to the other jurisdiction. The effect of this provision is highly uncertain for several reasons. First, it is unclear how many jurisdictions that have established a system of charges for stormwater management currently maintain local government property outside of its jurisdictional boundaries or will in the future. Further, the bill only requires such jurisdictions to agree, by MOU, on an amount to be paid, but does not necessarily subject such local government property to another jurisdiction’s existing (or future) rates charged under the system of charges. Finally, it should be noted that this requirement only applies to a system of charges established under Section 4-204 of the Environment Article, but not to stormwater remediation fees (established by Chapter 151 of 2012 and codified in Section 4-202.1 of the Environment Article). This provision currently affects several municipalities and will likely affect Montgomery County under the bill’s changes.

Local expenditures may increase from the imposition of the administrative penalties established by the bill; revenues increase correspondingly as any penalties paid by a jurisdiction are held by MDE in escrow and returned to the jurisdiction to be used solely for additional stormwater management projects or activities. It is unclear what effect, if any, these penalties may have for several reasons. First, the bill establishes a warning for a violation involving insufficient funding associated with a jurisdiction’s first financial assurance plan. Second, the bill authorizes, but does not require, MDE to impose an administrative penalty upon a finding of insufficient funding. Third, the bill establishes

*maximum* penalties (of \$5,000 or \$10,000 per day, for a first or subsequent penalty), but actual penalties imposed, if any, may be significantly less than those maximum penalties. Fourth, the administrative penalties are relatively minimal by comparison with other State and federal civil penalties and other sanctions associated with MS4 permit noncompliance (including noncompliance with permit conditions involving other CWA obligations). Finally, the bill's initial financial assurance requirements do not require full funding of projected permit costs, while actual compliance with the permit does necessitate sufficient funding for full compliance. In sum, existing MS4 permit obligations and sanctions are greater than the financial assurance plan requirements and penalties established by the bill.

#### *Other Local Systems of Charges*

The bill also has indeterminate fiscal impacts on several municipalities statewide as a result of the requirement for jurisdictions that have established a system of charges for stormwater management (separate from stormwater remediation fees) to enact various policies, procedures, and guidelines regarding credits, offsets, monitoring, verification, and inspections. Such policies are currently required of jurisdictions that implement stormwater remediation fees under Chapter 151 of 2012, but are not required for other jurisdictions with charges established under separate legal authority. Expenditures may increase to the extent additional personnel or other resources are necessary for monitoring and verifying credits and other policies put in place under the bill. Additionally, local revenues may decrease to the extent that additional property owners are eligible for credits against local stormwater charges.

**Small Business Effect:** Small businesses in any of the 10 jurisdictions currently subject to Chapter 151 may realize significant savings to the extent that the jurisdiction opts to repeal the local stormwater remediation fee. Savings are likely to be particularly significant for small businesses that own real property with relatively large expanses of impervious surfaces, such as small shopping malls and industrial parks that may incur fees of more than \$10,000 annually in some jurisdictions. However, increases from other fees or taxes may result in even greater liabilities for other small businesses if jurisdictions seek to raise other funding sources to meet federal and State stormwater management obligations.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Anne Arundel, Baltimore, Carroll, Charles, Frederick, Harford, Howard, Montgomery, and Prince George's counties; the cities of Frederick and Havre de SB 863/ Page 17

Grace; Baltimore City; Maryland Department of Planning; Maryland Department of Transportation; Department of General Services; Department of Natural Resources; Department of Budget and Management; *the Baltimore Sun*; Western Kentucky University; Department of Legislative Services

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Analysis by: Evan M. Isaacson

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

## **Appendix – Stormwater Remediation Fees in Maryland**

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The federal Clean Water Act 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 Clean Water Act, 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, and 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 the establishment of fee exemptions, 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*

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, have contributed to the wide range of revenues collected in fiscal 2014. In fiscal 2014, it is estimated that the stormwater fees will generate about \$110.9 million for the 10 jurisdictions.

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](#) and the [Local Stormwater Management Information Update](#) factsheet.

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**Exhibit 1**  
**Local Stormwater Remediation Fees**

<b>Jurisdiction</b>	<b>Annual Residential Rate</b>	<b>Annual Nonresidential Fee/ERU or IU</b>	<b>Nonres. Fee Per Acre Equivalent</b>	<b>Fiscal 2014 Revenues (\$ in Millions)</b>
Anne Arundel	\$34, \$85, or \$170 annually depending on zoning district	Generally, \$85 per ERU and capped at 25% of the property's base property tax. Fees vary for specified types of properties	\$1,259.39	\$13.17
Baltimore	\$21 per unit (single family attached); \$32 per unit (condos); \$39 (single-family detached and agricultural residential)	Generally, \$69 per ERU for nonresidential properties; \$20 per ERU for nonresidential institutional properties	\$1,502.81	\$24.67
Baltimore City	\$40, \$60, or \$120 depending on amount of impervious surface	Generally, \$60 per ERU; \$12 per ERU for religious nonprofits	\$2,489.14	\$21.43
Carroll <sup>1</sup>	None	None	None	None
Charles	\$43 per property (an increase of \$29 over fiscal 2013 levels)	\$43 per property	n/a	\$2.45
Frederick	\$0.01 per property	\$0.01 per property	n/a	\$0.00
Harford <sup>2</sup>	\$125 per property	\$7 per IU	\$609.84	\$1.05
Howard	\$15, \$45, or \$90 depending on type and size of property	\$15 per IU	\$1,306.85	\$10.27
Montgomery	Varies, ranges from \$29.17 to \$265.20 depending on home size	\$88.40 per IU	\$1,593.22	\$23.63
Prince George's	\$20.58 per property plus \$20.90 per IU	\$20.90 per IU	\$370.69 (plus \$20.58 admin. fee), or \$391.27	\$14.24
<b>Statewide</b>				<b>\$110.91</b>

ERU: equivalent residential unit; IU: impervious unit

<sup>1</sup> Carroll County dedicates a portion of property tax revenues instead of collecting a stormwater remediation fee; the county dedicated about \$1.07 million in property tax revenues in lieu of the fee.

<sup>2</sup> Harford county passed legislation to repeal the fee on January 20, 2015, which is to take effect in fiscal 2016.

Note: All revenues shown reflect audited actual amounts, except for Baltimore City and Prince George's County, which are county estimates contained in the jurisdictions' 2015 budget.

Source: Department of Legislative Services

### *Stormwater Utility Fees in the United States*

Stormwater utility fees are a common type of user fee for generating funds to support stormwater infrastructure in the United States and were first implemented by local jurisdictions in the early 1970s. Today, there may be roughly 1,500 stormwater utility fees collected by counties, municipalities, or regional authorities in 40 different states and the District of Columbia, according to the most recent annual survey conducted by Western Kentucky University. The population within these jurisdictions is estimated at roughly 110 million, or more than one-third of the U.S. population.

There are 5 states (Florida, Minnesota, Texas, Wisconsin, and Washington) estimated to have at least 100 local stormwater fees, another 7 states (California, Georgia, Indiana, Iowa, North Carolina, Ohio, and Oregon) with more than 50 local fees, and another 10 states, including Maryland (16) and Virginia (21) with more than 10 local stormwater fees. Within the Chesapeake Bay watershed, there are stormwater utility fees in every state except New York (including 9 in West Virginia, 6 in Pennsylvania, and 2 in Delaware).

The median residential fee identified in the report is \$3.50 per month (the mean monthly fee is \$3.98). Most jurisdictions collect relatively modest stormwater fee revenues to support the cost of operating and maintaining traditional stormwater infrastructure to control flooding. However, a number of jurisdictions, including many that are subject to Phase I MS4 permits under the Clean Water Act, collect more significant stormwater fee revenues to be used to meet the watershed restoration goals of their permits, such as the 10 jurisdictions in Maryland subject to Chapter 151. Examples of Phase I MS4 permit holders in other states with significant stormwater fee revenues include: Sacramento, California; Denver, Colorado; Clearwater, Orlando, and Pinellas County, Florida; Des Moines, Iowa; Louisville/Jefferson County, Kentucky; Minneapolis and St. Paul, Minnesota; Charlotte and Wilmington, North Carolina; Austin, Fort Worth, and Houston, Texas; Chesapeake, Newport News, Norfolk, and Virginia Beach, Virginia; Pierce County, Seattle, and Tacoma, Washington; and Milwaukee, Wisconsin.