

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 472 (Senator Young, *et al.*)

Education, Health, and Environmental Affairs
and Budget and Taxation

Environment - Municipal Stormwater Charges - Property Subject to Charges

This bill establishes that if a municipality has established a system of charges to fund the implementation of stormwater management programs under § 4-204 of the Environment Article, property owned by the State, a unit of State government, a county, a college or university, or a local school system that is located in the municipality is subject to those charges if (1) the municipality has established a dedicated stormwater management fund and (2) property owned by the municipality is subject to the charges.

Fiscal Summary

State Effect: Potential significant increase in State expenditures (all funds) for multiple State agencies and institutions of higher education that own property located in municipalities that meet the bill's requirements. Revenues are not affected.

Local Effect: Potential significant indeterminate impact on municipal revenues from stormwater charges. Local expenditures increase for affected counties to pay stormwater charges.

Small Business Effect: Minimal.

Analysis

Current Law/Background: The General Assembly first enacted the Stormwater Management Act in 1982 and has amended it several times since. Stormwater management initially focused on urban flood prevention, later evolved into resource management, and, more recently, has become an environmental and regulatory function. According to the Office of the Attorney General, under the Stormwater Management Act, the legislature found that the management of stormwater runoff is necessary to reduce stream channel erosion, pollution, siltation and sedimentation, and local flooding in order to protect the State's water and land resources. The intent of the Stormwater Management Act is to reduce, as much as possible, the adverse effects of stormwater runoff. To achieve that goal, the Act requires each county and municipality to have an ordinance implementing a stormwater management program consistent with flood management plans and that meets certain minimum requirements. A key provision of the Act is the authorization for each county and municipality to adopt a "system of charges" to fund the implementation of stormwater management programs under § 4-204 of the Environment Article.

Revenues generated by the system of charges may be used for:

- reviewing stormwater management plans;
- inspection and enforcement activities;
- watershed planning;
- planning, design, land acquisition, and construction of stormwater management systems and structures;
- retrofitting developed areas for pollution control;
- water quality monitoring and water quality programs;
- operation and maintenance of facilities; and
- program development of these activities.

A local governing body can choose to pay the costs of the program with local revenues or with the proceeds of a system of charges. A local government is not required to establish a dedicated stormwater management fund under these provisions.

State and local governments are exempt from the stormwater charges established under § 4-204 of the Environment Article.

Although a complete list of the municipalities that have established a system of charges under § 4-204 of the Environment Article has not been able to be verified in time for inclusion in this fiscal and policy note, the Department of Legislative Services believes that at least the following eight municipalities have done so: Annapolis; Berlin; Frederick; Gaithersburg; Oxford; Rockville; Salisbury; and Takoma Park. It is unclear how many of

these municipalities have established dedicated stormwater management funds, however. Several of these municipalities do not impose stormwater charges on city-owned property.

Public law 111-378 of the 111th Congress added Section 313 (c) of the federal Clean Water Act to clarify that, in general, the federal government is responsible for paying reasonable service charges relating to stormwater management as long as the service charge is a “reasonable nondiscriminatory fee, charge, or assessment that is based on some fair approximation of the proportionate contribution of the property or facility to stormwater pollution...and used to pay or reimburse the costs associated with any stormwater management program (whether associated with a separate storm sewer system or a sewer system that manages a combination of stormwater and sanitary waste), including the full range of programmatic and structural costs attributable to collecting stormwater, reducing pollutants in stormwater, and reducing the volume and rate of stormwater discharge, regardless of whether that reasonable fee, charge, or assessment is denominated a tax.”

State Expenditures: As noted above, the bill authorizes municipalities to charge a unit of State government and a college or university, among other entities, stormwater charges established under § 4-204 of the Environment Article if certain conditions are met. As such, the bill results in a potentially significant increase in State expenditures (all funds) for those State agencies and public institutions of higher education that must now pay stormwater charges as a result of the bill. A reliable estimate of the total increase in costs cannot be made, as it depends on the amount and type of property owned, the location of that property, the charges established in various municipalities, and the extent to which municipalities meet the conditions required in order to assess stormwater charges on those entities (*i.e.*, the municipality has established a dedicated fund, and property owned by the municipality itself is subject to the charge).

Although an estimate of the overall impact on the State cannot be made, for some agencies, the increase in expenditures to pay stormwater charges could be significant. The bill is likely to have the biggest impact on those agencies that own/manage significant amounts of property, such as the Department of General Services, the Maryland Department of Transportation, and the University System of Maryland, among others. However, the extent to which these agencies and others own property in the municipalities that have established a qualifying system of charges (or will do so in the future) is unknown.

Local Fiscal Impact:

Impact on Municipal Stormwater Revenues

The bill results in a potentially significant indeterminate impact on revenues for municipalities. As noted above, the bill authorizes municipalities to charge a unit of State government, a college or university, or a local school system stormwater charges

established under § 4-204 of the Environment Article if certain conditions are met. Thus, municipal revenues increase, potentially significantly, from being able to impose stormwater charges on the State, a county, a public institution of higher education, or a local school system, if certain conditions are met.

However, the bill's authorization relating to *colleges and universities* is not limited to *public* colleges and universities (more commonly referred to public institutions of higher education). Under current law, public entities are exempt from such charges, but *private* colleges and universities are not. Thus, if a municipality that currently assesses a stormwater management charge on a private college or university does not meet the bill's conditions, the municipality is no longer able to impose the stormwater charge under the bill.

Also unknown is the extent to which the bill triggers the requirement for the federal government to pay municipal stormwater charges, pursuant to Public Law 111-378. If the federal government becomes subject to such charges as a result of the bill, municipal revenues increase, potentially significantly.

The exact increase or decrease in local revenues from stormwater charges is unknown, but could be significant for certain municipalities.

For example, the City of Rockville advises that the city could have collected \$512,687 in fiscal 2016 from property owned by public entities that are exempt from stormwater charges under current law. The City of Takoma Park advises that the city could collect approximately \$49,700 annually from properties owned by Montgomery County, the Maryland-National Capital Park and Planning Commission, the school system, and Montgomery College (a public community college). However, the cities of Takoma Park and Frederick advise that although both cities have stormwater charges under current law, city property is not currently subject to the charges. Thus, neither city could collect additional revenue under the bill without changing current practice.

This analysis assumes that any State or local entity that voluntarily pays municipal stormwater charges under current law continues to do so under the bill.

Impact on Counties to Pay Stormwater Charges

Expenditures increase for any county that owns property in a qualifying municipality and must pay stormwater charges under the bill.

Additional Comments: As discussed above, private colleges and universities are not currently exempt from stormwater charges. To the extent that a private college or

university is no longer subject to stormwater charges as a result of the bill, expenditures decrease for those entities.

This bill relates only to stormwater charges established under § 4-204 of the Environment Article, which authorizes local governments to establish a system of charges for stormwater management. It does *not* relate to stormwater remediation fees established under § 4-202.1 of the Environment Article.

Additional Information

Prior Introductions: HB 1108 of 2016 received a hearing in the House Environment and Transportation Committee, but no further action was taken.

Cross File: HB 656 (Delegate Barve, *et al.*) - Environment and Transportation.

Information Source(s): cities of Frederick, Rockville, Takoma Park, and Baltimore; Montgomery County; Maryland Association of Counties; Maryland Municipal League; Baltimore City Community College; University System of Maryland; St. Mary's College of Maryland; Maryland Department of the Environment; Department of General Services; Department of Health and Mental Hygiene; Department of Housing and Community Development; Department of Juvenile Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Department of Legislative Services

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kb/lgc

Analysis by: Kathleen P. Kennedy

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