HB 295

Department of Legislative Services

Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 295 (Delegates Love and Henson)
Environment and Transportation Education, Health, and Environmental Affairs

Water Pollution - Stormwater Management Regulations and Watershed Implementation Plans - Review and Update

This bill requires the Maryland Department of the Environment (MDE) to update specified stormwater management regulations and criteria once every five years to incorporate specified updated precipitation data. Among other things, in updating the regulations, MDE must conduct specified public outreach and consult with specified entities. The bill also (1) establishes new related reporting requirements for MDE and (2) requires MDE to submit a climate load allocation addendum to the Chesapeake Bay Total Maximum Daily Load (TMDL) Phase III Watershed Implementation Plan (WIP), as well as updated two-year milestones, to the U.S. Environmental Protection Agency (EPA) by December 31, 2025. **The bill takes effect June 1, 2021**.

Fiscal Summary

State Effect: General fund expenditures increase, potentially significantly, beginning as early as FY 2022. State expenditures (all funds) may increase, potentially significantly, beginning as early as FY 2022. State revenues are not directly affected.

Local Effect: Local government finances and operations may be affected depending on the content of the updated regulations and any subsequent changes to discharge permits as well as any changes in the WIP, as discussed below. Local revenues are not directly affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Section 4-203 of the Environment Article requires MDE to adopt rules and regulations that establish criteria and procedures for stormwater management in Maryland. The bill requires these rules and regulations to incorporate the most recent available "precipitation data," defined in the bill as historical data that describes the relationship between precipitation intensity, duration, and return period. Additionally, under the bill, MDE must review and update these regulations at least once every five years. In conducting the required review and update, MDE must (1) at a minimum, revise water quality and water quantity control standards using the most recent precipitation data available and (2) as necessary, update and revise the regulations to meet specified requirements under current law and the bill.

By November 1, 2021, MDE must report to the General Assembly on (1) the most recent precipitation data available; (2) MDE's plans for immediately updating water quality control standards for watersheds where flooding events occurred on or after January 1, 2000; and (3) MDE's plans for updating all other regulations adopted under § 4-203 of the Environment Article. After November 1, 2021, MDE must report to the General Assembly on any intended revisions to regulations adopted under § 4-203 of the Environment Article before such regulations are published. The bill also establishes public outreach and hearing requirements, which include consulting with specified governmental entities, groups, and stakeholders prior to proposing related regulations.

MDE may not delay the implementation of any new requirements or standards established under regulations adopted pursuant to § 4-203 of the Environment Article.

MDE must submit to EPA a Chesapeake Bay TMDL Phase III WIP climate load allocation addendum and updated two-year milestones that fully offset additional nitrogen, phosphorus, and sediment loads attributable to the impacts of climate change as determined and allocated by the Chesapeake Bay Program. MDE must fully implement the addendum and updated milestones by December 31, 2025.

Current Law:

State Stormwater Management Rules and Regulations

The General Assembly first enacted the Stormwater Management Act in 1982 and has amended it several times since. The intent of the Stormwater Management Act is to reduce, as much as possible, the adverse effects of stormwater runoff. To achieve that goal, pursuant to § 4-203 of the Environment Article, MDE is in charge of implementing the Stormwater Management Act and is required to adopt rules and regulations that establish criteria and procedures for stormwater management in Maryland. In implementing the Act,

MDE must consult with the Department of Natural Resources from time to time, including during the adoption of the regulations. Additionally, each county and municipality must have an ordinance implementing a stormwater management program that is consistent with flood management plans and that meets certain minimum requirements. MDE must provide local governments with technical assistance, training, research, and coordination in stormwater management technology.

Discharge Permits

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 CWA, regulates stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s). 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). Additionally, the State Highway Administration holds a Phase I MS4 permit. One of the conditions of an MS4 permit is that permitted jurisdictions must implement State stormwater management regulations.

Additionally, a person must generally hold an MDE discharge permit before constructing, installing, modifying, extending, altering, or operating a system, facility, outlet, or establishment if its operation could cause or increase the discharge of pollutants into the waters of the State. This permitting requirement applies to (1) an industrial, commercial, or recreation facility or disposal system; (2) a State-owned treatment facility; or (3) any other outlet or establishment. Further, a person must hold a concentrated animal feeding operation (CAFO) discharge permit before beginning construction on any part of a new CAFO. MDE has broad authority to require a discharge permit for any other activity by rule or regulation.

Chesapeake Bay Total Maximum Daily Load

The current bay restoration policy framework is primarily guided by an executive order, two-year goal milestone setting, and a Chesapeake Bay TMDL, which was established by EPA in December 2010, as required under the federal Clean Water Act. The 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: 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%. All reduction measures must be in place by 2025, with at least 60.0% of the actions completed by 2017.

As part of the TMDL, bay jurisdictions must develop WIPs that identify the measures being put in place to reduce pollution and restore the bay. WIPs are submitted to EPA for review and evaluation to (1) identify pollution load reductions to be achieved by various source sectors and in different geographic areas and (2) 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 each jurisdiction plans to achieve its pollution reduction goals under the TMDL. In 2012, the bay jurisdictions submitted Phase II WIPs that establish more detailed strategies to achieve the TMDL on a geographically smaller scale. A Phase III WIP was submitted in final form to EPA in August 2019. The intent behind the Phase III WIP is to ensure that all practices are in place by 2025 so that water quality standards can be met and maintained.

State Fiscal Effect/Local Fiscal Effect/Small Business Impact:

Maryland Department of the Environment Administrative Costs

General fund expenditures for MDE increase, potentially significantly, beginning as early as fiscal 2022 to (1) conduct required outreach and consultations related to the regulatory update; (2) use recent precipitation data to update State stormwater regulations; and (3) assist with developing and implementing the required TMDL Phase III WIP climate load allocation addendum and updated two-year milestones. However, the Department of Legislative Services (DLS) is unable to provide a precise estimate at this time for the following reasons:

- MDE's Sediment, Stormwater, and Dam Safety Program is understaffed, and to implement the bill, the department estimates that it must hire two full-time, permanent senior regulatory compliance engineers. DLS concurs that additional resources are necessary but does not have sufficient information to independently verify if hiring two permanent staff is the most reasonable approach or if engaging the expertise of a consultant would be more appropriate (because the regulations only need to be updated every five years).
- MDE advises that the most recent precipitation data needed to update the regulations are not yet available. MDE reports that it is applying for a federal grant to update rainfall data for Maryland. MDE further advises that if it secures this grant, once the data analyses are complete, it anticipates incorporating them into the State's stormwater management program.
- MDE further advises that there is no current industry standard to analyze predicted new rainfall amounts due to climate change in Maryland. While MDE is pursuing $1.0 million in federal grant funding to update precipitation rates and to predict climate change rates for the State, MDE reports that the timeframe for conducting these analyses is more than two to three years out.

- If the federal grants discussed above are not secured, the amount of State funding required to collect and analyze the required data increases significantly.

Fiscal Impact on State Agencies, Local Governments, and Small Businesses Related to Regulatory Changes and the Total Maximum Daily Load Phase III Watershed Implementation Plan Updates

Updating the State's stormwater management regulations likely results in changes to discharge permits issued by MDE and, in particular, the need to incorporate the regulatory changes into all MS4 NPDES permits. Any entity, facility, agency, or operation that obtains a discharge permit could be affected by the regulatory changes under the bill. This is a broad group of potentially affected entities, including counties, municipalities, State agencies (in particular the Maryland Department of Transportation), CAFOs, and industrial businesses. However, any specific impact depends on the changes adopted by MDE. Changes to the TMDL Phase III WIP could also affect a broad range of State agencies, local governments, and businesses. Overall, the magnitude of any impact on these entities depends on the regulatory changes, the content of the WIP addendum, and the updated two-year milestones.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 227 (Senator Elfreth, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Anne Arundel and Garrett counties; Maryland Association of Counties; Maryland Municipal League; University System of Maryland; Maryland Department of Agriculture; Maryland Department of the Environment; Department of Natural Resources; Maryland Department of Transportation; Department of Legislative Services

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