

Department of Legislative Services

Maryland General Assembly

2007 Session

FISCAL AND POLICY NOTE

Revised

Senate Bill 784

(Senator Rosapepe, *et al.*)

Education, Health, and Environmental Affairs

Environmental Matters

Stormwater Management Act of 2007

This bill requires the Maryland Department of the Environment (MDE) to establish regulatory requirements regarding the use of “environmental site design” (ESD) in stormwater management practices. The bill also modifies existing regulatory requirements of MDE with respect to stormwater management. Finally, the bill requires MDE, by December 1, 2007, to evaluate options for a stormwater management fee system and an appropriate fee schedule necessary to improve enforcement of stormwater management laws and report its findings to the House Environmental Matters Committee and the Senate Education, Health, and Environmental Affairs Committee.

Fiscal Summary

State Effect: MDE general fund expenditures would increase by \$170,500 in FY 2008 and \$93,800 in FY 2009 for two contractual employees, to revise the stormwater design manual, and for outsourcing certain responsibilities. Potential significant increase in Transportation Trust Fund (TTF), federal fund, and related bond expenditures to incorporate ESD into State road construction projects. No effect on revenues.

| (in dollars) | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 |
|----------------|-------------|------------|---------|---------|---------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 170,500 | 93,800 | 0 | 0 | 0 |
| SF/FF Exp. | - | - | - | - | - |
| Bond Exp. | - | - | - | - | - |
| Net Effect | (\$170,500) | (\$93,800) | \$0 | \$0 | \$0 |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential significant increase in local expenditures and a potential significant operational impact on local governments. Some of these costs could be offset

by an increase in fee revenue. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Meaningful.

Analysis

Bill Summary: MDE's regulations must:

- establish local regulations and a model ordinance that require (1) the implementation of ESD to the maximum extent practicable; (2) the review and modification (if necessary) of planning and zoning or public works ordinances to remove impediments to ESD implementation; and (3) a developer to demonstrate that ESD has been implemented to the maximum extent practicable;
- specify that all stormwater management plans must be designed to meet several requirements specified in the bill; and
- establish a comprehensive process for approving grading and sediment control plans and stormwater management plans that takes into account the cumulative impact of both plans.

During the creation of the regulations and model ordinance required by the bill, MDE must seek the input of interested parties, including each county and municipality that operates a stormwater management program. MDE is required to work with the counties, municipalities, and other interested parties to address any reasonable concern.

“Environmental site design” means using small-scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources.

Current Law: State law requires each county and municipality to adopt ordinances necessary to implement a stormwater management program and to restrict the development of any land unless the landowner has submitted a stormwater management plan consistent with the local ordinance. The county or municipality has the authority to approve or disapprove stormwater management plans. In general, a person may not develop any land for residential, commercial, industrial, or institutional use without submitting, and getting approval of, a stormwater management plan from the county or municipality that has jurisdiction. The developer must certify that all land development

will be done according to the approved plan. A State or federal agency may not undertake any construction activity unless the agency has submitted and obtained approval of a stormwater management plan from MDE. Criminal, civil, and administrative penalties apply to violations of the State's stormwater management provisions. Every three years, MDE is required to review the stormwater management programs in the counties and municipalities and monitor their implementation. 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.

There is no stormwater management fee system.

Background: The State began reducing the adverse effects of stormwater runoff back in 1982 with the passage of the Stormwater Management Act. State regulations followed in 1983, which required local ordinances to be adopted and implemented by 1984. At this time, each local jurisdiction has a State approved and locally enforced stormwater management ordinance. The increasing amount of impervious surfaces within the Chesapeake Bay watershed is outpacing current stormwater controls. Implementing and retrofitting stormwater management systems, however, is expensive. In 2004, the Department of Natural Resources estimated the funding shortfall for installing new and retrofitting old stormwater management systems at nearly \$1.9 billion from 2003 to 2010.

State Fiscal Effect: This bill would have a significant impact on State general, special, federal, and certain bond expenditures in fiscal 2008 and subsequent years.

Maryland Department of the Environment

MDE advises that it would need to hire two regular full-time employees, a Natural Resources Planner and a Water Resources Engineer, to:

- develop local regulations and model ordinances;
- adopt regulations that specify local ordinance content;
- establish minimum stormwater management plan content that requires ESD; and
- ensure adequate, ongoing outreach and education to local jurisdictions in future years.

The Department of Legislative Services (DLS) observes that most of the functions required by the bill would be one-time expenditures and that, while there may be ongoing education and outreach required in the future, these future costs would not necessarily be significant enough to warrant hiring two regular employees. Therefore, DLS advises that the added responsibilities resulting from this legislation could be performed by two contractual employees for two years and could likely then be absorbed by existing staff. Accordingly, MDE's general fund expenditures for the contractual employees and associated operating costs would increase by \$77,983 in fiscal 2008 and \$93,765 in fiscal 2009.

In addition, MDE advises that it would need to revise its stormwater design manual at a cost of \$50,000 in fiscal 2008 only.

MDE also advises that it would need to outsource services to establish a comprehensive process for approving grading and sediment control plans and stormwater management plans. According to MDE it currently does not have the staffing levels required to perform this function in house. MDE estimates that outsourcing these duties would cost approximately \$42,500 in fiscal 2008 only.

It is assumed that MDE could handle the bill's requirement that it evaluate fee system options and report these options within existing resources.

State Highway Administration

Future year TTF, federal fund and related bond expenditures by the State Highway Administration (SHA) could increase. It is assumed that incorporating ESD into road construction projects might require more land. However, the cost would depend on the design of the construction project, and thus cannot be reliably quantified at this time. SHA advises that the increase could be significant. According to SHA, the bill proposes a significant change in the way stormwater management would be handled on road construction projects and would result in increased costs and resources that could limit the number of projects.

Department of General Services

The Department of General Services (DGS) advises that since MDE currently requires some ESD techniques for State construction projects, this bill would have only a minimal impact on its operations and finances. DGS notes that rain gardens, stone filled trenches, and vegetated swales are typical ESD techniques used on State building projects.

Local Fiscal Effect:

Increased Local Government Expenditures

MDE advises that its regulations would require local governments to adopt the new stormwater ordinance or local regulations required by the bill by a certain date. Since ESD has not been widely implemented in Maryland, this bill could impact local government operations and finances. While the impact cannot be reliably estimated at this time, it could be significant depending on the jurisdiction. Larger jurisdictions with planning offices might be able to absorb some of these effects within existing resources; smaller jurisdictions might need to hire additional personnel or pay for contractual services. Examples of increased expenditures include costs:

- associated with training employees about ESD strategies;
- to conduct education and outreach on the new requirements;
- related to inspecting and enforcing ESD;
- to review the more complex stormwater projects; and
- to amend local comprehensive plans to reflect the new requirements.

Washington County, for example, estimates \$55,000 in one-time costs associated with revising ordinances and training staff and \$60,000 in additional annual ongoing costs associated with reviewing, processing, and approving the more complex plans required by the bill.

If there is an increase in local expenditures directly related to instituting and enforcing the new requirements, it is assumed that local governments would increase permit fees to offset the costs. Accordingly, local revenues would be affected.

The cost for local government construction projects, including road construction projects, could increase as a result of the bill. It is assumed that incorporating ESD into construction projects might require more land. However, the cost would depend on the design of the construction project, and thus cannot be reliably quantified at this time. Depending on the project and the jurisdiction, the cost increase could be substantial.

Potential Decrease in Local Government Expenditures

If more sediment is removed from stormwater runoff before reaching water treatment plants as a result of the new requirements, water treatment costs could decrease. For example, the Washington Suburban Sanitary Commission advises that while this bill could result in increased pipeline and construction costs, it could also result in improved water quality entering water reservoirs and thus reduce drinking water treatment plant costs. Until the level of sediment reduction is determined, however, the cost savings cannot be reliably quantified.

Montgomery County advises that, while there could be some reduction in costs from using natural means of filtering out pollutants rather than the pre-cast structures currently used, these potential savings would likely be offset by the need to acquire more land to accommodate ESD.

Small Business Effect: This bill could place an additional burden on small construction businesses. The financial burden depends on the extent to which construction site costs increase to meet the new stormwater requirements. These costs would likely be passed along to the consumer, and depending on the magnitude of the increase, could lessen demand for private-sector construction projects.

On the other hand, the bill could encourage innovation in how ESD is implemented. If this is the case, then existing and new small businesses that fill this niche in the construction industry could greatly benefit from requiring ESD to be used to the maximum extent practicable.

In calendar 2005, the construction industry in Maryland employed 182,878 individuals with a total payroll of \$8.4 billion.

Additional Information

Prior Introductions: None.

Cross File: HB 786 (Delegate Lawton, *et al.*) – Environmental Matters.

Information Source(s): Department of Budget and Management; Maryland Department of the Environment; Department of General Services; Department of Labor, Licensing, and Regulation; Department of Natural Resources; Maryland Department of Transportation (State Highway Administration); Garrett County, Montgomery County, Washington County; Maryland Association of Counties; Maryland Municipal League;

Maryland-National Capital Park and Planning Commission; Washington Suburban Sanitary Commission; Low Impact Development Center, Inc.; Department of Legislative Services

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