

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 552 (Senator Madaleno, *et al.*)
Education, Health, and Environmental Affairs

Environment - Local Stormwater Charges - State Property

This bill subjects State-owned property to any local stormwater management charges adopted by a county or municipality.

Fiscal Summary

State Effect: General and special fund expenditures may increase significantly for various State agencies subject to any local stormwater management charges. The extent of the increase is likely to be minimal in FY 2012, but may increase substantially in future years, particularly if other legislation is enacted mandating statewide local stormwater management charges.

Local Effect: Local government revenues increase, potentially significantly, due to the collection of local stormwater management charges from the State. Local expenditures decrease to the extent that stormwater management charges paid by the State displace local expenditures that would otherwise be dedicated to stormwater management or other related purposes.

Small Business Effect: Potential meaningful beneficial impact on small business stormwater management contractors to the extent that additional stormwater management activities are undertaken under the bill than otherwise would occur.

Analysis

Current Law/Background:

Stormwater Management in Maryland

According to the Maryland Department of the Environment (MDE), while nitrogen loading to the Chesapeake Bay from agricultural and wastewater sources in Maryland has been decreasing since 1985, stormwater runoff has been increasing from newly developed impervious surfaces. The State began reducing the adverse effects of stormwater runoff in 1982 with the passage of the Stormwater Management Act. State regulations followed in 1983, which required each county and municipality to adopt ordinances necessary to implement a stormwater management program. Maryland's stormwater management regulations were significantly strengthened in 2000 with the adoption of the Stormwater Design Manual in State regulations.

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 with jurisdiction. The developer must certify that all land development will be done according to the approved plan. While the State is exempt from these requirements, 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. In Prince George's and Montgomery counties, property owned by the State, a county, a municipality, or a regularly organized volunteer fire department used for public purposes is exempt from stormwater taxes, user charges, and utility fees.

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.

Chapters 121 and 122 of 2007 attempted to further enhance the State's stormwater management program by requiring a new form of management practice known as environmental site design (ESD). ESD involves 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. ESD is widely considered to be the leading and most stringent stormwater management framework employed in the United States today.

Specifically, Chapters 121 and 122 required MDE to promulgate regulations 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 demonstration by developers that ESD has been implemented to the maximum extent practicable in a project. The law also established a comprehensive process for approving grading and sediment control plans as well as stormwater management plans to take into account the cumulative impact of both plans. The Administrative, Executive, and Legislative Review Committee approved emergency regulations implementing Chapters 121 and 122 on April 6, 2010.

Role of Stormwater Management in Meeting Federal Chesapeake Bay Restoration Plans

The federal Clean Water Act requires states to designate intended uses for their water bodies, such as swimming and fishing, and to set water quality standards to achieve these uses. Water bodies that do not meet the water quality standards are designated as *impaired* and are assigned a Total Maximum Daily Load (TMDL) or “pollution diet,” which (1) sets the maximum amount of pollution that the water body can receive and still attain water quality standards; and (2) identifies specific pollution reduction requirements among the various contributing sources.

The U.S. Environmental Protection Agency (EPA) has been working with watershed states and the District of Columbia to develop a Chesapeake Bay TMDL since 2000 in order to prepare for a federal court-ordered deadline established by several consent decrees. The effort was also significantly reinvigorated by the signing of Executive Order 13508 by President Obama in May 2009. In May 2010, EPA committed to establishing a final bay TMDL, which it released on December 29, 2010.

Working with EPA, each watershed state and the District of Columbia completed a final Phase I watershed implementation plan (WIP). The WIPs, which were released in December 2010 after a public comment period, are intended to provide a roadmap for how each jurisdiction will achieve and maintain its share of the bay TMDL.

Maryland’s WIP builds on existing State-directed restoration efforts and identifies strategy options to reduce nitrogen and phosphorus from all major sources, such as wastewater, stormwater runoff, septic systems, agriculture, and air pollution. Of these sources in Maryland, stormwater runoff contributes about 11% of the nitrogen and 20% of the phosphorus entering the bay from Maryland sources, and it will be required to contribute to just under 10% of the nitrogen reduction and just under 40% of the phosphorus reduction under Maryland’s WIP.

Financing Stormwater Programs

According to the Maryland Transition Work Group Report on Environment and Natural Resources (January 2007), actions to upgrade or replace stormwater management systems, along with septic systems, accounted for 87% of the total additional costs needed to restore the Chesapeake Bay, or an estimated \$4.5 billion. Since then, EPA's Clean Water Needs Survey Report to Congress (2010) has estimated a total cost for stormwater infrastructure in Maryland of \$3.755 billion over the 20-year period beginning in 2008, of which about \$1.264 billion is attributed to "green stormwater" uses. Finally, Maryland's WIP has included an estimated cost for urban stormwater management of \$3.983 billion between calendar 2010 and 2017.

Chapters 121 and 122 of 2007 required MDE to evaluate options for a stormwater management fee system and an appropriate fee schedule necessary to improve enforcement of stormwater management laws. In its May 2008 report developed in response to that charge, MDE noted that Maryland's stormwater management program is implemented locally with little financial support from the State, and that it does not have the authority under current law to assess fees or charges at the State level. In 1992, the General Assembly enacted enabling legislation that allows localities to develop a "system of charges" to finance stormwater programs. Legislative Services is aware of only six local jurisdictions (Montgomery and Prince George's counties and the cities of Annapolis, Frederick, Rockville, and Takoma Park) that have developed stormwater utility fees or user charges, although several others have explored the creation of dedicated stormwater revenue sources.

In its 2008 report, MDE noted its continuing support for the development of a system of charges by local governments to provide the funding needed to meet local obligations under State and federal law. Bills were introduced in the 2007 and 2009 sessions to generate funding for stormwater management. These bills would have established fees based on the amount of impervious surface on certain types of property. In turn, the fees would have been used to fund the remediation, upgrade, and expansion of stormwater management systems statewide. Similar legislation has been introduced this session. In addition, as part of the WIP, the Governor plans to seek legislation to require the establishment of local stormwater utilities if similar legislation has not been passed prior to the 2013 session.

State funding for stormwater management projects is available from several sources. Chapters 120 and 121 of 2008 established a Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund and directed funds from the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund to this fund. The fund is intended to support nonpoint source capital projects that previously were funded under MDE's Small Creeks and Estuaries Restoration Program and the Maryland Stormwater Pollution Control Program.

Beginning in fiscal 2012, the Department of Natural Resources will be utilizing the trust fund to support its ongoing Local Implementation Grants for high-priority local stormwater and other nonpoint source pollution control projects, which have been allocated \$6.27 million in the Governor's proposed fiscal 2012 budget. Maryland also supports stormwater management through the Water Quality Revolving Loan Fund, which is capitalized by federal funds.

In January 2011, President Obama signed S. 3481 to clarify that reasonable stormwater management fees and assessments are not to be considered taxes, thus making federal entities subject to such fees and assessments and not protected by an assertion of federal sovereign immunity.

State Expenditures: Legislative Services advises that a reliable estimate of the increase in State expenditures to pay local stormwater management charges under the bill cannot be made at this time due to a lack of information regarding:

- how many jurisdictions currently have stormwater management charges other than a stormwater utility fee or user charge that would be applicable to the State, or will add such fees or charges in future years;
- how many additional local governments will adopt a stormwater utility fee or other charge, and when that would occur;
- the structure and rate of each charge as applied to State-owned properties; and
- the number and size of all properties owned by units of State government in each jurisdiction.

However, the Maryland Department of Planning (MDP) estimates an increase in State expenditures of \$100,000 in fiscal 2012, \$2.2 million in fiscal 2013, and \$8.5 million by fiscal 2016 under the following assumptions:

- Montgomery County estimates that State properties would be charged \$100,000 in fiscal 2012 under the county's existing stormwater utility charge;
- Montgomery County is the only local government to impose a charge under the bill in fiscal 2012;
- half of all counties and municipalities impose a stormwater management charge by fiscal 2016;
- the number of jurisdictions with a stormwater management charge increases at a linear rate between fiscal 2013 and 2016, such that 11 jurisdictions levy a charge in fiscal 2013, with 21 in fiscal 2014, and 43 jurisdictions in 2015; and
- each jurisdiction's charge in each future year is equivalent to that of Montgomery County's charge in fiscal 2012.

Legislative Services advises that MDP's estimate may provide useful context as to the extent of any increase in State expenditures. However, the estimate likely understates State expenditures in fiscal 2012 as it is unlikely that only Montgomery County will levy a charge on State property in fiscal 2012. For example, the State owns a number of buildings in Annapolis, which also has a stormwater utility fee. With respect to the out-years, it is unlikely that the number of jurisdictions with a stormwater management charge will increase at a linear rate. The extent to which additional stormwater utilities will be established is unknown unless legislation is enacted mandating statewide local stormwater utility fees or user charges. If such legislation passes, State expenditures will increase substantially in the year the establishment of such charges is required. And, pursuant to the WIP, MDE plans to seek legislation mandating local stormwater management charges by 2013 if such legislation has not already been enacted. Of course, local jurisdictions may choose to establish such fees or charges in order to meet their commitments under the WIP, even in the absence of a State mandate.

The Maryland Transportation Authority estimates that nonbudgeted expenditures may increase by about \$240,000 annually for payments to Montgomery County under the bill, based on the extent of impervious surfaces from the InterCounty Connector within the county. Legislative Services advises, however, that Montgomery County currently exempts public roads from its stormwater management fee. Legislative Services also advises that, even if Montgomery County or other jurisdictions establish a stormwater fee that applies to State highways, the Maryland Department of Transportation plans to conduct stormwater management retrofitting of roadways under its WIP commitment; thus the impact of any changes applicable to State highways is unknown.

Local Revenues: In addition to the corresponding increase in local revenues from any charges paid by the State expenditures may decrease to the extent that revenues from a local stormwater management charge imposed on State agencies reduces the need to provide local funds for stormwater management or other environmental activities. For example, any local stormwater management activities funded by the State may reduce the need for local expenditures to achieve the targets mandated in the WIP or any federally mandated clean water permit or other requirement.

Legislative Services advises that certain jurisdictions may benefit disproportionately under the bill. The cities of Annapolis and Baltimore, for example, are home to a large number of State agency buildings and property. Currently, Annapolis charges a flat stormwater utility rate of \$120 per year for commercial properties, but Baltimore does not have a stormwater utility fee. However, the bill may encourage the establishment or increase in stormwater utility fees or user charges that are based on the amount of impervious surface for each property by any local government that has a significant amount of State property within its jurisdiction.

Additional Comments: Legislative Services advises that, in the future, a more comprehensive estimate of the increase in State expenditures under this bill may be possible through additional collaboration and study with the Maryland Environmental Service (MES). MES has identified stormwater management and the reduction of impervious surfaces on State property as future recommended actions under its effort to measure the State's "environmental footprint," as directed by Governor O'Malley. Additionally, the impervious surface area of State property may soon be inventoried as part of the State's ongoing effort to comply with the Chesapeake Bay TMDL.

Additional Information

Prior Introductions: None.

Cross File: HB 668 (Delegate Carr, *et al.*) - Environmental Matters.

Information Source(s): Baltimore Frederick, Garrett, Howard, Montgomery, and Worcester counties; State Department of Assessments and Taxation; Department of Budget and Management; Maryland Department of Planning; Maryland Department of the Environment; Department of General Services; Maryland Association of Counties; Maryland Department of Transportation; Maryland Environmental Service; U.S. Environmental Protection Agency; Department of Legislative Services

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