

Department of Legislative Services
 Maryland General Assembly
 2011 Session

FISCAL AND POLICY NOTE

House Bill 1064 (Delegate Hucker, *et al.*)
 Environmental Matters

Watershed Protection and Restoration Act

This bill requires each county and municipality, by July 1, 2012, to adopt local laws or ordinances necessary to establish an annual stormwater remediation fee and a local watershed protection and restoration fund to provide financial assistance for the implementation of local stormwater management plans. The bill also establishes specified reporting requirements for local governments and the Maryland Department of the Environment (MDE). MDE is authorized to adopt regulations.

The bill takes effect July 1, 2011.

Fiscal Summary

State Effect: General fund expenditures increase by \$184,100 in FY 2012 for MDE to hire an additional engineer and for contractual assistance in implementing the bill. Future years reflect annualization, inflation, and ongoing expenses. In addition, to the extent that local stormwater remediation fees assist the State in achieving federal Chesapeake Bay restoration mandates, State expenditures (all funds) that would otherwise support these efforts may be reduced or redirected. Revenues are not affected.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	184,100	79,100	83,100	87,200	91,600
Net Effect	(\$184,100)	(\$79,100)	(\$83,100)	(\$87,200)	(\$91,600)

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

Local Effect: Local revenues to local watershed protection and restoration funds increase significantly beginning in FY 2012 or 2013 depending on when the stormwater remediation fee is implemented by each jurisdiction. Local expenditures from local watershed protection and restoration funds increase commensurately to fund local stormwater management activities, and for reasonable administrative costs. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The stormwater remediation fee established for residential property owners must be the same for all such owners within the county or municipality. For commercial properties, each county or municipality must set the fee at a rate that is (1) the same for all commercial properties; (2) assessed on the amount of impervious surface; and (3) greater than the fee assessed residential property. Each county and municipality is required to collect the fee from all property owners, subject to specified exceptions, and must determine the method, frequency, and enforcement of fee collection. State-owned property is not subject to the fee.

Fee revenue from each jurisdiction must be deposited into its local watershed protection and restoration fund established under the bill. Each fund also consists of interest or other investment income and any other money made available to the fund. The stated purpose of each fund is to provide financial assistance for the implementation of local stormwater management plans through urban and suburban stormwater management practices and stream and wetland restoration activities. Money in each fund is intended to be used to support additional (not existing or ongoing) efforts related to the following activities:

- capital improvements for stormwater management;
- operation and maintenance of stormwater management systems and facilities;
- stormwater management permitting, inspection, and enforcement activities;
- stormwater management planning;
- grants to nonprofit organizations for specified watershed restoration and rehabilitation projects; and
- reasonable administrative costs.

Beginning on April 1, 2012, each county and municipality is required to annually report to MDE the amount of impervious surface located within the jurisdiction. MDE must then report that information to the BayStat Subcabinet.

“Impervious surface” is defined in the bill as structures, buildings, dwelling units, roads, parking lots, driveways, and areas covered with gravel, stone, shell, impermeable decking, or pavers, or any other impervious material. The term does not include a fence or wall that is less than one foot in width that has not been constructed with a footer; a wood mulch pathway; or a deck with gaps to allow water to pass freely.

Current Law/Background:

Stormwater Management in Maryland

According to 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. 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.

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.

MDE was required by Chapters 121 and 122 to seek the input of each county and municipality that operates a stormwater management program and work with interested parties to address any reasonable concern during the creation of the ESD regulations and model ordinances. Nevertheless, after the regulations were adopted on May 4, 2009, numerous concerns were raised by local jurisdictions, developers, and others. In general, the concerns related to the need for grandfathering of certain projects that have reached an advanced stage in the development process, the cost and feasibility of ESD, potential conflicts between the regulations' more stringent requirements for redevelopment projects and the State's ongoing smart growth efforts, and the costs of long-term maintenance for ESD practices.

To address some of these concerns, in March 2010 MDE submitted emergency regulations to the General Assembly's Administrative, Executive, and Legislative Review (AELR) Committee. On the grandfathering issue, the emergency regulations allowed local governments to incorporate waiver provisions into their ordinances for projects that have completed part of the development review process but have not received final approval by May 4, 2010. A grandfathered project that receives an administrative waiver may proceed with the development under the previous stormwater regulations in effect as of May 4, 2009. The emergency regulations also provided local governments with greater flexibility in addressing the new requirements for redevelopment projects by providing for alternative stormwater management measures under specified conditions. The AELR Committee approved the emergency regulations on April 6, 2010.

Role of Stormwater Management in Meeting Federal Requirements

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 adopted enabling legislation that allows localities to develop a "system of charges" to finance stormwater programs. To date, only six local jurisdictions (Montgomery and Prince George's counties and the cities of Annapolis, Frederick, Rockville, and Takoma Park) have developed programs to raise revenues dedicated for stormwater management, although several others have explored the creation of dedicated stormwater revenue sources.

In the 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. As part of the WIP, the Governor has planned 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 Chesapeake and Atlantic Coastal Bays Nonpoint Source 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 Chesapeake and Atlantic Coastal Bays 2010 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.

State Expenditures: General fund expenditures increase by \$184,080 in fiscal 2012, which accounts for a 90-day start-up delay. This estimate reflects the cost for MDE to hire an engineer to develop regulations and a new model ordinance, draft guidance for local governments, and oversee implementation. Currently, the stormwater management program at MDE is staffed by two full-time employees. MDE advises that existing staff cannot draft the regulations and new model ordinances and coordinate with local governments to implement the bill. This estimate includes a salary, fringe benefits, one-time start-up costs (including the purchase of an additional automobile), and ongoing operating expenses. Additionally, MDE advises that it needs to contract with an outside vendor to develop a tracking system, which includes hardware and software costs, at an estimated cost of \$100,000 in fiscal 2012 only.

Position	1
Salary and Fringe Benefits	\$56,180
Contractual Services	100,000
Start-up Costs and Operating Expenses	<u>27,900</u>
Total FY 2012 MDE Expenditures	\$184,080

Future year expenditures reflect a full salary with 4.4% annual increases and 3% employee turnover as well as 1% annual increases in ongoing operating expenses.

Also, to the extent that local stormwater remediation fees assist the State in achieving federal Chesapeake Bay restoration mandates, State expenditures (all funds) that would otherwise support these effects may be reduced or redirected.

Local Fiscal Effect: Local government revenues increase from collection of the stormwater remediation fee established as a result of this bill. However, the Department of Legislative Services (DLS) advises that the amount of local revenues generated by the bill cannot be estimated because the bill does not specify or mandate the amount of the charge. It is assumed that all revenues collected are offset by expenditures from local watershed protection and restoration funds as specified in the bill, including reasonable administrative costs.

Although it is not possible to develop a reliable estimate of the statewide revenues for local jurisdictions generated under the bill, a review of literature on local stormwater utility fees nationwide may be instructive. For example, typical residential stormwater utility fees range from \$30 to \$75 per residential unit annually, with separate charges for nonresidential properties. *For illustrative purposes only*, assuming an average residential stormwater remediation fee of \$45 annually, local revenues may increase statewide by roughly \$130 million annually beginning in fiscal 2013, the first full year of implementation. This is based on property data from the State Department of Assessments and Taxation and the following information and assumptions:

- a residential fee of \$45 annually;
- the assumption that the average number of residential units per apartment building is 20;
- the average collection of stormwater fees from nonresidential properties, which is based on the area of the property's impervious surface, generates an equal amount of revenue as the residential fee; and
- jurisdictions that currently impose stormwater management charges do not charge an additional fee under the bill.

In addition, although local governments have broad authority to set the fee at any level they desire, smaller jurisdictions may find that stormwater remediation fee revenues generated from a reasonable fee do not provide a significant amount of funding for stormwater management activities once administrative costs are paid. For example, the Town of Bel Air estimates that the total administrative costs necessary to implement a stormwater utility is about \$50,000 annually. With an estimated 4,500 households, the stormwater remediation fee would need to be set at about \$11 per household just to cover administrative costs related to accounting, collections, and disbursement of funds. If the residential stormwater remediation fee were set at \$45 per household, revenues available for stormwater management activities after covering administrative costs would be roughly \$150,000 annually. If a lower residential fee were set, it is possible that far less

than \$100,000 might be available to accomplish the various stormwater remediation activities intended by the bill. Calvert County also estimates additional expenditures of about \$50,000 annually for administrative costs.

There are about 65 jurisdictions in the State with a population of less than 1,000. In these jurisdictions, fee revenue is likely negligible and may not be sufficient to cover the administrative costs of implementing the bill unless the fee is set at a level that far exceeds the average State or nationwide stormwater utility fee. DLS notes that the bill requires *each* county and municipality to establish a stormwater remediation fee and to deposit revenues into *its* local fund; the bill does not specifically authorize the creation of multijurisdiction stormwater management programs.

In jurisdictions that have a charter limit on their property taxes, establishing a stormwater remediation fee may necessitate an offsetting reduction in some other property tax, to the extent the fees established under the bill are considered property taxes.

Finally, net revenues generated by local stormwater remediation fees under the bill may reduce future local expenditures that may be necessary to achieve the mandates of the State WIP and the bay TMDL. As noted above, total stormwater-related costs to comply with the WIP are likely to far exceed \$1 billion. In the absence of a dedicated funding source for these activities, it is assumed that local governments will likely need to generate additional revenue through an increase in other fees, charges, or taxes.

Small Business Effect: Any small businesses involved in the planning, design, and/or construction of stormwater management projects may benefit to the extent the additional revenue generated for stormwater-related activities results in an increase in the number of projects undertaken than otherwise would occur. On the other hand, small businesses themselves are subject to the stormwater remediation fees established by local governments under the bill.

Additional Information

Prior Introductions: HB 999 of 2010 received a hearing in the House Environmental Matters Committee, but no further action was taken on it. Its cross file, SB 686, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken on it. A similar bill, SB 672 of 2009, passed with amendments on second reading in the Senate but failed on third reading. Its cross file, HB 1457, was referred to the House Rules and Executive Nominations Committee, but no further action was taken.

Cross File: None.

Information Source(s): Calvert and Montgomery counties, the towns of Bel Air and Leonardtown, the City of Salisbury, Department of Natural Resources, Maryland Department of Planning, Maryland Department of the Environment, Maryland Association of Counties, U.S. Environmental Protection Agency, Department of Legislative Services

Fiscal Note History: First Reader - March 10, 2011
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