

Department of Legislative Services
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FISCAL AND POLICY NOTE

House Bill 671

(Delegate S. Robinson, *et al.*)

Environmental Matters

Stormwater Management - Dredging - Testing for Toxic Substances

This bill requires the Maryland Department of the Environment (MDE) to adopt regulations that require any dredged sediment from a stormwater retention structure, including ponds and wetlands, be tested for toxic substances. MDE must also adopt regulations that prohibit dredged sediment from a stormwater retention structure that contains toxic substances from being used in an area that poses a risk to public health and safety.

Fiscal Summary

State Effect: State expenditures (all funds) increase, potentially significantly, for multiple State agencies to conduct testing of dredged materials from stormwater facilities on State property and to ensure disposal of any toxic materials consistent with the bill to the extent this is not already current practice. It is assumed that MDE can develop the required regulations with existing resources.

Local Effect: Local expenditures increase, potentially significantly, for most jurisdictions to conduct testing of dredged materials and to ensure disposal of any toxic materials consistent with the bill to the extent this is not already current practice. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Potential meaningful adverse impact on small businesses that are required to conduct testing of dredged materials from stormwater facilities on properties they own and to ensure disposal of any toxic materials consistent with the bill to the extent this is not already current practice. Potential meaningful beneficial impact on small business laboratories that conduct toxic material testing and for small businesses engaged in the disposal of dredged material.

Analysis

Current Law: MDE is required to adopt regulations that establish criteria and procedures for stormwater management in Maryland. The required regulations include numerous specified elements, including rules regarding watershed-wide analyses, exemptions from the requirements of submitting a stormwater management plan, the minimum content of local model ordinances or rules, requirements for water quality practices that may be required for redevelopment projects, minimum requirements for inspection and maintenance of stormwater practices, specifications for the design of stormwater management plans, and a comprehensive process for approving grading and sediment control plans and stormwater management plans.

Background: 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. 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.

Common stormwater management practices include ponds and constructed wetlands that are designed to capture stormwater. As the stormwater settles, nutrients, sediments, and numerous chemicals and pollutants are deposited at the bottom of the pond or wetland. Proper maintenance of stormwater ponds and constructed wetlands may include periodic dredging of these accumulated sediments to allow captured stormwater to infiltrate from the facilities into the water table.

State Expenditures: Numerous State agencies own property with stormwater retention structures, including ponds and wetlands, and will be required to test dredged substances and ensure that any toxic substances are disposed of so as to not pose a risk to public health or safety.

However, a reliable estimate of the bill's impact cannot be made at this time due to numerous uncertainties, including how many stormwater structures are owned by the

State, how often each one is dredged, whether less dredging will be undertaken due to the bill's requirements, and due to variable costs of testing and disposing of toxic dredged materials. For example, the State Highway Administration (SHA) advises that it dredges each of its 150 sites each year, while the Department of Natural Resources advises that it has few stormwater ponds on its properties and has dredged only one pond in 20 years. The Department of General Services (DGS) advises that it manages 18 facilities with stormwater management systems that are inspected annually but are dredged on average once every five years.

According to the Office of Materials and Testing within SHA, the average testing cost required by the bill is about \$1,000, while DGS estimates that the additional cost might be between \$200 and \$250 per test. The Maryland Transportation Authority (MDTA) estimates that the required testing will likely add about 5% to the cost of its stormwater dredging activities, which is about \$100,000 annually. MDTA also advises that additional compliance tracking activities to ensure disposal consistent with the bill may increase disposal costs by another 5%. Total expenditures for SHA and MDTA are estimated to increase by more than \$160,000 under the bill, of which \$150,000 represents additional testing costs for SHA and \$10,000 represents additional testing and compliance tracking costs for MDTA.

Legislative Services advises that it is unclear to what extent the bill's prohibition on disposing of dredged sediment containing toxic substances in an area that poses a risk to public health and safety will alter current practices. The bill requires MDE to adopt regulations to implement this, and other requirements, of the bill. It is difficult to estimate the fiscal impact of this prohibition without additional information as to the ultimate contents of the regulations. Presumably, many agencies already dispose of dredged materials in a manner that is consistent with the bill, whether due to compliance with environmental laws, or due to the experience and best practices of the dredged material haulers or other contractors used for these purposes.

Local Expenditures: Similarly, local expenditures may increase for many jurisdictions as owners of stormwater ponds and wetlands. The Washington Suburban and Sanitary Commission advises that it owns numerous stormwater facilities and that, while dredging may be infrequent, the cost for testing dredged materials will have a fiscal impact. Worcester County advises that it performs regular maintenance inspections of all stormwater management facilities every three years.

Personnel expenditures may increase for some jurisdictions for oversight of testing and to ensure proper disposal of any dredged toxic materials. For example, Worcester County advises that, due to current staffing levels, it will need to create an additional clerical position to verify that appropriate testing is performed on all necessary facilities and to

ensure that any toxic materials that are dredged are then disposed of in an area that does not pose a risk to public health or safety. Stormwater management program operating expenditures may increase significantly for some jurisdictions depending on both the standards currently being followed for testing and disposal of dredged stormwater materials and on the standards that are ultimately adopted by MDE under the bill. For example, Montgomery County advises that, depending on the standard adopted by MDE, testing and disposal costs could increase by as much \$1.0 million annually, but that because the county is already conducting some testing and special disposal activities, some of these costs may be incurred even in the absence of this bill.

Additional Information

Prior Introductions: None.

Cross File: SB 475 (Senator King, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Montgomery and Worcester counties, Department of General Services, Maryland Department of Agriculture, Department of Natural Resources, Maryland Department of Transportation, Washington Suburban Sanitary Commission; Department of Legislative Services

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Analysis by: Evan M. Isaacson

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