

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

House Bill 854 (Delegate Gilchrist)
Environmental Matters

Forest Conservation Act - Exception for Local Stormwater Management Activity

This bill creates an exemption to the Forest Conservation Act (FCA) for any stormwater management activity performed by a local jurisdiction under specified provisions of the Environment Article.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances.

Local Effect: Local government expenditures decrease, potentially significantly, in FY 2013 and subsequent years to the extent they are no longer required to implement forest mitigation when constructing a stormwater management project.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Enacted in 1991, FCA provides a set of minimum standards that developers must follow when designing a new project that affects forest land. Local governments are responsible for making sure these standards are met, but they may choose to implement even more stringent criteria. If there is no local agency in place to review development plans, the Department of Natural Resources (DNR) does so. In general, FCA calls for a minimum amount of forest cover on development sites based upon the site's zoning. FCA applies, subject to enumerated exceptions, to any public or private development requiring a subdivision plan, grading permit, or sediment control permit that is to apply on 40,000 square feet (approximately 0.9 acres) or greater of land.

DNR administers the State Forest Conservation Fund to facilitate afforestation or reforestation requirements when an applicant cannot reasonably accomplish these requirements on- or off-site. In addition, a local approval authority may establish and administer a local forest conservation fund to apply in that local jurisdiction instead of the State fund. A State or local forest conservation fund consists of payments made by an applicant in lieu of performance of afforestation or reforestation requirements and penalties collected for noncompliance with a forest conservation program, a forest conservation plan, or an associated two-year management agreement.

The Maryland Department of the Environment (MDE) is required to adopt regulations establishing criteria and procedures for stormwater management in Maryland. Each county and municipality is required to adopt ordinances necessary to implement a stormwater management program. Every three years, MDE is required to review local programs and evaluate their effectiveness. 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.

The governing body of a county or municipality may adopt a system of charges to fund the implementation of stormwater management programs. State and local governments are exempt from any such charges.

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. 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. Emergency regulations to implement Chapters 121 and 122 were approved in April 2010.

Role of Stormwater Management in Meeting Federal Bay Restoration Requirements

In December 2010, the U.S. Environmental Protection Agency (EPA) established the Total Maximum Daily Load for the Chesapeake Bay (Bay TMDL) that (1) sets the maximum amount of pollution the bay can receive and still attain water quality standards; and (2) identifies specific pollution reduction requirements. **Exhibit 1** illustrates Maryland's pollution reduction goals in TMDL. All pollution reduction measures must be in place by 2025, with at least 60% of the actions complete by 2017.

Exhibit 1
Maryland's Pollution Reduction Goals in the Bay TMDL
(Million Pounds Per Year)

<u>Pollutant</u>	<u>2010 Loads</u>	<u>Bay TMDL Target Load</u>	<u>Percent Reduction</u>
Nitrogen	52.76	41.17	22.0%
Phosphorus	3.30	2.81	14.9%
Sediment	1,376	1,350	1.9%

TMDL: Total Maximum Daily Load

Note: Target loads as revised by EPA in August 2011.

Source: Maryland Department of the Environment; U.S. Environmental Protection Agency

In 2010, each bay jurisdiction submitted a Phase I Watershed Implementation Plan (WIP) that details how the jurisdiction will achieve its individual pollution reduction goals under TMDL. The Phase I WIP focused on the following three approaches for bridging the remaining loading gap: (1) developing new technology and approaches before 2017; (2) increasing the scope of implementation of existing strategies such as upgrading wastewater treatment plants, upgrading septic systems, and increasing the number and efficiency of stormwater runoff controls; and (3) improving regulatory requirements. The Phase I WIP establishes that all nutrient impacts from future growth must be offset if TMDL is to be met.

On January 26, 2012, Maryland released for public comment a draft of the State's Phase II WIP, which provides implementation strategies for the five major basins in Maryland (the Potomac River basin, Eastern Shore, Western Shore, the Patuxent River basin, and Maryland's portion of the Susquehanna River basin). Maryland's Phase II WIP builds on existing State-directed restoration efforts and identifies strategy options to reduce nitrogen and phosphorus from all major sources, including stormwater runoff. Of the major sources of nutrient pollution in Maryland, stormwater runoff contributes about

18.1% of the nitrogen and 22.1% of the phosphorus entering the bay from Maryland sources, and it will be required to contribute to just under 17% of the nitrogen reduction and just under 45% of the phosphorus reduction under Maryland's Phase II WIP.

Anticipated Costs of Implementing Stormwater Management Controls in WIP

To determine the cost of implementing the Bay TMDL, MDE began investigating the potential cost of local stormwater control measures in early spring 2011. As part of this investigation, MDE commissioned a study by the University of Maryland Center for Environmental Science and The Johns Hopkins University to examine costs related to stormwater best management practices (BMPs) and assess revenue-generating options for Maryland counties. The study was completed in October 2011 and provided estimated costs of various stormwater BMPs, including the average unit cost over 20 years.

Exhibit 2 shows the preliminary estimated cost of implementing the Phase II WIP from all sectors. Among other things, the exhibit illustrates that stormwater BMPs likely represent the largest costs to local governments in implementing TMDL.

Exhibit 2
Estimated Phase II WIP Costs for Interim and Final Targets Under the Bay TMDL
(\$ in Millions)

<u>Source Sector</u>	<u>Cost of 2017 Strategy 2010-2017</u>	<u>Cost of 2025 Strategy 2010-2025</u>
Agriculture	\$498	\$928
Municipal Wastewater	2,384	2,384
Major Municipal Plants	2,322	2,322
Minor Municipal Plants	62	62
Stormwater	3,826	7,607
Maryland Department of Transportation	467	1,500
Local Government	3,359	6,107
Septic Systems	799	3,746
Septic System Upgrades	336	2,533
Septic System Connections	439	1,125
Septic System Pumping	24	88
Total	\$7,507	\$14,665

Note: Exhibit does not reflect costs associated with controlling combined sewer and sanitary overflows or the implementation of the Healthy Air Act.

Source: *Phase II Watershed Implementation Plan*; Maryland Department of the Environment

Local Expenditures: The bill reduces local expenditures, potentially significantly, in fiscal 2013 and future years by making local government stormwater control projects exempt from FCA compliance. Typical local government stormwater management activities include rain gardens, bioswales, stream restoration, and construction of stormwater management ponds.

Montgomery County advises that compliance with FCA represents approximately 10% of the design cost for a stormwater facility/stream restoration project. While projects may vary in size and cost, the county estimates FCA compliance requires at least \$10,000 or more per project, excluding staff resources. This estimate does not reflect additional costs incurred during construction to comply with FCA requirements.

Small Business Effect: The bill impacts small businesses that specialize in forestry management design to the extent they no longer assist local jurisdictions with the development of FCA plans for stormwater projects. Small landscaping businesses and nurseries are affected to the extent local jurisdictions no longer purchase trees and bushes to comply with FCA mitigation requirements.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City, Harford and Montgomery counties, Department of Natural Resources, Maryland Department of Planning, Maryland Department of the Environment, Maryland Environmental Service, Washington Suburban Sanitary Commission, Department of Legislative Services

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