

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 529

(Delegate Carr, *et al.*)

Environmental Matters

Budget and Taxation and Education, Health,
and Environmental Affairs

Environment - Local Stormwater Management Charges - State Property

This bill subjects State-owned property to county or municipal stormwater management charges, except for property of the Maryland Department of Transportation, including roads. Property owned by the University System of Maryland (USM) is exempt from such charges until October 1, 2014. The charges only apply if they are proportionate to the share of stormwater management services provided by the local government to the property and if established along with a system of credits or exemptions that adjust the charge to account for the costs of, and level of treatment provided by, stormwater management facilities that are funded and maintained by the property owner. Additionally, the bill prohibits a local government that holds a municipal separate storm sewer system permit (“permitted jurisdiction”) from imposing a stormwater management charge against State property located wholly within another permitted jurisdiction, unless services are actually provided to that property. If a property is located in more than one permitted jurisdiction, the charge must be based only on the amount of impervious surface in each permitted jurisdiction, unless the permitted jurisdictions agree otherwise.

Fiscal Summary

State Effect: State expenditures (all funds) increase, likely minimally in FY 2013, but potentially significantly in future years, to the extent that additional counties and municipal corporations adopt stormwater management charges consistent with the bill to fund stormwater management activities that may be necessary to comply with State and federal requirements.

Local Effect: Local government revenues increase for any county or municipal corporation that adopts a stormwater management charge consistent with the bill’s

requirements. Local expenditures may initially increase to establish charges and to ensure consistency with the bill's requirements.

Small Business Effect: Minimal.

Analysis

Current Law: Generally, unless a particular activity is exempt, a person may not develop any land without an approved final stormwater management plan from the approving agency (generally, a county or municipality). The owner/developer must certify that all land development will be done according to the approved plan. Current regulations exempt, among other activities, additions or modifications to existing single-family detached residential structures under specified conditions and any developments that do not disturb over 5,000 square feet of land area.

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 the 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 the 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 the 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 the 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 the TMDL.

The cost of implementing local stormwater management controls was also addressed in the work of the Task Force on Sustainable Growth and Wastewater Disposal, which was established by Governor O'Malley under Executive Order 01.01.2011.05. During the course of its work, the task force explored increasing the existing bay restoration fee in order to not only cover the existing shortfall in the Bay Restoration Fund for wastewater treatment plant upgrades, but also to help fund other WIP requirements associated with developed land BMPs, including stormwater management. Under one recommendation, the task force envisioned transferring 15% to 25% of the gross bay restoration fee revenue generated within each local jurisdiction to local governments for the implementation of approved stormwater BMPs.

Legislative Services advises, however, that the legislation that has been introduced by the Administration to increase the bay restoration fee (SB 240/HB 446) would not result in an increase in revenue sufficient to support that recommendation in the near term.

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</u> <u>2010-2017</u>	<u>Cost of 2025 Strategy</u> <u>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

Current Financing of Stormwater Management

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. Legislative Services is aware of six local jurisdictions (Montgomery and Prince George's counties and the cities of Annapolis, Frederick, Rockville, and Takoma Park) that have developed programs to raise revenues dedicated for stormwater management to date, although several others have explored the creation of dedicated stormwater revenue sources.

State funding for stormwater management projects is also available from several sources. Chapter 6 of the 2007 special session established a Chesapeake Bay 2010 Trust Fund to

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be used to implement the State's tributary strategy. The fund is financed with a portion of existing revenues from the motor fuel tax and the sales and use tax on short-term vehicle rentals. Subsequently, Chapters 120 and 121 of 2008 established a framework for how the trust fund money must be spent by specifying that it be used for nonpoint source pollution control projects and by expanding it to apply to the Atlantic Coastal Bays. In fiscal 2012, \$7.28 million from the fund was used to support local implementation grants for high-priority local stormwater and other nonpoint source pollution control projects. While no funding has been included in the proposed fiscal 2013 State budget for local implementation grants, an increase of roughly the same amount has been included in the budget for the Natural Filters program within the Department of Natural Resources (DNR), which supports the creation of riparian buffers and wetlands in priority watersheds within 15 counties. Maryland also provides ongoing support for stormwater management through a portion of expenditures from the Water Quality Revolving Loan Fund, which is capitalized by federal funds.

State Expenditures/Local Revenues: Although State expenditures (all funds) may increase beginning in fiscal 2013 to pay any stormwater charges assessed on State property, resulting in a corresponding increase in local revenues, an estimate of the increase cannot be made at this time due to numerous uncertainties, including (1) how many local governments will adopt a charge consistent with the bill's requirements; (2) when each jurisdiction will adopt such charges; (3) the level of each stormwater management charge; (4) how many State facilities discharge stormwater into local stormwater infrastructure or property; and (5) how the system of credits or exemptions will be established.

However, the increase in State expenditures and local revenues may be significant as the State owns many properties with several acres of impervious surfaces. For example, the Department of General Services is responsible for the statewide operation and maintenance of 56 buildings with 6.3 million square feet of space. This includes 74 acres of property within the City of Annapolis, at least 17 acres of landscaped area with 19 acres of parking lots in Baltimore City, and 47 acres of landscaped areas and 20 acres of parking lots serving 18 District Court/Multi-Service Centers across the State. In addition, USM encompasses about 1,000 buildings in 100 locations in Maryland; stormwater charges may be assessed against the USM properties beginning in fiscal 2015.

For contextual purposes, Montgomery County advises that, under its current stormwater utility fee, known as the Water Quality Protection Charge, the State would have been liable to the county for about \$5,500 in fiscal 2011 based on nearly 187,000 square feet of impervious surfaces. Legislative Services advises that this estimate does not account for the credits and adjustments to the charges required by the bill, and it may not reflect other provisions of the bill, including ensuring that the charge to the State is actually

proportionate to the stormwater management services provided and ensuring that the charge is not paid to two separate permitted jurisdictions.

Legislative Services further advises that the Montgomery County fee may not be reflective of the average fee established by other jurisdictions; currently, Montgomery County's fee is \$70.50 per equivalent residential unit annually. Based on a survey of stormwater utility fees nationwide, typical fees range from \$30 to \$75 per equivalent residential unit per year, though some fees greatly exceed this amount, particularly for charges that are based on the actual extent of impervious surfaces. Montgomery County has also provided an estimate of the potential future cost to the State under a newly proposed county stormwater charge that would be based on the actual extent of impervious surface for all properties. Under this proposed fee and under the bill, the State would be subject to charges of about \$115,500 annually in that county alone, net of credits and adjustments required by the bill. While it is unclear whether this Montgomery County proposal will be adopted, it is illustrative of the potentially greater liability of the State for some local stormwater management charges.

Although the extent to which local governments will establish charges consistent with the bill's requirements is not known, it is not unreasonable to assume that several local jurisdictions may seek such charges in order to help fund stormwater activities required by the WIP. Any increase in local government revenues resulting from this bill will help local governments implement those strategies.

Additional Information

Prior Introductions: A similar bill, HB 668 of 2011, was withdrawn after receiving a hearing in the House Environmental Matters Committee. Its cross file, SB 552, was also withdrawn after receiving a hearing in the Senate Education, Health, and Environmental Affairs Committee.

Cross File: None.

Information Source(s): Baltimore, Cecil, Carroll, Harford, and Montgomery counties; City of Bowie; Department of Natural Resources; Maryland Department of Planning; Department of General Services; Maryland Association of Counties; Maryland Environmental Service; Maryland Municipal League; Maryland Department of Transportation; Task Force on Sustainable Growth and Wastewater Disposal; University of Maryland Center for Environmental Science; Johns Hopkins University; University System of Maryland; U.S. Environmental Protection Agency; Department of Legislative Services

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