

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 50 (Delegate Norman, *et al.*)
Environmental Matters

Stormwater Management - Watershed Protection and Restoration Program -
Repeal

This bill repeals provisions of law enacted by Chapter 151 of 2012, which generally require a county or municipal corporation that is subject to a specified federal permit (currently, there are 10 such jurisdictions) to adopt and implement, by July 1, 2013, local laws or ordinances that establish an annual stormwater remediation fee and a local watershed protection and restoration fund.

The bill takes effect July 1, 2014.

Fiscal Summary

State Effect: State expenditures (all funds) may increase to the extent that additional State actions are taken to achieve nutrient reductions that otherwise would be achieved by local jurisdictions under Chapter 151; the likelihood that additional State actions would be taken is uncertain and depends in part on the nature and extent of future enforcement actions. Maryland Department of the Environment (MDE) workloads associated with stormwater permitting and enforcement may increase. Revenues are not affected.

Local Effect: Local stormwater remediation fee revenues may be eliminated in several jurisdictions in FY 2015; other local revenues may increase to offset the elimination of any fees, as local jurisdictions remain subject to State and federal stormwater management requirements. Local stormwater management expenditures may decrease for jurisdictions that cease collecting stormwater fees, unless fully offset by other revenue sources.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background: Chapter 151 of 2012 requires a county or municipal corporation that is subject to a National Pollutant Discharge Elimination System Phase I municipal separate storm sewer system permit (Phase I MS4 permit) to adopt and implement, by July 1, 2013, local laws or ordinances that establish an annual stormwater remediation fee and a local watershed protection and restoration fund.

Fee revenues from each jurisdiction must be deposited into its local watershed protection and restoration fund and may not revert or be transferred to a local general fund. Each fund must also consist of interest or other investment income and any other money made available to the fund. Money in each fund is intended to be used only to support additional (not existing or ongoing) efforts for:

- capital improvements for stormwater management, including stream and wetland restoration projects;
- operation and maintenance of stormwater management systems and facilities;
- public education and outreach relating to stormwater management or stream and wetland restoration;
- stormwater management planning, including mapping and assessment of impervious surfaces;
- stormwater management monitoring, inspection, and enforcement activities to carry out the purposes of the watershed protection and restoration fund;
- review of stormwater management plans and permit applications for new development, only if fees to support these activities associated with new development are also deposited into the new watershed protection and restoration fund;
- grants to nonprofit organizations for specified watershed restoration and rehabilitation projects; and
- reasonable administrative costs.

Beginning on July 1, 2014, and every two years thereafter, a county or municipal corporation subject to the law is required to make a publicly available report on the number of properties subject to a stormwater remediation fee, the amount of money deposited into the watershed protection and restoration fund for the previous two fiscal years, and the percentage of funds spent on each of the purposes authorized by the bill.

Chapter 151 also altered the definition of “environmental site design” and specified that “impervious surface” means a surface that does not allow stormwater to infiltrate into the ground, which includes rooftops, driveways, sidewalks, or pavement.

Although Chapter 151 *required* the 10 local Phase I MS4 permit holders to establish a stormwater fee, local jurisdictions maintain the *authority* to levy a system of charges (which could include stormwater remediation fees) under separate provisions of the Environment Article that precede the enactment of Chapter 151. For example, prior to Chapter 151, there were several local stormwater fees in Maryland, including the Montgomery County Water Quality Protection Charge. The Montgomery County charge was amended to comply with Chapter 151, but was otherwise similar in the structure and amount of revenue raised to the county's current fee. Additionally, the City of Salisbury (not a Phase I MS4 permit holder) has recently considered establishing a fee under State law in order to help finance its projected stormwater management needs of \$23.2 million over the next 10 years.

For additional information about Chapter 151 of 2012 and its implementation, see the **Appendix – Stormwater Remediation Fees in Maryland.**

State Expenditures: State expenditures (all funds) may increase to the extent that additional State actions are taken to achieve nutrient reductions that otherwise would be achieved by local jurisdictions under Chapter 151.

Although the 10 jurisdictions subject to Chapter 151 are no longer *required* to levy a stormwater remediation fee under the bill, it is assumed that several jurisdictions continue to do so as the local stormwater fees, funds, and enhanced stormwater programs have already been established. As noted above, the bill repeals the *requirement* to establish a local stormwater remediation fee and fund, but jurisdictions maintain the *authority* to levy such fees under authority that precedes the enactment of Chapter 151. Further, these jurisdictions remain subject to federal Clean Water Act requirements, including Phase I MS4 permit requirements and the nutrient reduction requirements under the Chesapeake Bay Total Maximum Daily Load – a federal requirement to reduce nutrient and sediment loadings into the Chesapeake Bay.

While several jurisdictions may repeal their local stormwater remediation fees and watershed protection and restoration funds, these jurisdictions are, nevertheless, required to dedicate other revenue sources to these activities in order to meet their local stormwater obligations. However, to the extent that the bill's repeal causes a temporary delay or deferral of local revenues available to support the State's nutrient reduction requirements, additional State resources may be needed. The likelihood that additional State expenditures may be needed is unclear and may depend on the nature and extent of enforcement by MDE of local Phase I MS4 permit requirements and other State and federal laws. Any such expenditures may only be temporary to account for the delay or deferral of local stormwater management expenditures.

Local Fiscal Effect: As noted above, it is assumed that several jurisdictions continue to collect stormwater fees similar to the stormwater remediation fees established under Chapter 151, given their ongoing stormwater management obligations. Nevertheless, several jurisdictions may consider eliminating the current stormwater remediation fees established pursuant to Chapter 151 and replace some or all of the foregone fee revenues with other local funds (such as proceeds from the sale of local bonds) to satisfy local stormwater management obligations. *For illustrative purposes only*, **Exhibit 1** shows current projections of the total estimated fee revenues, total local revenues identified for stormwater management (including Chapter 151 fee revenues and other sources), and total projected costs (between fiscal 2014 and 2018) to comply with existing stormwater management obligations for the 10 jurisdictions currently subject to Chapter 151.

Exhibit 1
Local Projections of Stormwater Revenues and Costs

| <u>Jurisdiction</u> | <u>Fiscal 2014-2018 Fee Revenues</u> | <u>Fiscal 2014-2018 Total Revenues</u> | <u>Fiscal 2014-2018 Projected Costs</u> |
|----------------------------|---|---|--|
| Anne Arundel | \$110,200,000 | \$402,700,000 | \$402,700,000 |
| Baltimore City | 129,200,000 | 233,000,000 | 228,500,000 |
| Baltimore | 121,500,000 | 171,500,000 | 167,000,000 |
| Carroll | - | 23,049,460 | 34,069,366 |
| Charles | 7,361,650 | 42,654,350 | 47,440,600 |
| Frederick | 2,440 | 22,402,440 | 112,000,000 |
| Harford | 43,050,000 | 43,050,000 | 90,000,000 |
| Howard | 54,400,000 | 97,600,000 | 210,000,000 |
| Montgomery | 147,250,922 | 273,409,373 | 332,904,709 |
| Prince George's | 58,000,000 | 396,000,000 | 449,000,000 |
| Total | \$670,965,012 | \$1,705,365,623 | \$2,073,614,675 |

Note: Future year fee revenues may be based on local projections of future fee levels where specific fees have not been established by local enactment. For some jurisdictions, projected fee revenues in certain fiscal years are based on fee levels or specified local plans from previous fiscal years. The exhibit includes revenues collected by Montgomery County; if revenues from the county are excluded because it had already collected a similar amount in stormwater fee revenues in fiscal 2013, then total fee revenues collected between fiscal 2014 and 2018 are reduced to about \$523.7 million.

Source: Department of Legislative Services

To the extent any of the affected jurisdictions repeal their stormwater remediation fees, local stormwater management expenditures may decrease. However, as noted earlier, the bill only repeals the requirement for local jurisdictions to levy a stormwater remediation fee and does not affect the requirement for local jurisdictions to comply with their Phase I MS4 permits. Thus, expenditures of other local funds likely increase to replace stormwater fee expenditures for any jurisdictions that repeal their local stormwater fees as a result of the bill.

Montgomery County advises that it is unclear at this time whether the bill's repeal may affect specific aspects of its local watershed protection and restoration program and laws. Specifically, the county established a hardship exemption under the authority of Chapter 151. The county is currently deliberating as to whether it possesses authority to reestablish a hardship exemption in the event that its current authority under State law is repealed. The bill may have similar effects on various aspects of other jurisdictions' watershed protection and restoration programs as well. However, any such impacts are unclear at this time.

Small Business Effect: Small businesses in any of the 10 jurisdictions currently subject to Chapter 151 may realize significant savings to the extent that the jurisdiction opts to repeal the local stormwater remediation fee. Savings are likely to be particularly significant for small businesses that own real property with relatively large expanses of impervious surfaces. It is unclear, however, to what extent levies of other fees or taxes may result in even greater liabilities for some small businesses as local jurisdictions seek to raise other funding sources to meet federal and State stormwater management obligations.

Small business engineering and environmental services firms and contractors that specialize in the installation or maintenance of stormwater best management practices may incur a reduction in the demand for their services over the short term. This temporary reduction in demand is likely to be particularly significant for businesses located in any of the 10 jurisdictions that ceases to collect an existing stormwater fee established pursuant to Chapter 151. However, any reduction in the demand for such services is likely to be temporary, as each of the 10 jurisdictions currently subject to Chapter 151 remain subject to Phase I MS4 permit requirements.

Additional Information

Prior Introductions: None.

Cross File: SB 464 (Senator Jennings, *et al.*) - Education, Health, and Environmental Affairs..

Information Source(s): Caroline, Charles, Frederick, Harford, Howard, Montgomery, and Prince George's counties; the City of Bowie; Maryland Department of Agriculture; Department of Natural Resources; Maryland Department of Planning; Maryland Department of the Environment; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services

Fiscal Note History: First Reader - February 6, 2014
ncs/lgc

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Appendix – Stormwater Remediation Fees in Maryland

The federal Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States. The National Pollutant Discharge Elimination System (NPDES), a component of the CWA, regulates stormwater discharges from municipal separate storm sewer systems (MS4). There are 10 jurisdictions in Maryland that hold NPDES Phase I MS4 permits (Anne Arundel, Baltimore, Carroll, Charles, Frederick, Harford, Howard, Montgomery, Prince George's counties, and Baltimore City). In the 2012 legislative session, the General Assembly passed legislation, House Bill 987 (Chapter 151), which required these 10 jurisdictions to establish a local stormwater remediation fee to assist in financing the implementation of the local MS4 permits, including the requirement of each permit to meet the stormwater-related targets under the Chesapeake Bay Total Maximum Daily Load (TMDL).

Chapter 151 of 2012

Chapter 151 of 2012 was passed by the General Assembly in the context of a substantial projected shortfall in funding for local water quality related stormwater projects. The Phase II Watershed Implementation Plan under the bay TMDL was released in fall 2012 and estimated that the largest cost to implement the bay TMDL, by a significant margin, was attributed to local stormwater management. Thus, Chapter 151 required the 10 jurisdictions subject to a NPDES Phase I MS4 permit – representing the vast majority of the State's population and untreated impervious surface area – to adopt local laws establishing a stormwater remediation fee and watershed protection and restoration fund by July 1, 2013.

Chapter 151 provided flexibility for each jurisdiction to decide the level and structure of the fee, how it is collected, and other details of the fee and fund. The law did require the fee to be based on the share of stormwater management services related to a property and provided by the county or municipality. The law also required fee exemptions and a system of offsets, as well as a process for property owners to appeal a fee assessment, and specified that money in each fund is intended to be used only to support additional (not existing or ongoing) efforts for stormwater management activities.

Adoption and Implementation of Local Laws

In fiscal 2014, it is estimated that the stormwater fee will generate about \$80.2 million across nine jurisdictions; if revenues from the restructured fee established by Montgomery County are counted, fiscal 2014 revenues amount to \$103.0 million. The structure and amount of the fees established pursuant to Chapter 151 vary greatly by

jurisdiction, as shown in **Exhibit 1**. For example, with respect to residential fees, four counties chose to establish a flat fee per property or per unit, while four other jurisdictions established fees based on imperviousness, type or size of property, or home size. For nonresidential properties, most counties chose to establish a rate based on the amount of impervious surface, as defined through an equivalent residential unit (ERU) or an impervious unit (IU). Jurisdictions have also established separate fees for certain types of properties, such as properties owned by religious groups or nonprofit organizations. And, in recognition of the financial burden that the new fees may cause for some property owners, several jurisdictions adopted a phased-in approach to fee collection.

Each jurisdiction has also devised a unique approach to the provision of fee exemptions, credits, and rebates. Chapter 151 specifies that property owned by the State, a local government, or a volunteer fire department is exempt from the stormwater fee; each jurisdiction also had to establish a financial hardship exemption. Some jurisdictions have chosen to establish further exemptions, such as for properties located within municipal boundaries, properties that are already subject to certain permits, properties owned by disabled veterans, and agricultural nonresidential properties. Similarly, while Chapter 151 requires jurisdictions to establish Maryland Department of the Environment-approved policies to reduce fees to account for services or activities that a property owner has invested in to reduce or treat stormwater runoff, each jurisdiction has established slightly different credits available for property owners. The significant variation in each jurisdiction's local laws, regulations, and associated programs, as well as the differing amounts of untreated impervious surfaces and overall level of local stormwater infrastructure needs in each jurisdiction, are projected to result in a wide range of revenues collected in fiscal 2014, as shown in Exhibit 1.

For additional information regarding stormwater remediation fees and the implementation of Chapter 151 of 2012 please see the Department of Legislative Services' report: *Stormwater Remediation Fees in Maryland*, available at: http://dls.state.md.us/data/polanasubare/polanasubare_natresenvntra/Stormwater-Remediation-Fees-in-MD.pdf.”

Exhibit 1
County Stormwater Fees and Estimated Revenues

| <u>Local Jurisdiction</u> | <u>Residential Rate</u> | <u>Nonresidential Fee/ERU or IU</u> | <u>Nonresidential Fee Per Acre Equivalent</u> | <u>Local Estimate of Fiscal 2014 Revenues (\$ in Millions)</u> |
|---------------------------|--|--|---|--|
| Anne Arundel | \$34, \$85, or \$170 annually, depending on zoning district | Generally, \$85 per ERU; capped at 25% of property tax. Fees vary for specified types of properties. | \$1,259.39 | \$13.9 (subject to phase-in) |
| Baltimore | \$21 (single-family attached); \$32 (condo); \$39 (single-family, detached, and agricultural residential). | Generally, \$69 per ERU for nonresidential property; \$20 per ERU for institutional properties. | \$1,502.81 | \$24.3 |
| Baltimore City | \$40, \$60, or \$120 depending on amount of impervious surface | Generally, \$60 per ERU; \$12 per ERU for religious nonprofits. | \$2,489.11 | \$16.7 (partial collection) |
| Carroll | None | None | None | No fee |
| Charles | \$43 per property (an increase of \$29 over fiscal 2013 levels) | \$43 per property | N/A | \$1.4 (reflects \$29 increase) |
| Frederick | \$0.01 per property | \$0.01 per property | N/A | \$0.0 |
| Harford | \$125 per property | \$7 per IU | \$609.86 | \$1.05 (subject to phase-in) |
| Howard | \$15, \$45, or \$90 depending on type and size of property | \$15 per IU | \$1,306.85 | \$10.8 |
| Montgomery* | Varies, ranges from \$29.17 to \$265.20 depending on home size | \$88.40 per IU | \$1,593.22 | \$22.8 |
| Prince George's | \$20.58 per property plus \$20.90 per IU | \$20.90 per IU | \$391.68 | \$12.0 |

ERU: equivalent residential unit
IU: impervious unit

* Montgomery County established a stormwater fee similar to the one required under Chapter 151 of 2012 prior to the enactment of legislation.

Source: Department of Legislative Services
