

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 135 (Senator Glassman)
Education, Health, and Environmental Affairs

**Watershed Protection and Restoration Program - Enforcement by Department of
the Environment - Moratorium**

This bill prohibits the Maryland Department of the Environment (MDE) from taking an administrative action to enforce the provisions of Chapter 151 of 2012 (pertaining to local watershed protection and restoration programs and the required stormwater remediation fees) or imposing a penalty for a violation of the law or any regulation adopted under the law, until July 1, 2015.

The bill takes effect July 1, 2014.

Fiscal Summary

State Effect: General fund revenues may decrease in FY 2015 only to the extent that the bill prevents the assessment of penalties that would otherwise occur in the absence of the bill. Expenditures are not likely materially affected.

Local Effect: Local government expenditures may decrease to the extent that the bill prevents the assessment of penalties in an enforcement action that would otherwise occur in the absence of the bill. Local revenues are not likely affected.

Small Business Effect: Minimal.

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 revenue from each jurisdiction must be deposited into its local watershed protection and restoration fund and it may not revert or be transferred to a local general 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.

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

Enforcement of Chapter 151 and Phase I MS4 Permits

Under current law, MDE has the responsibility to ensure that Maryland's counties and municipalities have an acceptable stormwater management program, including the required components of Chapter 151. Under Chapter 151, MDE is specifically authorized to adopt regulations for implementation and enforcement. While such regulations have not been promulgated to date, the Environment Article provides MDE

with general enforcement authority relating to the State's stormwater management laws. Specifically, current law provides for civil penalties of up to \$10,000 per day. In addition, MDE may impose administrative penalties of up to \$1,000 per day, not exceeding \$20,000 total for any action.

State law also provides for enforcement of the State's water pollution control laws. Specifically, a person who violates any provision of the State's Water Pollution Control laws or any regulation, order, or permit adopted or issued under those laws (including Phase I MS4 permits) is liable to a civil penalty of up to \$10,000 per day. MDE is also authorized to impose an administrative penalty of up to \$5,000 per violation, not exceeding \$50,000 total; each day is considered a separate violation. Finally, there are separate and greater penalties available under the federal Clean Water Act (CWA).

The State recently sent enforcement letters to Carroll and Frederick counties regarding compliance issues with Chapter 151 and other stormwater obligations. Due to the failure of Carroll County to establish a local stormwater remediation fee as required by Chapter 151, the Office of the Attorney General sent a letter to the county in October 2013 that indicated that the county is in violation of the provisions of Chapter 151 and could be subject to specified penalties. In addition, MDE sent a letter in October 2013 to Frederick County indicating concern that the county's fee and fund structure will not provide adequate funding for the county's stormwater program. The letter noted that the county's failure to implement the requirements of its Phase I MS4 permit could result in an enforcement action for violations of CWA that could include fines and penalties of up to \$32,500 per day for each violation.

State/Local Fiscal Effect: General fund revenues may decrease in fiscal 2015 only to the extent that fewer administrative, civil, or criminal penalties are collected as a result of the bill's enforcement moratorium. However, it is unclear how much penalty revenue, if any, would be assessed in an MDE enforcement action in fiscal 2015 in the absence of the bill. As noted above, Carroll County has received a letter indicating that, due to its failure to establish a stormwater radiation fee, it is currently in violation of the provisions of Chapter 151. The county remains the only jurisdiction that has not established a fee as required by Chapter 151.

This fiscal and policy note assumes that all jurisdictions that have established a stormwater remediation fee to date continue to assess the fee during the bill's moratorium. None of the local jurisdictions that responded to the request for information for preparation of this fiscal and policy note indicated plans to cease collection of their stormwater remediation fees. However, the bill may result in additional fiscal impacts to the extent that any local jurisdiction opts not to comply with the requirements of Chapter 151 as a result of the bill's enforcement moratorium. In the event that a jurisdiction ceases to collect stormwater remediation fees, local stormwater remediation

fee revenues and corresponding local watershed protection and restoration fund expenditures decrease. If local jurisdictions fail to conduct stormwater management activities that the State is relying on to meet its commitments under the State's Watershed Implementation Plan, State expenditures (all funds) could increase in fiscal 2015 to conduct additional State actions to achieve the nutrient reductions that otherwise would be achieved by local jurisdictions. Any such impacts, however, are speculative.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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ns/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
