

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 315 (Senator Simonaire)
Education, Health, and Environmental Affairs

Environment - Stormwater Remediation Fee - County Tax Limitations

This bill prohibits Anne Arundel and Talbot counties, and any municipalities within those counties, from setting a stormwater remediation fee that generates revenues in an amount that, in combination with county property tax revenues, would exceed the county charter tax limitation.

The bill takes effect July 1, 2014.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances.

Local Effect: Local revenues to Anne Arundel County's watershed protection and restoration fund likely decrease beginning in FY 2015 due to the bill's limitation. The extent of any decrease is unknown due to uncertainty regarding future increases to the county's property tax, which would constrain the level of stormwater remediation fees that may be levied. Anne Arundel County expenditures from its watershed protection and restoration fund decrease commensurately, but the county may need to identify other funds to dedicate for stormwater management activities in order to meet its ongoing stormwater management obligations. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background:

Chapter 151 of 2012 Stormwater Remediation Fee

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.

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.

Anne Arundel County is a Phase I MS4 permit holder and thus subject to the requirements of Chapter 151. Talbot County, however, is not.

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

County Charter Property Tax Limitations

Five counties have amended their charters to adopt a limitation on property tax increases: Anne Arundel, Montgomery, Prince George's, Talbot, and Wicomico counties. Of these jurisdictions, Anne Arundel, Montgomery, and Prince George's counties have enacted a stormwater remediation fee, as required by Chapter 151. However, the bill applies only to Anne Arundel and Talbot counties. Thus, only Anne Arundel County has both a charter limit on property tax increases and a stormwater remediation fee. In Anne Arundel County, the total annual increase in property tax revenues is limited to the lesser of 4.5% or the increase in the consumer price index (CPI).

Local Fiscal Effect: Anne Arundel County stormwater remediation fee revenues likely decrease beginning in fiscal 2015. The Anne Arundel County stormwater remediation fee is projected to generate about \$18.6 million in fiscal 2015, which is the equivalent of about 3% of the county's estimated fiscal 2014 property tax revenues (\$602.7 million). As noted above, the county's charter property tax limit is the lesser of 4.5% or CPI, which the county calculates using the Bureau of U.S. Labor Statistic's January year-over-year *Consumer Price Index for All Urban Consumers in the Washington-Baltimore area*. For the most recent fiscal year, the property tax limit was defined by the 1.81% CPI. While the CPI for fiscal 2015 is not yet known, it is expected to be roughly 2%. Thus, the county's stormwater remediation fee revenues are likely to significantly exceed CPI and the county property tax limit in fiscal 2015. Further, Anne Arundel County's stormwater remediation fee is subject to a phase-in period, which, when complete in

fiscal 2016, is expected to yield about \$23.2 million annually, an increase of about \$4.6 million from fiscal 2015.

The bill does not specify the actions that Anne Arundel County must take in the event that stormwater remediation fee revenues, in combination with county property tax revenues, are projected to exceed the county charter property tax limit. It is unclear whether the county may be required to reduce its stormwater remediation fee to a level that allows the county property tax to increase. Further, if the stormwater remediation fee revenue is greater than the allowable increase in the county property tax in a given year, and the county does not sufficiently reduce the fee to allow property tax revenues to increase, then property tax revenues remain constant in future fiscal years. In this situation, the county property tax remains constant until the CPI increases by an amount sufficient to allow for the collection of both the county property tax and the full stormwater remediation fee. This is unlikely for the foreseeable future, however, as current CPI projections remain under 3% through fiscal 2019.

To the extent that Anne Arundel County reduces its stormwater remediation fee as a result of the bill, expenditures from the county's watershed protection and restoration fund may decrease commensurately. However, Anne Arundel County remains 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. Thus, Anne Arundel County is likely required to dedicate other revenue sources to these activities in order to meet its ongoing stormwater management obligations.

Small Business Effect: Small businesses engaged in the installation of stormwater best management practices in Anne Arundel County may incur a meaningful reduction in demand for their services as the county is likely to be required to reduce its stormwater remediation fee to comply with the bill. More generally, small businesses within Anne Arundel County may realize a meaningful savings due to the potentially significant reduction in stormwater remediation fee liability under the bill. However, any impact on small businesses may be limited or offset to the extent that the county increases other local charges to replace foregone fee revenues.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Charles, and Montgomery counties; the cities of Frederick and Havre de Grace; State Department of Assessments and Taxation; Maryland Department of the Environment; Maryland Association of Counties; Maryland Municipal League; U.S. Bureau of Labor Statistics; Department of Legislative Services

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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
