

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1139 (Delegates Olszewski and Kach)
Environmental Matters

Environment - Stormwater Remediation Fees - Reduction of Fees

This bill requires stormwater remediation fee credit policies or procedures to apply to both residential and nonresidential property owners. The bill also requires the credit policies and procedures to include fee reductions of 25%, 50%, 75%, and 100%.

Fiscal Summary

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

Local Effect: Local stormwater remediation fee revenues decrease for any jurisdiction that is required to expand its fee credit policies to new classes of property and greater fee reductions. Local administrative expenditures may increase, potentially significantly, for a jurisdiction to hire additional inspectors for verification of credit eligibility. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful benefit for small businesses newly eligible to receive stormwater remediation fee credits.

Analysis

Current Law: A county or municipality must establish policies and procedures, approved by the Maryland Department of the Environment, to reduce *any portion of* a stormwater remediation fee to account for on-site and off-site systems, facilities, services, or activities that reduce the quantity or improve the quality of stormwater discharged from the property. The policies and procedures must include guidelines for determining which on-site systems, facilities, services, or activities may be the basis for a fee reduction, including guidelines (1) relating to properties with existing advanced

stormwater best management practices; (2) relating to agricultural activities or facilities that are otherwise exempt from stormwater management requirements; and (3) that account for the costs of, and the level of treatment provided by, stormwater management facilities that are funded and maintained by a property owner. The guidelines must also establish the method for calculating the amount of a fee reduction, and procedures for monitoring and verifying the effectiveness of the on-site systems, facilities, services, or activities in reducing the quantity or improving the quality of stormwater discharged from the property.

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.

As of November 2013, every Phase I MS4 jurisdiction that has established a stormwater remediation fee has implemented or intends to implement a fee credit program, as required by Chapter 151. At that time, six jurisdictions had outlined the requirements of the fee credit program, while three jurisdictions (Frederick, Harford, and Prince George's counties) had indicated that a fee credit program will be established in the future. While the eligibility requirements for the fee credit program vary by jurisdiction, many of the programs cap the percentage by which a fee may be reduced and specify that a fee may only be reduced by certain amounts depending on the type of property and best management practice. For example, in Montgomery County, property owners may reduce their fee by up to 60% depending on the type of practice and the volume of water treated. By contrast, in Howard County, the fee reduction and the eligibility requirements for the fee reduction vary based on the type of property owned (*i.e.*, residential, nonresidential, and nonprofit).

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

Local Fiscal Effect: Local stormwater remediation fee revenues likely decrease for the 10 jurisdictions that are currently required to impose such fees as the jurisdictions expand fee credit policies to apply to classes of property not previously eligible for the credit and to allow for greater fee reductions than currently available. The Department of Legislative Services (DLS) advises that the bill does not specify criteria for eligibility for a fee credit, only that the fee credits of specified percentages must be available. It is unclear whether any jurisdiction currently offers an uncapped fee credit available to all residential or nonresidential properties. Thus, local stormwater remediation fee revenues decrease by an indeterminate, but potentially significant amount, from the offering of greater fee credits, particularly credits that allow for fee reductions of 75% and 100%. Baltimore County estimates that new residential credits may reduce stormwater remediation fee revenues by more than \$5 million annually, while Charles County estimates that fee revenues decrease minimally under the bill. Although not a *direct* effect of the bill, local watershed protection and restoration fund expenditures decrease correspondingly as additional fee credits reduce fee revenues available within each local fund.

Local administrative expenditures may increase significantly for a jurisdiction to hire additional inspectors for verification of credit eligibility. For example, Baltimore County advises that it does not currently offer a residential credit because of the significant cost of providing verification of credit eligibility for a large number of residential properties. The county estimates that seven additional positions are needed for such inspection and

verification duties, as well as contractual costs for programming and data acquisition, at a total additional cost of more than \$1 million annually.

Additional Comments: DLS advises that it is unclear whether the bill's requirement that fee credit policies and procedures *include* credits of 25%, 50%, 75%, and 100% necessarily precludes credits of other percentages. The bill's impact on local stormwater remediation fee revenues may be greater to the extent that credits may only be granted as specified in the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Carroll, Charles, Frederick, and Harford counties; Maryland Department of the Environment; Maryland Association of Counties; 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
