

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 773 (Delegate McDonough)
Environment and Transportation

Baltimore County - Watershed Protection and Restoration Program - Exemption

This bill exempts Baltimore County from the requirements of Chapter 151 of 2012 to establish a local stormwater remediation fee and a local watershed protection and restoration fund, among other requirements.

Fiscal Summary

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

Local Effect: Baltimore County stormwater remediation fee revenues may decrease by about \$16.4 million annually beginning in FY 2016 to the extent that the fee is eliminated. Other county revenues may increase in FY 2016 or future years to offset the elimination of the current stormwater remediation fee, as the county remains subject to State and federal stormwater management requirements. Baltimore County stormwater management expenditures may decrease in FY 2016, unless fully offset by other revenue sources; expenditures may increase in future years to the extent projects not funded in FY 2016 require additional funding in future years.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background:

Chapter 151 of 2012

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. Chapter 151 did not require each jurisdiction to set the fee at a specific level or otherwise require the jurisdictions to collect a specific amount in revenues; each jurisdiction has discretion in setting the local stormwater remediation fee.

Fee revenues from each jurisdiction must be deposited into the 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, but 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 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 Act.

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 recently established a fee to help finance its projected stormwater management needs and is the latest of 16 jurisdictions in Maryland to establish a stormwater fee (the Town of Oxford also recently established a stormwater fund consisting of a property tax increment). Finally, it should be noted that 2 of the 10 jurisdictions subject to Chapter 151 – Carroll and Frederick counties – already implement their Phase I MS4 permits without revenues from the stormwater remediation fee (Frederick County has collected only a one-cent fee). Chapter 464 of 2014 (the Budget Reconciliation and Financing Act of 2014) provided Carroll and Frederick counties with the authority to establish an alternative source of funding to the stormwater remediation fees required by Chapter 151.

For additional information about Chapter 151 of 2012, stormwater remediation fee revenues, and stormwater utility fees around the United States, see the **Appendix – Stormwater Remediation Fees in Maryland.**

Stormwater Funding from Other State Sources

The Governor’s proposed fiscal 2016 budget for the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund includes about \$2.8 million for grants to local jurisdictions to defray the costs of providing stormwater pollution control services to State facilities of less than five acres that are not subject to separate stormwater permits. According to a fact sheet by the Department of Natural Resources, which administers the trust fund, the grants provided for fiscal 2015 were distributed based on factors including the amount of impervious surface on State facilities serviced in each jurisdiction and the comparative degree of local effort. The grants are to be directed to each jurisdiction’s local stormwater restoration fund to be used solely for the planning, design, and construction of stormwater restoration projects.

Fiscal 2016 is the second year that such grants from the 2010 Trust Fund have been provided in the trust fund's budget. However, the Governor's proposed fiscal 2016 capital budget does not include any general obligation bond funds for local stormwater management projects, which were provided from fiscal 2013 through 2015 (nearly \$100 million over these three fiscal years) and used to fund 307 projects (of which 55 have been completed). Funding from the 2010 Trust Fund in fiscal 2013 and 2014 has funded 14 projects for Baltimore County: 7 were completed as of February 2015, 3 projects are in construction, and another 4 projects are in the design or planning stages.

Finally, it should be noted that another potential source of additional State support for stormwater management is the Bay Restoration Fund (BRF), which, beginning in fiscal 2018, is authorized to be used to provide grants to jurisdictions that have established a system of charges for stormwater management (which are separate from stormwater remediation fees under Chapter 151 – legislation is needed to allow BRF grants to be made to the 10 jurisdictions subject to Chapter 151). Currently, the Maryland Department of the Environment projects that at least \$25 million annually may be available from BRF for local stormwater grants in fiscal 2018, assuming an equal amount is also provided for additional septic system grants to local jurisdictions; this amount is also projected to increase after fiscal 2018.

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

Baltimore County Stormwater Remediation Fee

Pursuant to Chapter 151 of 2012, Baltimore County established a residential fee that is based upon a rate of \$21 annually per unit for single-family attached homes; \$32 per unit for condos; and \$39 for single-family detached and agricultural residential homes. Generally, \$69 is charged per “equivalent residential unit” (ERU) for nonresidential properties, and \$20 per ERU is charged for nonresidential institutional properties (*e.g.* churches and private schools). An ERU is 2,000 square feet. The county law establishing the stormwater remediation fee did not set the rates to be charged; the rates are established by executive order. Fees are collected annually via property tax bills.

Credits against the fee are available to nonresidential property owners that make changes to the property to reduce the extent of impervious surfaces or improve stormwater management practices on the property. Additionally, the county has established a program to assist nonprofit property owners, in which the county targets impervious surfaces on the property of nonprofit owners with the proceeds of the county's fee revenues in order to reduce the owners' future fee liabilities.

In February 2015, a bill was introduced in the county council to reduce, generally by about one-third, the fees charged to residential and nonresidential properties.

Local Fiscal Effect: The bill exempts Baltimore County from the requirement to establish a stormwater remediation fee under Chapter 151. According to Baltimore County, fee revenues are anticipated to total approximately \$16.4 million in fiscal 2016 (which assumes a reduction of about one-third from the \$24.7 million collected in fiscal 2014). Thus, county revenues may decrease significantly unless offset by a similar fee (which may be adopted under other authority provided in State law) or other local revenue sources; the county may instead seek to issue debt or reprogram existing funds rather than generate additional revenues. This fiscal and policy note assumes that the bill's exemption affects the county's stormwater remediation fee collection for all of fiscal 2016, even though the bill takes effect October 1, 2015. The county's stormwater remediation fee is currently collected on the county property tax bill, which is generally due on July 1, but which may also be paid by September 30 and December 31 under a semiannual payment option.

Although the bill exempts the county from the requirement to impose its currently enacted stormwater remediation fee, the county nevertheless remains subject to the same State and federal stormwater management obligations. The county's stormwater management operating costs are estimated at more than \$2.3 million annually beginning in fiscal 2016. Additionally, the county spent about \$24.9 million in fiscal 2014 on stormwater capital projects and has projected roughly \$24.3 million in annual capital spending beginning in fiscal 2016, although it is unclear whether this may be reduced following the enactment of the currently planned fee reduction.

Baltimore County advises that the elimination of its stormwater remediation fee may necessitate the issuance of bonds, which could result in the need to increase other county revenues sources, such as income or property taxes, to cover debt service costs.

Small Business Effect: Small businesses in Baltimore County may realize significant savings to the extent that the stormwater remediation fee is repealed and not offset by a similar fee or system of charges. 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 to the extent the county seeks to raise other revenue 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. However, any reduction in the demand for such services is likely to be temporary, as the county remains subject to Phase I MS4 permit requirements.

Additional Information

Prior Introductions: HB 952 of 2014 was referred to the House Environmental Matters Committee, but was subsequently withdrawn.

Cross File: None.

Information Source(s): Baltimore County, Maryland Department of the Environment, Department of Natural Resources, Department of Legislative Services

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Analysis by: Evan M. Isaacson

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

Appendix – Stormwater Remediation Fees in Maryland

The federal Clean Water Act 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 Clean Water Act, 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, and 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 the establishment of fee exemptions, 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

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, have contributed to the wide range of revenues collected in fiscal 2014. In fiscal 2014, it is estimated that the stormwater fees will generate about \$110.9 million for the 10 jurisdictions.

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*](#) and the [Local Stormwater Management Information Update](#) factsheet.

Exhibit 1
Local Stormwater Remediation Fees

Jurisdiction	Annual Residential Rate	Annual Nonresidential Fee/ERU or IU	Nonres. Fee Per Acre Equivalent	Fiscal 2014 Revenues (\$ in Millions)
Anne Arundel	\$34, \$85, or \$170 annually depending on zoning district	Generally, \$85 per ERU and capped at 25% of the property's base property tax. Fees vary for specified types of properties	\$1,259.39	\$13.17
Baltimore	\$21 per unit (single family attached); \$32 per unit (condos); \$39 (single-family detached and agricultural residential)	Generally, \$69 per ERU for nonresidential properties; \$20 per ERU for nonresidential institutional properties	\$1,502.81	\$24.67
Baltimore City	\$40, \$60, or \$120 depending on amount of impervious surface	Generally, \$60 per ERU; \$12 per ERU for religious nonprofits	\$2,489.14	\$21.43
Carroll ¹	None	None	None	None
Charles	\$43 per property (an increase of \$29 over fiscal 2013 levels)	\$43 per property	n/a	\$2.45
Frederick	\$0.01 per property	\$0.01 per property	n/a	\$0.00
Harford ²	\$125 per property	\$7 per IU	\$609.84	\$1.05
Howard	\$15, \$45, or \$90 depending on type and size of property	\$15 per IU	\$1,306.85	\$10.27
Montgomery	Varies, ranges from \$29.17 to \$265.20 depending on home size	\$88.40 per IU	\$1,593.22	\$23.63
Prince George's	\$20.58 per property plus \$20.90 per IU	\$20.90 per IU	\$370.69 (plus \$20.58 admin. fee), or \$391.27	\$14.24
Statewide				\$110.91

ERU: equivalent residential unit; IU: impervious unit

¹ Carroll County dedicates a portion of property tax revenues instead of collecting a stormwater remediation fee; the county dedicated about \$1.07 million in property tax revenues in lieu of the fee.

² Harford county passed legislation to repeal the fee on January 20, 2015, which is to take effect in fiscal 2016.

Note: All revenues shown reflect audited actual amounts, except for Baltimore City and Prince George's County, which are county estimates contained in the jurisdictions' 2015 budget.

Source: Department of Legislative Services

Stormwater Utility Fees in the United States

Stormwater utility fees are a common type of user fee for generating funds to support stormwater infrastructure in the United States and were first implemented by local jurisdictions in the early 1970s. Today, there may be roughly 1,500 stormwater utility fees collected by counties, municipalities, or regional authorities in 40 different states and the District of Columbia, according to the most recent annual survey conducted by Western Kentucky University. The population within these jurisdictions is estimated at roughly 110 million, or more than one-third of the U.S. population.

There are 5 states (Florida, Minnesota, Texas, Wisconsin, and Washington) estimated to have at least 100 local stormwater fees, another 7 states (California, Georgia, Indiana, Iowa, North Carolina, Ohio, and Oregon) with more than 50 local fees, and another 10 states, including Maryland (16) and Virginia (21) with more than 10 local stormwater fees. Within the Chesapeake Bay watershed, there are stormwater utility fees in every state except New York (including 9 in West Virginia, 6 in Pennsylvania, and 2 in Delaware).

The median residential fee identified in the report is \$3.50 per month (the mean monthly fee is \$3.98). Most jurisdictions collect relatively modest stormwater fee revenues to support the cost of operating and maintaining traditional stormwater infrastructure to control flooding. However, a number of jurisdictions, including many that are subject to Phase I MS4 permits under the Clean Water Act, collect more significant stormwater fee revenues to be used to meet the watershed restoration goals of their permits, such as the 10 jurisdictions in Maryland subject to Chapter 151. Examples of Phase I MS4 permit holders in other states with significant stormwater fee revenues include: Sacramento, California; Denver, Colorado; Clearwater, Orlando, and Pinellas County, Florida; Des Moines, Iowa; Louisville/Jefferson County, Kentucky; Minneapolis and St. Paul, Minnesota; Charlotte and Wilmington, North Carolina; Austin, Fort Worth, and Houston, Texas; Chesapeake, Newport News, Norfolk, and Virginia Beach, Virginia; Pierce County, Seattle, and Tacoma, Washington; and Milwaukee, Wisconsin.