

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 36 (Senator Brochin, *et al.*)
Education, Health, and Environmental Affairs

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, the nine largest counties and Baltimore City) 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, 2015.

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; however, any such increase is unlikely and depends in part on local decisions and 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 2016; 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: 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), as other counties may do under the bill. 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 the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund

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 (DNR), 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).

State Expenditures: State expenditures (all funds) may increase to the extent that additional State actions are taken to achieve nutrient reductions that would otherwise 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. As discussed further in the Appendix, stormwater utility fees have long been a common method for local governments to finance both traditional stormwater infrastructure maintenance and expansion, as well as federal Clean Water Act (CWA) obligations. Thus, it is unclear how many jurisdictions may decide to cease collecting local stormwater fees under the bill.

While some 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. The 10 jurisdictions remain subject to CWA requirements, including Phase I MS4 permit requirements and the nutrient reduction requirements under the Chesapeake Bay Total Maximum Daily Load (TMDL) – a federal requirement to reduce nutrient and sediment loadings into the Chesapeake Bay. 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 in several of the jurisdictions, additional State resources may be needed to maintain the level of nutrient reductions.

Exhibit 1 demonstrates current projected *capital* costs associated with local Phase I MS4 permit compliance in the 10 jurisdictions subject to the requirements of Chapter 151 to provide context regarding the planned level of local effort toward reducing nutrient loads from urban sources. Generally, planned capital spending on MS4 permits between fiscal 2015 and 2020 ranges from 5% to 10% of total capital spending identified in the most recent capital improvement program (CIP) in most jurisdictions. Similarly, annual stormwater remediation fee revenues typically range from between 0.5% and 3.0% of local property tax revenues, and from 0.2% and 0.7% of total local revenues. More information on local stormwater remediation fee revenues is available in the Appendix.

Exhibit 1
Projected Capital Spending of Maryland Phase I MS4 Permit Holders
(\$ in Millions)

<u>Jurisdiction</u>	<u>Fiscal 2015-2017</u>	<u>Fiscal 2015-2020</u>
Anne Arundel	\$231.3	463.9
Baltimore City	72.9	145.8
Baltimore	80.7	135.1
Carroll	9.5	20.6
Charles	9.2	20.9
Frederick	10.4	30.4
Harford	2.7	4.9
Howard	45.5	100.3
Montgomery	180.4	363.7
Prince George's	154.3	314.0
Total County	\$796.9	\$1,599.5
State Highway Administration	252.3	598.9
Total State	\$1,049.2	\$2,198.4

Source: Department of Legislative Services

Exhibit 1 shows projected CIP spending for each holder of a Phase I MS4 permit in the State, which consists of each of the 10 jurisdictions and the State Highway Administration. It should be noted, however, that the amounts shown in Exhibit 1 may differ significantly from the amount actually spent in the future on watershed restoration and other stormwater remediation activities pursuant to the local MS4 permits, as changes are made each year to local CIPs. Further, because there is no standardized means for reporting the estimated cost of projects specifically designed to meet MS4 permit requirements within a jurisdiction's budget, the amounts shown in the exhibit may reflect different reporting methodologies or judgments regarding which planned projects are related to meeting MS4 permit requirements, as compared with traditional stormwater infrastructure spending. Additionally, some jurisdictions may finance a portion of MS4 permit costs from operating funds. It should be noted that MDE has estimated total local stormwater costs of about \$380 million per year to comply with the bay TMDL.

The Department of Legislative Services advises that not all jurisdictions have fully developed spending plans for MS4 permit compliance for the entire six-year period shown; thus, comparisons between jurisdictions are unreliable. Additionally, each jurisdiction possesses vastly different extents of impervious surfaces, levels of urbanization, and stream miles, all of which contribute to the total cost to comply with the MS4 permit.

Nevertheless, the amounts shown above may be instructive regarding the scope and magnitude of planned spending for these purposes over the next several years.

It is unlikely that significant additional State expenditures are necessary to account for any reduction in stormwater spending by a local jurisdiction under the bill, as each jurisdiction remains responsible for meeting its State and federal obligations under their MS4 permit. Further, any reduction in spending resulting from a repeal of a local stormwater remediation fee is likely to be only temporary and not of a sufficient magnitude to warrant additional State expenditures. Nevertheless, any decrease in future capital spending on MS4 permits could potentially necessitate either a reprioritization by the State of programs, projects, and plans associated with meeting the bay TMDL, or additional State appropriations to ensure that any forgone progress by local MS4 permit holders is offset through additional State actions.

It should be noted that one 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, MDE 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.

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, some 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. The cost of meeting local stormwater obligations is driven primarily by the watershed restoration requirements of the local MS4 permits. To the extent that any of the affected jurisdictions repeal their stormwater remediation fees, local stormwater management expenditures may decrease, unless the foregone fee revenues are fully replaced through other funding sources. For example, Anne Arundel County advises that the repeal of the stormwater remediation fee results in the removal of the dedicated revenue source for stormwater capital projects and requires such projects to compete with other projects in the county's CIP.

Montgomery County advises that the bill's repeal does not affect its local watershed protection and restoration program, which was established under a separate provision of State law. Similarly, Baltimore City advises that its program has been established through

a charter amendment. Workloads may increase minimally for some jurisdictions to evaluate whether additional local laws are needed to ensure that all aspects of the local stormwater remediation fee, fund, and/or program are lawful following the bill's repeal.

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, such as small shopping malls and industrial parks that may incur fees of more than \$10,000 annually in some jurisdictions. It is unclear, however, to what extent increases from other fees or taxes may result in even greater liabilities for some small businesses if 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 meaningful reduction in the demand for their services over the short term. This temporary reduction in demand may be particularly significant for businesses located in any of the 10 jurisdictions that cease to collect an existing stormwater fee established pursuant to Chapter 151. For example, Anne Arundel County advises that \$16 million in design and construction contracts were recently signed to undertake capital projects related to its MS4 permit, and that most of these contractors are small businesses based in Maryland. Additionally, DNR has estimated that 98% of the capital funds from the 2010 Trust Fund used for local stormwater management projects were used for construction services. Exhibit 1 shows the projected value of capital spending on stormwater projects that will likely be undertaken primarily by the private sector, including many small businesses, from the State's Phase I MS4 permit holders. However, it should be noted that any reduction in the demand for such services as a result of the bill is likely to be temporary, as each of the 10 jurisdictions currently subject to Chapter 151 remain subject to MS4 permit requirements under the bill.

Additional Comments: The bill does not repeal Section 18 of the Budget Reconciliation and Financing Act of 2014 (Chapter 464), which provided Carroll and Frederick counties with the authority to establish an alternative source of funding to the stormwater remediation fees required by Chapter 151. It is unclear whether this provision of Chapter 464 is rendered obsolete by this bill and whether it has any legal effect under the bill.

Additional Information

Prior Introductions: SB 5 of 2014 received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee. Its cross file, HB 97, received an unfavorable report from the House Environmental Matters Committee. SB 464 of 2014 received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee. Its cross file, HB 50, received an unfavorable report from the House Environmental Matters Committee. HB 895 of 2014 received an unfavorable report from the House Environmental Matters Committee.

Cross File: None designated; however, several identical bills have been introduced, including SB 588/HB 481 and SB 42/HB 874.

Information Source(s): Anne Arundel, Baltimore, Carroll, Charles, Frederick, Harford, Howard, Montgomery, Prince George's, Talbot, and Wicomico counties; Baltimore City; cities of Bowie and Takoma Park; Maryland Department of Planning; Maryland Department of the Environment; Maryland Association of Counties; Maryland Municipal League; 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 bay 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.