

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 82 (Delegate Carr, *et al.*)
Environment and Transportation

Stormwater Management - Assessment of Local Fees, Charges, and Excise Taxes
- Leasehold Interests

This bill requires the lessee or user of a publicly owned property to pay any stormwater remediation fee or excise tax established by the county or municipality where the property is located as if the lessee/user were the owner of the property, if the property is leased or made available to that person (1) by the federal government, the State, a county, a municipality, or an agency or instrumentality thereof and (2) for use in connection with a business that is conducted for profit. Property owned by a public-private partnership is excluded from the bill's requirements.

Fiscal Summary

State Effect: Although the bill does not require State agencies to pay local stormwater remediation fees/excise taxes for their tenants, the bill could result in increases in contract costs or decreases in lease revenues for various State agencies, as discussed below.

Local Effect: Local watershed protection and restoration fund revenues increase from stormwater remediation fees/excise taxes collected from lessees/users of property subject to the bill. Potential minimal increase in local government expenditures to alter administrative processes to identify and charge such entities any stormwater remediation fees/excise taxes owed.

Small Business Effect: Minimal. Some lessees of State, federal, and local government property are considered small businesses and may be subject to stormwater remediation fees/excise taxes under the bill.

Analysis

Current Law/Background: 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 CWA, regulates stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s). 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 State's 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, 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.

Although Chapter 151 required the 10 local Phase I MS4 permit holders to establish a stormwater remediation fee, local jurisdictions maintained the authority to levy a system of charges for stormwater management under § 4-204 of the Environment Article, which preceded the enactment of Chapter 151.

Chapter 124 of 2015

Chapter 124 of 2015 made significant changes to the stormwater remediation fee provisions under Chapter 151. Notably, the Act repealed the *requirement* for those jurisdictions subject to a NPDES Phase I MS4 permit to collect a stormwater remediation fee if certain conditions are met. Instead, such jurisdictions are *authorized* to collect a fee. However, such jurisdictions must still meet the requirements established under Chapter 151 to create a local watershed protection and restoration program and fund.

The Act conditioned the repeal (or reduction) of a stormwater remediation fee before July 1, 2016, on the jurisdiction identifying dedicated revenues, funds, or other sources of funds to be deposited into the local watershed protection and restoration fund for meeting the requirements of its MS4 permit. Additionally, the jurisdiction must file a financial assurance plan that is determined by the Maryland Department of the Environment to demonstrate good faith in identifying sufficient funds to meet 75% of the anticipated costs of the MS4 permit's "impervious surface restoration plan." These conditions are not applicable to the repeal or reduction of a fee beginning on July 1, 2016.

State and Local Liability for Local Fee

Chapter 151 specified that property owned by the State or a local government (but not federal property) is exempt from liability for the payment of stormwater remediation fees. Chapter 124, however, authorized a local jurisdiction to charge a fee to the State based on the State's share of stormwater management services provided by the local jurisdiction to the State property if the State or unit of State government agrees. The State may only be charged a fee by a jurisdiction under Chapter 124 if the jurisdiction also appropriates money into its own local watershed protection and restoration fund based on its own share of stormwater management services related to local government property. Chapter 124 did not specify an amount of money that must be appropriated by a jurisdiction or that may be charged to the State, which may be set by each jurisdiction.

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, three counties chose to establish a flat fee per property or per unit, while six other jurisdictions established fees based on imperviousness, type or size of property, or home size. Carroll County dedicates a portion of property tax revenues instead of collecting a stormwater remediation fee. Harford and Baltimore counties passed legislation to repeal their stormwater remediation fees, effective in fiscal 2016 and 2017, respectively. Other counties have proposed legislation or have otherwise indicated interest in repealing their stormwater remediation fees in response to Chapter 124.

For nonresidential properties, most counties chose to establish a rate based on the amount of impervious surface, as defined through an equivalent residential unit or an impervious unit. 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.

Exhibit 1
Local Stormwater Remediation Fees
Fiscal 2016

Jurisdiction	Annual Residential Rate	Annual Nonresidential Fee/ERU or IU
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
Baltimore ¹	\$14 per unit (single family attached), \$33 per unit (condos), \$26 (single family detached and agricultural residential)	Generally, \$46 per ERU for nonresidential properties; \$14 per ERU for nonresidential institutional properties
Baltimore City	\$40, \$60, or \$120 depending on amount of impervious surface	Generally, \$60 per ERU; \$12 per ERU for religious nonprofits
Carroll ²	None	None
Charles	\$35 per property (a decrease of \$8 over fiscal 2015 levels)	\$35 per property
Frederick	\$0.01 per property	\$0.01 per property
Harford ³	None	None
Howard	\$15, \$45, or \$90 depending on type and size of property	\$15 per IU
Montgomery ⁴	Varies, ranges from \$29.17 to \$265.20 depending on home size	\$88.40 per IU
Prince George's	\$20.58 per property plus \$20.90 per IU	\$20.90 per IU

ERU: equivalent residential unit; IU: impervious unit

¹ Baltimore County passed legislation to repeal the stormwater remediation fee, effective July 1, 2017.

² Carroll County dedicates a portion of property tax revenues instead of collecting a stormwater remediation fee.

³ Harford county passed legislation to repeal the fee. This legislation took effect July 1, 2015.

⁴ Montgomery County amended its water quality protection charge in 2015 to be defined as "an excise tax charged to a property owner for the privileges of maintaining impervious surfaces on the owner's property."

Source: Department of Legislative Services

Disposition of Local Stormwater Remediation Fee Revenues

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.

State Fiscal Effect: The bill does not require State agencies to pay local stormwater remediation fees/excise taxes owed by their tenants under the bill. However, several State agencies could be affected by the bill to the extent revenues from leases decrease or contract costs with lessees increase as a result of the bill.

For example, the Maryland Department of Transportation (MDOT) advises that several of its modes, including the Maryland Aviation Administration, the Maryland Port Administration, the State Highway Administration, and the Maryland Transit Administration, own property that is leased or used by non-State entities, some of which are for-profit private businesses and thus subject to the bill's changes. MDOT advises that, under the bill, some costs borne by lessees to pay stormwater remediation fees/excise taxes could be passed on to the State in the form of lower lease payments (resulting in a decrease in Transportation Trust Fund (TTF) revenues) and/or higher contract prices (resulting in an increase in TTF expenditures).

The overall impact on State revenues and expenditures across all State agencies cannot be estimated at this time because:

- the total number of State parcels and the associated impervious surface area of affected State leases is unknown; and
- the extent to which local jurisdictions will be modifying their stormwater remediation fees in response to Chapter 124 is not fully known.

Local Revenues: Local watershed protection and restoration fund revenues increase from stormwater remediation fees/excise taxes collected from users or lessees of property owned by a local, State, or federal government in those jurisdictions that have established a stormwater remediation fee or excise tax. The magnitude of any such increase cannot be determined at this time.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Association of Counties, Maryland Municipal League, Maryland Department of the Environment, Department of General Services, Department of Natural Resources, Maryland Department of Transportation, Department of Legislative Services

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