

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 316 (Senator Simonaire)
Education, Health, and Environmental Affairs

**Anne Arundel County - Watershed Protection and Restoration Program -
Exemption (Anne Arundel County Rain Tax Exemption Act of 2014)**

This bill exempts Anne Arundel 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: Anne Arundel County stormwater remediation fee revenues may decrease by about \$18.6 million in FY 2015 to the extent that the fee is eliminated. Other county revenues may increase in FY 2015 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. To the extent that stormwater remediation fees are eliminated and not offset, the county's current plan to issue bonds each year to support the projected capital costs of all stormwater management plans is likely jeopardized. Anne Arundel County stormwater management expenditures may decrease in FY 2015, unless fully offset by other revenue sources; expenditures may increase in future years to the extent projects not funded in FY 2015 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 (NPDES) 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 similar stormwater 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.

The Governor's proposed fiscal 2015 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 will be based on factors including the amount of impervious surface on the 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. This is the first year that such grants have been provided in the trust fund's budget.

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

Anne Arundel County Stormwater Remediation Fee

Pursuant to Chapter 151 of 2012, Anne Arundel County established a residential fee that is based upon a rate of \$85 annually per equivalent residential unit (ERU). An ERU is 2,940 square feet, which represents the median amount of imperviousness in specified residential zones (Tier 2). Properties are divided into separate billing tiers and represent zoning districts with a median imperviousness that is less than, equal to, or greater than the base ERU. Residential properties in Tier 1 pay twice the base rate, or \$170. Residential properties in Tier 2 pay the base rate, or \$85. Residential properties in Tier 3 pay 40% of the base rate, or \$34. Fees are phased in over three years, as described below. Multifamily residential properties pay based on actual imperviousness of the property in the amount of 40% of the base rate per ERU, or \$34 per ERU. For multifamily residential properties, if the fee exceeds \$500 annually, it is phased in over three years.

Generally, nonresidential properties in Anne Arundel County pay \$85 per ERU, capped at 25% of the property's base property tax (prior to the application of any credit, deferrals, or exemptions). If the fee exceeds \$500 annually, it is phased in over three years. Property owned by a nonprofit organization or a religious group or organization is charged a flat fee of \$1. Farms are charged 40% of the base rate, or \$34. Private roads are charged the base rate, or \$85. Airports and private schools are charged two times the base rate, or \$170. The fee for property owned by homeowners' associations is capped at a multiplier of the number of residential accounts times 40% of the base rate (\$34). Nonresidential properties subject to a NPDES permit with stormwater management controls are charged 30% of the base rate, or \$25.50, per ERU. Clean marinas are charged 25% of the base rate, or \$21.25, per ERU, for each acre or fraction thereof in excess of 7.5 acres.

Several credits against the fee are available to county property owners. For multifamily residential and nonresidential properties, fees may be reduced by up to 50% for property with a NPDES permit that includes stormwater management controls or to account for existing onsite systems, facilities, services, or activities that reduce the quantity or improve the quality of stormwater discharged from a property. Marinas with a NPDES permit with stormwater management controls are entitled to a 25% reduction in the fee, and clean marinas are entitled to a reduction of up to 50%.

Fees are collected annually via property tax bills, beginning July 1, 2013. For some properties, the county established a phase-in period for the fee. For single-family residential properties and those multifamily residential and nonresidential properties with a fee exceeding \$500, the charges are phased in at 60% for fiscal 2014, 80% for fiscal 2015, and 100% beginning in fiscal 2016.

Finally, the county has established an incentive in the form of rebates for the purchase, construction, and installation of qualifying stormwater management practices for nonresidential properties. The legislation that established the stormwater remediation fee in the county also repealed an existing storm drainage fee of 1.5 cents per square foot of the gross area disturbed by construction. The county's credit program also allows credits for residential properties that have executed an Inspection and Maintenance Agreement for Private Stormwater Management with the county. The agreement provides for the private (*i.e.*, not county) installation and maintenance of stormwater infrastructure on private property.

Local Fiscal Effect: The bill exempts Anne Arundel County from the requirement to establish a stormwater remediation fee under Chapter 151. Fee revenues are anticipated to total approximately \$18.6 million in fiscal 2015, which reflects the phase-in of 80% for the second year of collection. Stormwater remediation fee revenues are anticipated to total \$23.2 million annually in fiscal 2016 and 2017, reflecting the end of the phase-in.

Thus, county revenues may decrease significantly unless offset by a similar fee or other local revenue sources; the county may instead seek to reprogram existing funds rather than raise 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 2015, even though the bill takes effect October 1, 2014. 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. Given the county's ongoing stormwater management obligations, the county may choose to continue to assess a local stormwater fee under statutory authority that precedes the enactment of Chapter 151. The county's total stormwater management costs are estimated at about \$274.0 million between fiscal 2014 and 2017, which is based on estimated \$195.4 million in capital costs, plus \$14.7 million in anticipated new debt service costs and \$63.9 million in operating costs to comply with the near-term Phase I MS4 permit requirements.

The bill may alter the county's current plan to issue bonds to support the county's stormwater management capital costs. The county plans to issue bonds backed by stormwater remediation fee revenues each year in an amount necessary to cover annual capital costs. In the absence of the county's anticipated fee revenues, bond issuances are likely to be significantly curtailed.

Small Business Effect: Small businesses in Anne Arundel 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: None.

Cross File: HB 55 (Delegate Schuh) - Environmental Matters.

Information Source(s): Anne Arundel County, Maryland Department of the Environment, Department of Natural Resources, 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
