

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 277 (Senator Brinkley)
Education, Health, and Environmental Affairs

**Frederick County - Stormwater Management - Watershed Protection and
Restoration Program - Exemption**

This bill exempts Frederick 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.

The bill takes effect July 1, 2014.

Fiscal Summary

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

Local Effect: Frederick County stormwater remediation fee revenues may decrease by about \$488 in FY 2015 to the extent that the fee is eliminated. Frederick County watershed protection and restoration fund expenditures decrease correspondingly. County revenues and expenditures may be more significantly affected in future years to the extent the county would have significantly increased the stormwater remediation fee in the absence of the bill.

Small Business Effect: Minimal.

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.

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.**

Frederick County Stormwater Remediation Fee

Pursuant to Chapter 151 of 2012, Frederick County established a stormwater remediation fee of one cent per year for all real property located within Frederick County that is subject to the county's System Benefit Charge (which pays for a portion of the reasonably anticipated capital and operating costs for the disposal of solid waste; the charge is assessed on both residential and nonresidential real property). Fees are collected annually on property tax bills, beginning July 1, 2013.

The Maryland Department of the Environment sent a letter in October 2013 to Frederick County indicating concern that the county's fee and fund structure does not provide adequate funding for the county's stormwater program. The letter noted that the county's failure to implement the requirements of its Phase I MS4 permit could result in an enforcement action for violations of the federal Clean Water Act that could include fines and penalties of up to \$32,500 per day for each violation.

Local Fiscal Effect: The bill exempts Frederick County from the requirement to establish a stormwater remediation fee under Chapter 151. According to the county, the stormwater remediation fee generates about \$488 annually, based on collecting \$0.01 from each of an estimated 48,781 currently eligible properties. According to Frederick County, fee revenues are used to pay for the stormwater-related activities outlined under Chapter 151. Thus, assuming Frederick County repeals its stormwater remediation fee, local revenues decrease by \$488 annually, and local watershed protection and restoration fund expenditures decrease correspondingly.

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. According to Frederick County, the projected total cost to comply with its Phase I MS4 permit, currently in draft form, is approximately \$112.0 million, including \$96.0 million for stormwater retrofits. Over the five-year Phase I MS4 permit term, this is approximately \$22.4 million annually. The county has spent an average of \$2.5 million annually in general funds on stormwater permit compliance. It plans to continue funding its stormwater management activities through its general fund. For fiscal 2014, the county has budgeted \$3.6 million; funding is anticipated to increase to \$4.7 million in fiscal 2015. There is an estimated funding shortfall of approximately \$17.7 million in fiscal 2015. Therefore, it is unclear whether the county will be able to meet its stormwater management obligations even under current law.

Additional Information

Prior Introductions: SB 317 of 2013, received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee. Its cross file, HB 434, was referred to the House Environmental Matters Committee but subsequently withdrawn.

Cross File: HB 324 (Senator Brinkley) – Education, Health, and Environmental Affairs.

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

Fiscal Note History: First Reader - January 23, 2014
mam/lgc

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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
