

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 656

(Delegate Barve, *et al.*)

Environment and Transportation

Education, Health, and Environmental Affairs
and Budget and Taxation

Environment - Stormwater Remediation Fees and Stormwater Charges -
Property Subject to Fees and Charges

This bill repeals the authorization for a county to charge the State or a unit of State government a stormwater remediation fee or charge under specified conditions. Instead, the bill establishes that, if specified conditions are met, property owned by the State or a unit of State government, a county, a municipality, a public college or university, or a local school system is subject to a stormwater remediation fee adopted under § 4-202.1 of the Environment Article or a stormwater charge adopted under § 4-204 of the Environment Article.

Fiscal Summary

State Effect: Potential significant increase in State expenditures (all funds) for affected State agencies and public institutions of higher education to pay stormwater fees and charges. Revenues are not affected.

Local Effect: Potential significant increase in municipal and county revenues from stormwater fees and charges. Local expenditures increase for affected local jurisdictions, local community colleges, and local school systems to pay stormwater fees and charges.
This bill imposes a mandate on a unit of local government.

Small Business Effect: Minimal.

Analysis

Bill Summary: With respect to both stormwater remediation fees established under § 4-202.1 of the Environment Article and stormwater charges established under § 4-204 of the Environment Article (including in Montgomery County), property owned by the State or a unit of State government, a county, a municipality, a public college or university, or a local school system is subject to a stormwater remediation fee or charge if:

- the property is subject to a National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) permit *issued to the county or municipality in which the property is located*;
- the property is eligible for credits against the fees or charges to the same extent as other property located in the county or municipality, for specified activities that reduce the quantity and improve the quality of stormwater discharges from the property; and
- the local jurisdiction and the property owner have not entered into a mutually agreed upon alternative arrangement in lieu of a stormwater remediation fee or charge.

Additionally, for stormwater charges adopted under § 4-204 of the Environment Article (including in Montgomery County), a local jurisdiction must have established a dedicated stormwater management fund before property owned by the State or a unit of State government, a county, a municipality, a public college or university, or a local school system is subject to a stormwater charge.

The bill also expands the current law exemption that property owned by a public college or university or a local school system (in addition to other entities already exempt under current law) is exempt from being charged a stormwater remediation fee, except as specified.

Current Law/Background:

Authority to Adopt a System of Charges to Fund Implementation of Stormwater Management Programs under § 4-204 of the Environment Article

The General Assembly first enacted the Stormwater Management Act in 1982 and has amended it several times since. Stormwater management initially focused on urban flood prevention, later evolved into resource management, and, more recently, has become an environmental and regulatory function. The Act requires each county and municipality to have an ordinance implementing a stormwater management program consistent with flood management plans and that meets certain minimum requirements. A key provision of the Act is the authorization for each county and municipality to adopt a “system of charges” to

fund the implementation of stormwater management programs under § 4-204 of the Environment Article.

A local governing body can choose to pay the costs of the program with local revenues or with the proceeds of a system of charges. A local government is not required to establish a dedicated stormwater management fund under these provisions. State and local governments are generally exempt from the stormwater charges established under § 4-204 of the Environment Article.

Although a complete list of the municipalities that have established a system of charges under § 4-204 of the Environment Article has not been able to be verified in time for inclusion in this fiscal and policy note, the Department of Legislative Services believes that at least the following eight municipalities have done so: Annapolis; Berlin; Frederick; Gaithersburg; Oxford; Rockville; Salisbury; and Takoma Park. It is unclear how many of these municipalities have established dedicated stormwater management funds, however. Several of these municipalities do not impose stormwater charges on city-owned property.

National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Permits

The federal Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States. The NPDES municipal stormwater program, a component of CWA, regulates MS4 stormwater discharges by requiring local jurisdictions, as well as State and federal agencies, to obtain either a Phase I or a Phase II permit. Phase I permits are required for large urban jurisdictions with populations greater than 250,000, as well as “medium” urban jurisdictions with populations between 100,000 and 250,000. The following smaller municipalities are required to obtain a Phase II permit: (1) a municipality located within a Phase I MS4 county with a population greater than 1,000; (2) a municipality located within a Census-defined urbanized area; or (3) a municipality located outside of an urbanized area, with a population greater than 10,000 and a population density greater than 1,000 people per square mile. Additionally, State agencies (other than the State Highway Administration (SHA)) and federal agencies, must obtain a Phase II permit. Phase I permits are issued individually, while the Phase II program relies on a general permit.

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). SHA is also subject to a NPDES Phase I MS4 permit.

Maryland is in the process of issuing a “second-generation” NPDES stormwater general permit for Phase II entities. Cecil and Washington counties are subject to the existing

Phase II permit, along with a number of municipalities. According to the draft permit available on MDE's [website](#), in addition to the counties and municipalities currently subject to the Phase II permit, five additional counties (Allegany, Queen Anne's, St. Mary's, and Wicomico) and eight municipalities are now required to apply for a Phase II permit.

Chapter 151 of 2012 and Chapter 124 of 2015

In the 2012 legislative session, the General Assembly passed legislation, House Bill 987 (Chapter 151), which required the 10 jurisdictions subject to a NPDES Phase I MS4 permit 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. However, 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 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.

Chapter 124 of 2015 required each jurisdiction to file a financial assurance plan that is determined by the Maryland Department of the Environment (MDE) to demonstrate good faith in identifying sufficient funds to meet 75% of the anticipated costs of the MS4 permit's "impervious surface restoration plan." In 2016, all of the required jurisdictions submitted financial assurance plans, which were approved by MDE.

Although no longer required, some jurisdictions have retained stormwater remediation fees under § 4-202.1 of the Environment Article. The structure and amount of the fees vary greatly by jurisdiction. The Center for Progressive Reform conducted an analysis of the financial assurance plans submitted in 2016, and, according to that analysis, average fees range from \$0.01 in Frederick County to \$89 in Montgomery County. Carroll County continues to dedicate 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.

State and Local Liability for Local Fees

Chapter 124 authorized a local jurisdiction to charge a stormwater remediation fee (or, in Montgomery County, a stormwater charge) 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.

Related Federal Action

Public law 111-378 of the 111th Congress added Section 313 (c) of CWA to clarify that, in general, the federal government is responsible for paying reasonable service charges relating to stormwater management as long as the service charge is a “reasonable nondiscriminatory fee, charge, or assessment that is based on some fair approximation of the proportionate contribution of the property or facility to stormwater pollution...and used to pay or reimburse the costs associated with any stormwater management program (whether associated with a separate storm sewer system or a sewer system that manages a combination of stormwater and sanitary waste), including the full range of programmatic and structural costs attributable to collecting stormwater, reducing pollutants in stormwater, and reducing the volume and rate of stormwater discharge, regardless of whether that reasonable fee, charge, or assessment is denominated a tax.”

State Expenditures: As noted above, the bill establishes that property owned by the State or a unit of State government or a public college or university is subject to stormwater fees and charges established under § 4-202.1 and § 4-204 of the Environment Article if certain conditions are met. As such, the bill results in a potentially significant increase in State expenditures (all funds) for those State entities that must now pay stormwater fees and charges as a result of the bill.

A reliable estimate of the total increase in costs cannot be made, as it depends on whether the property is subject to a NPDES MS4 permit issued to the local jurisdiction in which the property is located, the amount and type of property owned, the location of the property, the fees/charges established in various local jurisdictions, whether the property owner is subject to an NPDES MS4 permit specific to the property owner, whether the property owner is eligible for any specified credit for mitigation activities, whether the property owner and the local jurisdiction have entered into any alternative arrangement, and, for charges under § 4-204, whether the municipality has established a dedicated stormwater management fund.

Although an estimate of the overall impact on the State cannot be made, for some agencies, the increase in expenditures to pay stormwater fees/charges could be significant. The bill is likely to have the biggest impact on those agencies that own significant amounts of property, such as the Department of General Services, the Maryland Department of Transportation, and the University System of Maryland, among others. However, the extent to which these agencies and others own property in a local jurisdiction that is subject

to a NPDES MS4 permit (either Phase I or Phase II) and meets the other specified conditions (or will do so in the future) is unknown.

To the extent that a State agency or other entity is subject to its own NPDES MS4 permit (e.g., SHA and some of the public colleges and universities), there is no increase in expenditures because an entity cannot be subject to both an individual and a general NPDES MS4 permit. In other words, an entity cannot be subject to a NPDES MS4 permit *issued to the county or municipality within which the property is located* and also a NPDES MS4 permit specific to the entity. Thus, an entity will not be subject to duplicative costs for stormwater management.

Local Fiscal Impact:

Impact on Local Stormwater Revenues

The bill results in a potentially significant increase in revenues for municipalities and counties. As noted above, the bill establishes that property owned by the State or a unit of State government, a county or municipality, a public college or university, or a local school system is subject to stormwater charges and fees established under § 4-202.1 and § 4-204 of the Environment Article if certain conditions are met. Thus, revenues for local jurisdictions increase, potentially significantly, from the collection of stormwater charges and fees.

The extent to which the bill triggers the requirement for the federal government to pay municipal and county stormwater charges and fees, pursuant to Public Law 111-378, is unknown. If the federal government becomes subject to such fees/charges as a result of the bill, local revenues increase further.

Thus, although the exact increase in local revenues from stormwater fees and charges is unknown, it could be significant for certain local jurisdictions.

For example, the City of Rockville advises that the city could have collected \$512,687 in fiscal 2016 from property owned by public entities that are exempt from stormwater charges under current law. The City of Takoma Park advises that the city could collect approximately \$49,700 annually from properties owned by Montgomery County, the Maryland-National Capital Park and Planning Commission, the school system, and Montgomery College (a public community college).

Impact on Local Jurisdictions to Pay Stormwater Fees and Charges

Under the bill, property owned by a county or a municipality, a local community college, or a local school system is subject to a stormwater remediation fee or charge established

under § 4-202.1 and § 4-204 of the Environment Article if specified conditions are met. Thus, expenditures increase, potentially significantly, for any local jurisdiction that owns property in a qualifying municipality or county and must pay stormwater fees or charges under the bill.

Additional Information

Prior Introductions: None.

Cross File: SB 472 (Senator Young, *et al.*) - Education, Health, and Environmental Affairs and Budget and Taxation.

Information Source(s): cities of Frederick, Rockville, Takoma Park, and Baltimore; Montgomery County; Maryland Association of Counties; Maryland Municipal League; Baltimore City Community College; University System of Maryland; St. Mary's College of Maryland; Maryland Department of the Environment; Department of General Services; Department of Health and Mental Hygiene; Department of Housing and Community Development; Department of Juvenile Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Center for Progressive Reform; Department of Legislative Services

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