

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 999 (Delegate Hucker, *et al.*)
Environmental Matters

Watershed Protection and Restoration Act

This bill requires each county and municipality, by July 1, 2011, to adopt local laws or ordinances necessary to establish an annual stormwater remediation fee and a local watershed protection and restoration fund to provide financial assistance for the implementation of local stormwater management plans. The bill also establishes specified reporting requirements for local governments and the Maryland Department of the Environment (MDE). MDE is authorized to adopt regulations.

The bill takes effect July 1, 2010.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances.

Local Effect: Local revenues to local watershed protection and restoration funds increase significantly on an annual basis beginning in FY 2011 or 2012 depending on when the stormwater remediation fee is implemented by each jurisdiction. Local expenditures from local watershed protection and restoration funds increase commensurately to fund local stormwater management activities, including reasonable administrative costs. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The stormwater remediation fee established for residential property owners must be the same for all such owners within the county or municipality. For

nonresidential properties, the fee must be based on the amount of impervious surface but must be greater than the fee assessed residential property. Each county and municipality is required to collect the fee from all property owners, subject to specified exceptions, and must determine the method, frequency, and enforcement of fee collection. State-owned property is not subject to the fee.

Fee revenue from each jurisdiction must be deposited into its local watershed protection and restoration fund established under the bill. Each fund also consists of interest or other investment income and any other money made available to the fund. The stated purpose of each fund is to provide financial assistance for the implementation of local stormwater management plans through urban and suburban stormwater management practices and stream and wetland restoration activities. Money in each fund must be used to support additional (not existing or ongoing) efforts related to the following activities:

- capital improvements for stormwater management;
- operation and maintenance of stormwater management systems and facilities;
- stormwater management permitting, inspection, and enforcement activities;
- stormwater management planning;
- grants to nonprofit organizations for specified watershed restoration and rehabilitation projects; and
- reasonable administrative costs.

By April 1, 2011, each county and municipality is required to annually report to MDE the amount of impervious surface located within the jurisdiction. MDE must then report that information to the BayStat Subcabinet.

“Impervious surface” is defined in the bill as structures, buildings, dwelling units, roads, parking lots, driveways, and areas covered with gravel, stone, shell, impermeable decking or pavers, or any other impervious material. The term does not include a fence or wall that is less than one foot in width that has not been constructed with a footer; a wood mulch pathway; or a deck with gaps to allow water to pass freely.

Current Law: State law requires each county and municipality to adopt ordinances necessary to implement a stormwater management program. In general, a person may not develop any land for residential, commercial, industrial, or institutional use without submitting, and getting approval of, a stormwater management plan from the county or municipality with jurisdiction. The developer must certify that all land development will be done according to the approved plan. A State or federal agency may not undertake any construction activity unless the agency has submitted and obtained approval of a stormwater management plan from MDE.

Criminal, civil, and administrative penalties apply to violations of the State's stormwater management provisions. Every three years, MDE is required to review the stormwater management programs in the counties and municipalities and monitor their implementation. MDE is also required to provide technical assistance, training, research, and coordination services to local governments in the preparation and implementation of their stormwater management programs.

Chapters 121 and 122 of 2007, among other things, require MDE to establish regulatory requirements regarding the use of environmental site design in stormwater management practices. In October 2008, MDE proposed regulations to implement the Stormwater Management Act of 2007. The regulations, which were adopted on May 4, 2009, require the use of "environmental site design" to the *maximum extent practicable* in stormwater management practices. "Environmental site design" (ESD) means using small-scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of impervious surfaces from land development. "Maximum extent practical" means designing stormwater management systems so that all reasonable opportunities for using ESD planning techniques and treatment practices are exhausted and, only where absolutely necessary, a structural measure is implemented. The goal of the regulations is to maintain after development as nearly as possible the predevelopment runoff characteristics of the land.

Background:

Stormwater an Increasing Problem for the Chesapeake Bay

According to MDE, while nitrogen loading to the Chesapeake Bay from agricultural and wastewater sources in Maryland has been decreasing since 1985, loading from developed areas during that same timeframe has been increasing. MDE's new stormwater regulations are expected to slow down the loading increase.

Financing Stormwater Programs

According to the Maryland Transition Work Group Report on Environment and Natural Resources (January 2007), actions to upgrade or replace stormwater management systems, along with septic systems, accounted for 87% of the total additional costs needed to restore the Chesapeake Bay, or an estimated \$4.5 billion. Although that analysis is now outdated, it shows the magnitude of the anticipated costs related to addressing the impact of development on the Chesapeake Bay.

In an effort to provide additional funding for stormwater management, Chapters 120 and 121 of 2008 established a Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund within MDE to provide financial assistance for urban and suburban stormwater management practices and stream/wetland restoration. Chapters 120 and 121 direct funds from the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund to this fund; MDE is also authorized to issue revenue bonds for the benefit of the fund. The Governor's proposed fiscal 2011 budget includes \$1.9 million in PAYGO special funds for the Nonpoint Source Fund. The fund is intended to support nonpoint source capital projects that previously were funded under MDE's Small Creeks and Estuaries Restoration Program and the Maryland Stormwater Pollution Control Program.

Chapters 121 and 122 of 2007 required MDE to evaluate options for a stormwater management fee system and an appropriate fee schedule necessary to improve enforcement of stormwater management laws. In its May 2008 report, developed in response to that charge, MDE noted that Maryland's stormwater management program is implemented locally with little financial support from the State, and that it does not have the authority under current law to assess fees or charges at the State level. In 1992, the General Assembly enacted enabling legislation that allows localities to develop a "system of charges" to finance stormwater programs. To date, only six local jurisdictions (Charles, Montgomery, and Prince George's counties and the cities of Annapolis, Rockville, and Takoma Park) have developed a stormwater user charge of some type, although several others (Anne Arundel, Carroll, and Howard counties; the Baltimore Metropolitan Council; and Baltimore City) have explored the creation of local dedicated funding sources for stormwater management. In the report, MDE noted its continuing support for the development of a system of charges by local governments to provide the funding needed to meet local obligations under State and federal law.

Local Fiscal Effect: Local government revenues increase from collection of the stormwater remediation fee established as a result of this bill. However, the Department of Legislative Services (DLS) advises that the amount of local revenues generated by the bill cannot be estimated because the bill does not specify or mandate the amount of the charge. It is assumed that all revenues collected are offset by expenditures from local watershed protection and restoration funds as specified in the bill, including reasonable administrative costs.

Although it is not possible to develop a reliable estimate of the statewide revenues for local jurisdictions generated under the bill, the experience of several of the jurisdictions that currently assess stormwater management fees, as well as a previous analysis of stormwater management revenues by MDE, may be instructive. Based on the average fee per person in four of the jurisdictions that currently assess a stormwater fee, it is reasonable to assume that the average stormwater remediation fee assessed statewide is

equivalent to just over \$13 *per person*, although in actuality the fee is assessed on *property owners*. At this fee level, the statewide increase in local government revenues amounts to about \$74 million.

Legislative Services advises, however, that actual revenues may differ substantially. For example, if all jurisdictions assess a fee comparable to that of Takoma Park, local revenues may increase by about \$119 million statewide. Similarly, if jurisdictions assess a stormwater remediation fee at a rate comparable to that charged by Prince George's County, revenues may increase by about \$35 million statewide.

In addition, although local governments have broad authority to set the fee at any level they desire, smaller jurisdictions may find that stormwater remediation fee revenues generated from a reasonable fee are not sufficient to cover all administrative costs. For example, Garrett County estimates the total administrative costs to implement the bill at about \$120,000. With a population of just over 23,000 (excluding the population of the municipalities within the county), the stormwater remediation fee would need to be set at \$13 just to cover those estimated administrative costs. In fact, Garrett County reports that the average fee for residential and commercial property would likely be \$30 per year. In addition, there are 65 jurisdictions in the State with a population of less than 1,000. In these jurisdictions, fee revenue is likely negligible.

Finally, in jurisdictions that have a charter limit on their property taxes, such as Montgomery County, establishing a stormwater remediation fee may necessitate an offsetting reduction in some other property tax, to the extent the fees established under the bill are considered property taxes.

Small Business Effect: Any small businesses involved in the planning, design, and/or construction of stormwater management projects may benefit to the extent the additional revenue generated for stormwater-related activities results in an increase in the number of such projects undertaken. On the other hand, small businesses themselves are subject to the stormwater remediation fees established by local governments under the bill.

Additional Information

Prior Introductions: A similar bill, SB 672 of 2009, passed with amendments on second reading in the Senate but failed on third reading. It's cross file, HB 1457, was referred to the House Rules and Executive Nominations Committee, but no further action was taken.

Cross File: SB 686 (Senator Raskin, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Garrett, Howard, and Montgomery counties; State Department of Assessments and Taxation; Department of Natural Resources; Maryland Department of Planning; Maryland Department of the Environment; Maryland Municipal League; Department of Legislative Services

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