

Department of Legislative Services
 Maryland General Assembly
 2011 Session

FISCAL AND POLICY NOTE

Senate Bill 198 (Senator Glassman)
 Education, Health, and Environmental Affairs

Stormwater Management - Regulations - Applicability

This bill makes the local stormwater management ordinance in effect on May 3, 2009, applicable to the subdivision of a single lot into two lots if the second lot is for residential use at least five acres in size; and has, or will have, an impervious surface area not greater than 7% of the lot. Thus, for those subdivisions, less stringent stormwater management regulations apply.

Fiscal Summary

State Effect: General fund expenditures increase by about \$85,700 in FY 2012 for the Maryland Department of the Environment (MDE) to hire an additional engineer. Future year expenditures reflect annualization and inflation. Revenues are not affected.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	85,700	81,400	85,300	89,500	93,900
Net Effect	(\$85,700)	(\$81,400)	(\$85,300)	(\$89,500)	(\$93,900)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local government workloads may be affected, and expenditures may increase minimally, to revise stormwater management ordinances and plans in accordance with the bill's changes.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background:

Stormwater Management in Maryland

According to MDE, while nitrogen loading to the Chesapeake Bay from agricultural and wastewater sources in Maryland has been decreasing since 1985, stormwater runoff has been increasing from newly developed impervious surfaces. The State began reducing the adverse effects of stormwater runoff in 1982 with the passage of the Stormwater Management Act. State regulations followed in 1983, which required each county and municipality to adopt ordinances necessary to implement a stormwater management program. Maryland's stormwater management regulations were significantly strengthened in 2000 with the adoption of the Stormwater Design Manual in State regulations.

Chapters 121 and 122 of 2007 attempted to further enhance the State's stormwater management program by requiring a new form of management practice known as environmental site design (ESD). ESD involves using small-scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources. ESD is widely considered to be the leading and most stringent stormwater management framework employed in the United States today.

Specifically, Chapters 121 and 122 required MDE to promulgate regulations that require (1) the implementation of ESD to the maximum extent practicable; (2) the review and modification (if necessary) of planning and zoning or public works ordinances to remove impediments to ESD implementation; and (3) a demonstration by developers that ESD has been implemented to the maximum extent practicable in a project. The law also established a comprehensive process for approving grading and sediment control plans as well as stormwater management plans to take into account the cumulative impact of both plans.

MDE was required by Chapters 121 and 122 to seek the input of each county and municipality that operates a stormwater management program and work with interested parties to address any reasonable concern during the creation of the ESD regulations and model ordinances. Nevertheless, after the regulations were adopted on May 4, 2009, numerous concerns were raised by local jurisdictions, developers, and others. In general, the concerns related to the need for grandfathering of certain projects that have reached an advanced stage in the development process, the cost and feasibility of ESD, potential conflicts between the regulations' more stringent requirements for redevelopment projects and the State's ongoing smart growth efforts, and the costs of long-term maintenance for ESD practices.

To address some of these concerns, in March 2010 MDE submitted emergency regulations to the General Assembly's Administrative, Executive, and Legislative Review (AELR) Committee. On the grandfathering issue, the emergency regulations allowed local governments to incorporate waiver provisions into their ordinances for projects that have completed part of the development review process but have not received final approval by May 4, 2010. A grandfathered project that receives an administrative waiver may proceed with the development under the previous stormwater regulations in effect as of May 4, 2009. The emergency regulations also provided local governments with greater flexibility in addressing the new requirements for redevelopment projects by providing for alternative stormwater management measures under specified conditions. The AELR Committee approved the emergency regulations on April 6, 2010.

Role of Stormwater Management in Meeting Federal Chesapeake Bay Restoration Plans

The federal Clean Water Act requires states to designate intended uses for their water bodies, such as swimming and fishing, and to set water quality standards to achieve these uses. Water bodies that do not meet the water quality standards are designated as *impaired* and are assigned a Total Maximum Daily Load (TMDL) or "pollution diet," which (1) sets the maximum amount of pollution that the water body can receive and still attain water quality standards; and (2) identifies specific pollution reduction requirements among the various contributing sources.

The U.S. Environmental Protection Agency (EPA) has been working with watershed states and the District of Columbia to develop a Chesapeake Bay TMDL since 2000 in order to prepare to comply with several federal court-ordered deadlines established by consent decree. However, the effort was significantly reinvigorated by the signing of Executive Order 13508 by President Obama in May 2009. In May 2010, EPA committed to establishing a final bay TMDL, which it released on December 29, 2010.

Working with EPA, each watershed state and the District of Columbia submitted draft Phase I watershed implementation plans (WIPs) in September 2010, and after a comment period, submitted final WIPs in November and early December. WIPs are intended to provide a roadmap for how each jurisdiction will achieve and maintain the bay TMDL.

Maryland's WIP builds on existing State-directed restoration efforts and identifies strategy options to reduce nitrogen and phosphorus from all major sources, such as wastewater, stormwater runoff, septic systems, agriculture, and air pollution. Of these sources in Maryland, stormwater runoff contributes about 11% of the nitrogen and 20% of the phosphorus entering the bay from Maryland sources, and it will be required to contribute to just under 10% of the nitrogen reduction and just under 40% of the phosphorus reduction under Maryland's WIP.

State Expenditures: General fund expenditures increase by \$85,730 in fiscal 2012, which accounts for the bill's October 1, 2011 effective date. This estimate reflects the cost of hiring one regulatory and compliance engineer within the Water Management Administration's stormwater management program to develop new regulations and a model stormwater management ordinance and to oversee the adoption and implementation of local ordinances. The estimate includes a salary, fringe benefits, one-time start-up costs, including a new automobile, and ongoing operating expenses. Currently, the stormwater management program is staffed by two full-time employees.

Position	1
Salary and Fringe Benefits	\$56,180
Start-up Costs and Operating Expenses	<u>29,550</u>
Total FY 2012 State Expenditures	\$85,730

Future year expenditures reflect a full salary with 4.4% annual increases and 3% employee turnover as well as 1% annual increases in ongoing operating expenses.

Small Business Effect: The bill may have a meaningful beneficial impact on small business residential housing developers and contractors as a result of the savings associated with less costly stormwater management regulations for development on subdivided lots under the bill. However, the bill may also have a meaningful adverse impact on small businesses engaged in the design and construction of ESD stormwater management practices.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore and Howard counties, Department of Natural Resources, Maryland Department of Planning, Maryland Department of the Environment, Department of Legislative Services

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