

Department of Legislative Services  
Maryland General Assembly  
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 903

(Senator Hershey, *et al.*)

Budget and Taxation

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Tax Sales - Stormwater Remediation Fees - Temporary Prohibition

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This bill prohibits a county or municipality from collecting penalties or interest for the nonpayment of a stormwater remediation fee before July 1, 2023, if the fee is paid in full prior to that date. The bill also prohibits a local property tax collector from selling a property prior to July 1, 2023, for failure to pay a stormwater remediation fee.

The bill takes effect July 1, 2014.

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Fiscal Summary

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

**Local Effect:** Local stormwater remediation fee revenues may decrease significantly between FY 2015 and 2023 to the extent that the bill prevents the effective enforcement of stormwater remediation fee collection efforts and from foregone collection of penalties, interest, and tax sale proceeds. Local expenditures may increase significantly in FY 2014 and/or 2015 for jurisdictions to develop accounting mechanisms to separately track the liability for nonpayment of stormwater remediation fees. **This bill may impose a mandate on a unit of local government.**

**Small Business Effect:** Minimal.

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Analysis

**Current Law/Background:** 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 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.

A county or municipality subject to Chapter 151 must determine the method, frequency, and enforcement of the collection of the stormwater remediation fee. For additional information about Chapter 151 and its implementation, see the **Appendix – Stormwater Remediation Fees in Maryland**.

**Local Revenues:** Although a reliable estimate of the impact on local stormwater remediation fee revenues cannot be made due to considerable uncertainty about future rates of payment of stormwater remediation fees, the decrease in local revenues may be significant due to a reduction in the collection of penalties, interest, tax sale proceeds, and from a reduction in the payment of stormwater remediation fees. It is unclear what other enforcement methods, if any, a jurisdiction may implement to enforce fee collections if penalties, interest, and tax sale options are prohibited. Overall, jurisdictions may incur a significant reduction in fee collections between fiscal 2015 and 2023 if a significant number of residents decide not to pay stormwater remediation fees. Fee revenues may increase in fiscal 2024 from the collection of all unpaid fees, exclusive of the penalties,

interest, and tax sale proceeds that would have been collected in prior years for nonpayment of fees under current law.

**Local Expenditures:** Local expenditures may increase in fiscal 2014 and/or 2015 for jurisdictions to revise existing accounting methods to separately account for nonpayment and debt accrual of stormwater remediation fees from other charges on property tax and utility bills. For example, Baltimore County advises that its current tax collection system cannot account for debts and associated penalties and interest separately among charges. The system needs to be modified, or a new system developed, to provide for separate accounting under the bill's restrictions.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore, Howard, and Montgomery counties; Town of Berlin; Maryland Department of the Environment; Judiciary (Administrative Office of the Courts); Department of Legislative Services

**Fiscal Note History:** First Reader - March 5, 2014  
ncs/lgc

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## Appendix – Stormwater Remediation Fees in Maryland

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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](http://dls.state.md.us/data/polanasubare/polanasubare_natresenvntra/Stormwater-Remediation-Fees-in-MD.pdf).”

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**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

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