

ALERT

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Pending Maryland Law Requires Largest Counties and Municipalities to Set Stormwater Management Fee

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On April 6, 2012, the Maryland Senate passed, by a 33-14 vote, SB 614 or the "Stormwater Management - Watershed Protection and Restoration Program." The measure previously had been passed by the House of Delegates as HB 987 by a vote of 90-48 on March 20. The legislation would require certain counties and municipalities to establish by ordinance a watershed protection and restoration program that implements, among other requirements, the collection of stormwater remediation fees to be placed in local watershed protection/restoration funds. The legislation is now before Governor O'Malley for signature, and will automatically become law if not acted on by the governor within 30 days of presentment.

Overview

The new legislation would apply to counties and municipalities subject to a NPDES Phase I Municipal Separate Storm Sewer System (MS4) permit that, prior to July 1, 2012, have not already implemented a watershed protection and restoration funding program under Section 4-204 of the Code of Maryland, Environment Article.¹ The Phase I MS4 regulations apply to medium and large municipalities or certain counties with populations of 100,000 or more and require an individual NPDES permit (as opposed to Phase II MS4s typically covered by a general permit).² These affected counties and municipalities will have until July 1, 2013, to implement a watershed protection and restoration program.

The program must include a stormwater remediation fee to be collected annually from owners of property within the county or municipality. The fee is meant to help fund the implementation of local stormwater management plans. However, property owned by the state or a political subdivision is exempt from the fee, as well as property owned by a regularly organized volunteer fire department and used for public purposes.

¹ Among other things, Section 4-204 allows counties and municipalities to adopt a system of charges to fund the implementation of stormwater management programs.

² As of today, entities with Phase I MS4 permits include Prince George's, Anne Arundel, Harford, Baltimore, Howard, Carroll, Montgomery, Frederick and Charles counties, as well as Baltimore City. Montgomery County assesses a Water Quality Protection Charge to fund its stormwater management activities and may be exempt from this legislation provided its program is consistent with the new requirements.

Municipalities are the primary implementing authority under the legislation, but a county can opt to implement a program after giving municipalities within its jurisdiction notice and an opportunity to develop its own programs. Where a county program has been put into place, a municipality may later decide to develop its own program provided it gives the county time to discontinue collecting the fee. The new legislation specifically provides that a property shall not be subject to both a county and municipal program fee.

Stormwater Remediation Fee

Counties and municipalities would have some flexibility in determining how the stormwater remediation fee is to be calculated, which may include a flat fee, a graduated fee based on impervious surfaces on a given property, or some other method. The fee design also may include certain exemptions for properties that would suffer substantial hardship as a result of the fee. The fee is to be considered separate from any new development charges implemented under Section 4-204. The funds generated by the fee only can be used for purposes outlined in the new legislation and cannot be reverted or transferred to a general fund. Starting on July 1, 2014, and every two years thereafter, counties and municipalities must provide a publicly available report on the program that includes discussion of properties affected and the generation and use of program funds.

MDE Oversight

The new legislation would require that the Maryland Department of the Environment (MDE) approve of policies and procedures adopted by counties and municipalities for reducing fees based on stormwater management activities/facilities in place to control stormwater discharges from a specific property. Guidelines on the design of such policies and procedures are provided in the legislation, including certain monitoring and verification requirements. MDE also is granted discretion to adopt regulations regarding the implementation and enforcement of the new legislation.