


<b>FROM</b>	NAME & TITLE	Alfred H. Foxx, Director	CITY of <b>BALTIMORE</b> <b>MEMO</b>	
	AGENCY NAME & ADDRESS	Department of Public Works 600 Abel Wolman Municipal Building		
	SUBJECT	<b>CITY COUNCIL BILL 12-0155</b>		

DATE: March 29, 2013

**TO**

The Honorable President and Members  
of the Baltimore City Council  
c/o Karen Randle  
Room 400 – City Hall

I am herein reporting on City Council Bill 12-0155 introduced by the Council President on behalf of the Administration (Department of Public Works).

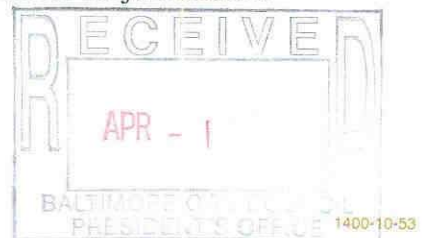
The purpose of the Bill is to impose a stormwater remediation fee to fund the costs of the City’s stormwater management system; provide for the setting of rates and calculation of the fee and for the establishment of a system of credits; provide for the collection and enforcement of the fee; specify the uses to which the proceeds of the fee may be expended; specify the accounting and expenditure system for the stormwater utility; define certain terms; prohibit certain conduct; impose certain penalties; provide for a special effective date; and generally relating to fees for stormwater management.

The State of Maryland requires Baltimore City and 9 other jurisdictions to create a stormwater remediation fee and protected fund by July 1, 2013.<sup>1</sup> The purpose of these fees is to enable the jurisdictions to comply with federal and State environmental laws and regulations. City Council Bill 12-0155 will bring the City into compliance with the State stormwater remediation fee law, provide an equitable funding mechanism for long under-funded infrastructure, and allow the City to comply with a new environmental permit.

The Clean Water Act is the federal law that governs waterway pollution generated by identifiable sources (point sources such as industry and wastewater treatment plants) and from more diffuse sources (nonpoint sources such as stormwater runoff). The Clean Water Act requires point sources to operate under National Pollutant Discharge Elimination System (NPDES) permits, and these permits stipulate the limits of pollutants that may be discharged. The pollution limitations are expressed in the amounts that may be present in the discharge or in the loadings that the receiving water body can manage within a given timeframe (such as pounds per year). Stormwater that discharges from an outfall, as it does in Baltimore City, is also governed by NPDES permits. These permits are called Municipal Separate Storm Sewer System permits, or MS4 permits. Before reaching the storm drain system and eventually the waterways, stormwater flows across streets, exposed soil, and buildings, picking up trash and pollutants along the way. MS4 permits seek to limit the pollutants carried by stormwater into waterways like the Jones Falls, the Baltimore Harbor and the Chesapeake Bay. Hard surfaces that do not allow water to infiltrate into the ground (known as impervious surface or impervious area) cause more pollution to be carried into waterways. One of the ways that MS4 permits seek to address water pollution is to require that impervious surface be restored by approved methodologies.

The State-mandated stormwater remediation fee and fund requires jurisdictions having Phase 1 MS4 permits to support the MS4 permit requirements. Baltimore City is one of the jurisdictions

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<sup>1</sup> House Bill 987 was signed into law in April, 2012.

that must comply with this State law and July 1, 2013 deadline.<sup>2</sup> This proposed legislation would support the requirements of the City's MS4 permit to counter the effects of runoff from the existing built environment and the pollution that is carried with it.

A Charter amendment was presented to the qualified voters of Baltimore City on the November 6, 2012 election ballot and was approved.<sup>3</sup> The approved Charter amendment establishes a stormwater enterprise fund that must be financially self-sustaining and operate without profit or loss to other funds of the City. Creating this stormwater utility provides the protected fund that State law requires. The fund may be used for stormwater management capital improvements, including stream and wetland restorations; operation and maintenance of stormwater management systems and facilities; stormwater management planning, including monitoring, inspection and enforcement activities; review of stormwater management plans and permits for future development; grants to nonprofits for watershed restoration and rehabilitation projects; public education and outreach; and reasonable costs necessary to administer the fund.

City Council Bill 12-0155 is the next step in complying with State law, the legislative mechanism for establishing: the basis for the stormwater remediation fee; the process for setting the fee; the permitted uses of the fund; the collection and accounting systems for the fee and fund; a requirement for a system of credits and hardship exemptions; and an administrative and judicial review process. The provisions of this legislation must meet the requirements of State law as well as the Charter amendment that established the enterprise fund.

The City's stormwater services are funded by the General Fund, but the funding level has always been very limited. As a result, there were never enough funds available to invest in repairing and replacing basic stormwater infrastructure or to fully address the City's MS4 permit requirements. The new forthcoming version of the City's MS4 permit will require the City to remove or mitigate the effects of 20% of its impervious area, not already restored before 2010, over a 5 year period. The cost to do so is expected to exceed \$200 million. The condition of our aging stormwater infrastructure is also in dire need of attention and will require a systematic plan for repair or replacement.

Baltimore's proposed stormwater remediation fee will be based on the amount of a property's impervious area. Impervious area has a direct impact on the quantity of water conveyed by the City's drainage system and on the amount of pollutants that are washed into our waterways. It is an appropriate metric to use in evaluating a property's contribution to stormwater runoff and stormwater services and is a recognized means to assess a stormwater remediation fee under State law.

The Department examined all parcels in the City, not owned by the City or the State, and determined that approximately 88% of these parcels are Single Family Property, containing 33% of the impervious area from private properties of the City. Taking this proportional contribution

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<sup>2</sup> Baltimore City and Anne Arundel, Baltimore, Carroll, Charles, Frederick, Harford, Howard, Montgomery, and Prince George's counties are Phase 1 MS4 permit holders. Charles, Montgomery, and Prince George's counties currently implement some form of a stormwater fee.

<sup>3</sup> Mayor and City Council Resolution 12-04.

to impervious area into consideration, the proposed fee structure will create a flat stormwater remediation fee for Single Family Properties that fall into one of three tiers. All other properties will pay a stormwater remediation fee calculated on the amount of impervious area within their parcel.

Each of the Single Family Property tiers includes a range of impervious area,<sup>4</sup> but most parcels fall within Tier 2. The median Single Family Property in Baltimore has 1,050 square feet of impervious area. This average impervious area measurement, called an Equivalent Residential Unit (or “ERU”), is the basic impervious area unit to be applied to properties in determining their fee. The Board of Estimates will set a quarterly stormwater remediation fee which will be multiplied against how many ERUs a property has. In the case of Single Family Properties, it is proposed for Tier 1 properties to pay 2/3 of an ERU, Tier 2 properties to pay a full ERU, and Tier 3 properties to pay 2 ERUs. For Non-Single Family Properties, the set fee will be applied for every multiple of ERUs, or for every 1,050 square feet of impervious area, contained within the property. As of this writing, State law prohibits local stormwater remediation fees to be charged to State and County or municipal properties.

State law requires that local stormwater programs include the ability to reduce a portion of a stormwater remediation fee to account for onsite or offsite systems, facilities or activities that reduce the quantity or improve the quality of stormwater discharged from a property. In an attempt to create a credit program that would be meaningful but easy to use and administer, the Department invited representative stakeholders to help define an effective credit program for Baltimore. This working group took their charge very seriously and provided credit recommendations that are embodied in the Department’s draft regulations. Property owners will be able to take advantage of credits that could range from participation in volunteer-based stormwater management activities (such as stream and community cleanups, removal of impervious surfaces, and tree plantings), to the installation and maintenance of onsite or offsite best management practices. The organizer of a participation event will have to register with the Department in advance to ensure the event qualifies and to receive a certification form. The certification form will be the proof volunteers will use to receive a credit against their stormwater remediation fee. Participation credits will be good for one year. Structural and non-structural best management practices require a more in-depth approval process. These credits will be good for 3 years, at which time the property owner may reapply for the credit. Renewing these credits ensures that the practices are regularly maintained and still performing as designed. Activity best management practices will also be eligible as a credit, good for one year. In addition, a Small Development Credit is proposed for Non-Single Family parcels containing 50 to 820 square feet of impervious surface. This credit would result in a stormwater remediation fee equivalent to a Tier 1 Single Family Property. A Vacant Lot Credit is proposed for parcels containing less than 50 square feet of impervious surface, but could be rescinded if the Department finds that the parcel is not regularly mowed and kept free of litter and debris. While credits can help property owners lower their stormwater remediation fee, the credits also reduce the revenue requirements for the City to satisfy some of its MS4 permit requirements.

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<sup>4</sup> Tier 1 property with less than or equal to 820 square feet of impervious area; Tier 2 with greater than 820 square feet and less than 1,500 square feet of impervious area; Tier 3 with greater than 1,500 square feet of impervious area.

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City Council Bill 12-1055 also provides the necessary structure for supporting the stormwater utility as defined in the voter-approved Charter amendment. These include: applying the stormwater remediation fee to the quarterly water bill or on a stormwater only account for those properties that do not have an active water account; a collections process managed by the Department of Finance; and a fee system that would be subject to the lien process. Just like water and wastewater utilities, the stormwater utility must be operated without profit or loss to other funds of the City, meaning that stormwater services could no longer receive financial support from the City's General Fund. The stormwater utility would be able to sell revenue bonds and incur debt which helps spread the impact of large capital investments over a longer period of time. As with any municipal charge, an administrative and judicial process is made available to customers wishing to appeal a charge.

The Department of Public Works believes the stormwater remediation fee is essential for the City to comply with State law, to meet its environmental obligations under its MS4 permit, and to make progress toward a more stable and well functioning infrastructure system. It is for these reasons that the Department of Public Works strongly supports passage of City Council Bill 12-0155.

Respectfully,



ALFRED H. FOXX  
DIRECTOR

AHF/MMC:ela