



## HB 987 - SW Fees

Attachment A

Craig Simoneau to: Phyllis Marcuccio, John F Hall, Mark Pierzchala, Bridget Newton, Tom Moore  
Cc: Jenny Kimball, Linda Moran, Mark Charles

04/24/2012 08:53 AM

Mayor Marcuccio and Councilmembers,

On April 9, the Maryland General Assembly passed HB 987 which requires 9 specified Maryland Counties and Baltimore City to adopt stormwater fees by July 1, 2013 unless they have already done so before the effective date of the legislation (July 1, 2012). The legislation only applies to these Phase One Stormwater jurisdictions. Since Rockville is a Phase Two community, the law does not apply to the City. However, it is possible that future legislation may extend these requirements to Phase Two communities like Rockville.

The attached memo contains a detailed summary of the Bill. While this new legislation does not apply to Rockville, it is indicative of where the State and perhaps Rockville may be going in the future. **The fee provisions in the bill are quite similar to Rockville's existing fee system, with several notable exceptions:**

- The law includes a *last minute* amendment that exempts public purpose properties owned by the State, a unit of the State, Counties, Municipalities and volunteer fire departments from the stormwater fees to be established by the Phase One jurisdictions. The language of the public sector exemption is similar to an exemption included in the amended Flush Tax Bill. This exemption has implications for federal stormwater fee payment since federal law authorizes payment only when all other property owners are required to pay.
- The law indicates that the fee revenue is intended to be *in addition* to any existing stormwater expenditures.
- It creates a biennial reporting obligation of revenues and expenses for the program.

**The public exemption raises a question about the City's ability to collect a fee from our public fee payers.**

While Rockville's fee program is not included in the new law, the legislation makes a strong public policy statement regarding the need for public entities to pay local stormwater fees. As you recall, Montgomery County and Montgomery College did not pay the FY 2012 stormwater fee and the draft FY 2013 stormwater program budget was developed without reliance on these revenues. In light of the legislation, City staff is concerned that the remaining public sector fee payers may also choose not to pay the fees. The total expected FY 2013 revenue from these remaining public sector fee payers is \$293,077.71, including \$117,714.21 paid into the stormwater fund by the City (This amount represents the fee for our own impervious surfaces). Staff intends to invoice all of our public property owners as usual in FY 2013 and monitor payment status closely into the fall. Regardless of actual revenues, we intend to undertake a comprehensive program review next year. We will make recommendations at that time to adjust our SWM program as needed to reflect both our actual revenues and our continuing need to comply with MDE's regulatory requirements, including the City's anticipated new State stormwater permit. These adjustments will form the basis of the stormwater budget, likely for FY 2014.

We understand that the public sector exemption was critical to the ultimate passage of this fee bill.

Consequently, staff is attempting to contact Senator Raskin who introduced the amendment on the Senate floor. We intend to determine his intent and rationale for the exclusion, and seek any suggestions he may have to address this situation in either the short or long term. Unfortunately, this development runs counter to the City's efforts over the past three years to achieve a legislative solution to our ongoing fee dispute with Montgomery County. This question is even murkier for the other Phase Two jurisdictions (28 cities and 2 additional counties) that do not currently have a stormwater fee in place. For example, even though HB 987 does not directly apply to them, can they legally establish a fee that applies to public sector properties?

Please let me know if you have any additional questions on this matter.

Craig



Revised Summary of HB 987 4.12.docx



City of  
**Rockville**  
Get Into It

## MEMORANDUM

April 23, 2012

TO: Jenny Kimball, Acting City Manager

FROM: Craig Simoneau, Public Works Director  
Mark Charles, Chief of Environmental Management

SUBJECT: Summary of HB 987 - Local Stormwater Funding Legislation

### Introduction

- On April 9, 2012 one of the last acts of the Maryland General assembly was to pass HB 987 (SB 614) to promote and provide funding for local stormwater programs. The Bill requires ten local jurisdictions\* holding a Phase One municipal separate storm sewer system (MS4) Clean Water Act permit issued by the Maryland Department of the Environment to adopt and implement a local watershed protection and restoration program, including establishing a stormwater remediation fee and a local watershed protection and restoration fund. The final votes were 33-14 in the Senate and 91-45 in the House. The required programming and fee are similar to Rockville's SWM program, fee and fund.

\* The ten jurisdictions include: Baltimore City; Baltimore County; Montgomery County; Prince George's County; Howard County; Frederick County; Anne Arundel County; Harford county; Carroll County and Charles County. Two additional counties and 29 cities, including Rockville, hold Phase II MS4 permits but are not covered by the legislation. Fee authorization for these jurisdictions will continue to be under the enabling authority of 4-204.

### Summary of the Bill

The primary elements of the bill are as follows:

- The legislation amends sections 4-201 and 4-202; and is effective on July 1, 2012.
- It does not apply to any of the 10 Phase One jurisdictions that, by July 1, 2012, have adopted a stormwater "system of charges" (under section 4-204) so long as the *system of charges is consistent with the new legislation*. Note that the legislation does not apply to Rockville since we are not a Phase One jurisdiction.

- It requires the affected jurisdictions to establish the watershed protection and restoration program by July 1, 2013. The elements of the program must include:
  - A stormwater remediation fee (comparable to Rockville's SWM fee)
  - A local watershed protection fund (comparable to Rockville SWM enterprise fund)
- The fee must apply to all property owners except for property used for a public purpose and owned by the State, a unit of the State, a County, a municipality or a regularly organized volunteer fire department.
- The fee amount must be based on the share of stormwater service related to the property and provided by the city or county.
- The fee is separate from any charges established for new development, including permitting, plan review, inspection or monitoring fees.
- The local government must establish policies and procedures (approved by MDE) to extend a fee credit for actions taken by the property owner to improve the quality or reduce the quantity of the stormwater discharged from the property.
- A property may not be assessed a fee by both a City and a County. The City has the first option to assess a property (even if the County currently charges a fee). The County may do so if the City chooses not to.
- There must be a process in place to appeal the fee.
- The fee must be placed in the fund. It cannot revert or be transferred to the general fund.
- The fee funds are intended to be *in addition* to any existing State or Local stormwater expenditures.
- The fund can only be used for:
  - Capital improvements, including stream restoration
  - Operations & Maintenance
  - Mapping and assessing impervious surfaces
  - Monitoring, Inspections and Enforcement
  - Development review
  - Permits for new development
  - Stormwater and Wetland Education and Outreach
  - Grants to nonprofit organizations engaged in stormwater best management practices, stream and wetland restoration projects, and education/outreach

- Fund administration
- If additional revenue is placed in the fund, the fund may be used for other environmental purposes.
- Beginning July 1, 2014 and every 2 years thereafter, the jurisdiction must report on the following:
  - The properties subject to the fee
  - The amount of money generated
  - The percent of funds spent on the activities listed above (as the uses of the fund)
- The jurisdiction *may* establish a hardship exemption or include as part of the credit program.
- MDE may adopt implementing fee/fund regulations (no date provided).