AGENDA ITEM 14
March 6, 2018

Pubic Hearing

MEMORANDUM

March 2, 2018

TO: County Council

FROM: Amanda Mihill, Legislative Attorney

SUBJECT: **Public Hearing:** Bill 1-18, Water Quality Protection Charge – Appeals

Bill 1-18, Water Quality Protection Charge – Appeals, sponsored by Lead Sponsor Council President at the request of the County Executive, was introduced on February 6, 2018. A Transportation, Infrastructure, Energy & Environment Committee worksession is tentatively scheduled for March 22 at 10:15 a.m.

Bill 1-18 would allow a property owner to obtain review by the Director of Finance of certain decisions by the Director of Environmental Protection involving the Water Quality Protection Charge (WQPC). The Bill would also allow a final WQPC decision by the Director of Finance to be appealed to the Maryland Tax Court.

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Bill No. 1-18
Concerning: Water Quality Protection Charge – Appeals
Revised: 2/1/2018 Draft No. 1
Introduced: February 6, 2018
Expires: August 5, 2019
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the Request of the County Executive

AN ACT to:

(1) allow a property owner to obtain review by the Director of Finance of certain decisions by the Director of Environmental Protection involving the Water Quality Protection Charge;
(2) allow a final Water Quality Protection Charge decision by the Director of Finance to be appealed to the Maryland Tax Court; and
(3) generally amend County law regarding the Water Quality Protection Charge.

By amending
Montgomery County Code
Chapter 19, Erosion, Sediment Control, and Stormwater Management
Article II
Sections 19-21 and 19-35

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 19-21 and 19-35 are amended as follows:

19-21. Definitions.

In this Article, the following words and phrases have the following meanings unless the context indicates otherwise:

* * *

Director of Finance: The Director of the Department of Finance or the Director's designee.

* * *

19-35. Water Quality Protection Charge.

* * *

(e) (1) A property owner may apply for, and the Director of Environmental Protection must grant, a credit equal to a percentage, set by regulation, of the Charge if:

(A) the property contains a stormwater management system for which the County does not perform structural maintenance that either treats on-site drainage only or both on-site drainage and off-site drainage from other properties located within the same drainage area;

(B) the property does not contain a stormwater management system, but is located in the same drainage area as another that contains a stormwater management system for which the County does not perform structural maintenance and both properties have the same owner;

(C) the property contains a stormwater management system built as part of a County-approved stormwater management participation project; or

(D) the property does not contain a stormwater management system, but is located in the same drainage area as a property containing a stormwater management system built as part of a County-approved stormwater management participation project and both properties have the same owner.

(2) To receive the credit, the property owner must apply to the Director of Environmental Protection in a form prescribed by the Director not later than September 30 of the year that payment of the Charge is due. Any credit granted under this subsection is valid for 3 years.

(3) The Director of Environmental Protection may revoke a credit granted under paragraph (2) if the property owner does not continue to take the measures needed to assure that the stormwater management system remains in proper working condition by correcting any deficiencies discovered by the Director during a maintenance inspection. The Director must not reinstate a revoked credit until the property owner has sufficiently corrected the deficiencies to fully satisfy the property owner's maintenance obligations under Section 19-28.

(4) The owner of an owner-occupied residential property, or any non-profit organization that can demonstrate substantial financial hardship may apply for an exemption from all or part of the Charge for that property, based on criteria set by regulation. [The] To receive the exemption, the owner or organization [may] must apply for the exemption to the Director of Finance not later than September 30 of the year that payment of the Charge is due. After

reviewing the request for exemption, the Director of Finance must issue a written decision. The owner or organization may appeal the decision of the Director of Finance to the Maryland Tax Court. The appeal must be filed within 30 days after the date of the decision.

* * *

(h) A person that believes that the Director of Environmental Protection has mistakenly assigned a Charge to the person's property or computed the Charge incorrectly may apply to the Director of Environmental Protection in writing for a review of the Charge, and request an adjustment to correct any error, not later than September 30 of the year that payment of the Charge is due. [An aggrieved property owner may appeal the Director's decision to the County Board of Appeals within 30 days after the Director issues the decision.]

(i) A [person] property owner that believes that the Director of Environmental Protection has incorrectly calculated a credit, revoked the property owner's credit or denied the [person's] property owner's application for a credit [or exemption] under subsection (e) [may appeal the Director's] (1), (2), or (3), or denied the property owner's request for an adjustment under subsection (h), may seek review of the Director's decision by submitting a written request for review with supporting reasons to the [County Board] Director of [Appeals] Finance within 30 days after the [Director issues the] date of that decision. After reviewing the decision of the Director of Environmental Protection, the Director of Finance must notify the property owner in writing of the decision to affirm or reverse the decision of the Director of Environmental

Protection. The property owner may appeal the decision of the Director of Finance to the Maryland Tax Court. The appeal must be filed within 30 days after the date of the decision of the Director of Finance.

[(j) The Board of Appeals may hear and decide all appeals taken from a decision of the Director of Environmental Protection under this Section as provided in Article I of Chapter 2A.]

Sec. 2. Transition:

If an appeal of a final decision by the Director of Environmental Protection is pending before the Board of Appeals at the time this Act takes effect, the Board of Appeals must forward a recommended decision to the Director of Finance. The Director of Finance must issue a final written decision that adopts, modifies, or reverses the recommended decision. The property owner may appeal the decision of the Director of Finance to the Maryland Tax Court within 30 days after the date of the decision of the Director of Finance.

In COMCOR 19.35.01, any reference to the final decision of the Director of the Department of Environmental Protection must be treated as a reference to the Director's recommended decision to the Director of the Department of Finance and any reference to an appeal to the Board of Appeals must be treated as a reference to an appeal to the Maryland Tax Court.

LEGISLATIVE REQUEST REPORT

Bill 1-18
Water Quality Protection Charge – Appeals

DESCRIPTION:	Bill 1-18 would allow a property owner that wishes to challenge a decision by the Director of Environmental Protection involving Water Quality Protection Charge (WQPC) credits or billing adjustments to obtain review by the Director of Finance and make any final WQPC decisions by the Director of Finance appealable to the Maryland Tax Court.
PROBLEM:	Given that the WQPC is expressly designated as an excise tax, the current procedure under which appeals from final decisions concerning WQPC credits and billing adjustments are adjudicated by the Board of Appeals is inconsistent with State law assigning jurisdiction to hear tax appeals to the Maryland Tax Court.
GOALS AND OBJECTIVES:	To transfer jurisdiction to hear WQPC appeals from the County Board of Appeals to the Maryland Tax Court and require that, like any other appealable tax decision, final appealable WQPC decisions be issued by the Director of Finance rather than the Director of Environmental Protection.
COORDINATION:	Department of Environmental Protection; Department of Finance
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Vicky Wan, Water Quality Protection Charge & Technology Section, Department of Environmental Protection, 240-777-7722; Michael Coveyou, Treasury Division, Department of Finance, 240-777-8878
APPLICATION WITHIN MUNICIPALITIES:	Does not apply in Rockville, Takoma Park, or Gaithersburg
PENALTIES:	N/A

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Bill

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

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RECEIVED
MONTGOMERY COUNTY
COUNCIL

Isiah Leggett
County Executive

January 18, 2018

TO: Hans Riemer, President
County Council

FROM: Isiah Leggett, County Executive

RE: Proposed Bill: Water Quality Protection Charge, Appeal To Tax Court

I am writing to request Council approval of the attached bill to amend County law to require that a property owner who wants to appeal the imposition of the Water Quality Protection Charge (WQPC) take that appeal to the Tax Court, rather than the Board of Appeals as currently provided. This is consistent with Expedited Bill 45-15, which designated the Water Quality Protection Charge as an excise tax imposed under the County's general taxing authority.

Md. Code Ann., Tax-Gen. (TG) § 3-103 assigns jurisdiction to hear appeals from final tax-related decisions to the Maryland Tax Court. The County's designation of the Board of Appeals as the body having jurisdiction to adjudicate appeals from final WQPC decisions is inconsistent with TG § 1-103. Therefore, the proposed legislation transfers jurisdiction to hear WQPC appeals from the Board of Appeals to the Tax Court. Also, TG § 13-101(d)(1) designates the Director of Finance as the County's "tax collector." Under State law, the tax collector is empowered to issue final tax decisions that may be appealed to the Tax Court. Therefore, the proposed bill requires the Director of Finance to issue final, appealable WQPC decisions, rather than the DEP Director.

Under this new procedure any denial by the DEP Director of a property owner's credit application or request for a revised tax bill may be challenged by requesting a review of the denial by the Director of Finance. After completing the review, the Director of Finance would then issue a final decision which could then be appealed to the Tax Court.

IL:el
c: Marc Hansen, County Attorney
Alexandre Espinosa, Director, Department of Finance
Patricia Bubar, Acting Director, Department of Environmental Protection
Bonnie Kirkland, Assistant Chief Administrative Officer

Fiscal Impact Statement
Bill XX-18 Stormwater Management – Water Quality Protection Charge - Appeals

1. **Legislative Summary.**

Bill XX-18 would allow a property owner that wishes to challenge a decision by the Director of Environmental Protection involving Water Quality Protection Charge (WQPC) credits or billing adjustments to obtain review by the Director of Finance and make any final WQPC decisions by the Director of Finance appealable to the Maryland Tax Court.

2. **An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

This bill transfers jurisdiction to hear WQPC appeals from the County Board of Appeals to the Maryland Tax Court and require that, like any other appealable tax decision, final appealable WQPC decisions be issued by the Director of Finance rather than the Director of Environmental Protection. It does not affect the WQPC revenues or expenditures.

3. **Revenue and expenditure estimates covering at least the next 6 fiscal years.**

Not applicable.

4. **An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

Not applicable.

5. **An estimate of expenditures related to County's information technology (IT) systems including Enterprise Resource Planning (ERP) systems.**

Not applicable

6. **Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

Not applicable

7. **An estimate of the staff time needed to implement the bill.**

Minimal to no staff time is needed to implement this bill. Since 2013, DEP has received three requests for reconsideration. This bill transfers reconsideration requests from DEP to Finance. However, DEP would still administer and conduct the technical review of the request for reconsideration and work in conjunction with Finance to issue the signed decision.

8. **An explanation of how the addition of new staff responsibilities would affect other duties.**

Not applicable

9. **An estimate of costs when an additional appropriation is needed.**

Not applicable

10. **A description of any variable that could affect revenue and cost estimates.**

Not applicable

11. **Ranges of revenue or expenditures that are uncertain or difficult to project.**

Not applicable

12. **If a bill is likely to have no fiscal impact, why that is the case.**

This bill transfers jurisdiction to hear WQPC appeals from the County Board of Appeals to the Maryland Tax Court and require that, like any other appealable tax decision, final appealable WQPC decisions be issued by the Director of Finance rather than the Director of Environmental Protection. It does not affect the WQPC revenues or expenditures. DEP would still administer and conduct the technical review of the request for reconsideration and work together with Finance to issue the signed decision.

13. **Other fiscal impacts or comments.**

Not applicable

14. **The following contributed to and concurred with this analysis (enter name and dept.)**

Vicky Wan, Water Quality Protection Charge & Technology Section, Department of Environmental Protection, 240-777-7722;
Patrice Bubar, Acting Director, Department of Environmental Protection, 240-777-7786
Michael Coveyou, Treasury Division, Department of Finance, 240-777-8878
Alex Espinosa, Director, Department of Finance, 240-777-8870
Trevor Lobaugh, Fiscal and Policy Analyst, Office of Management and Budget, 240-777-2763

Jennifer A. Hughes, Director
Office of Management and Budget

1/22/18
Date

Economic Impact Statement
Bill XX-18 Stormwater Management – Water Quality Protection Charge - Appeals

Background:

Bill XX-18 would allow a property owner that wishes to challenge a decision by the Director of Environmental Protection involving Water Quality Protection Charge (WQPC) credits or billing adjustments to obtain review by the Director of Finance and make any final WQPC decisions by the Director of Finance appealable to the Maryland Tax Court.

1. **The sources of information, assumptions, and methodologies used.**

   - Department of Environmental Protection (DEP) Water Quality Protection Charge appeal data

2. **A description of any variable that could affect the economic impact estimates.**

   The bill will not have an economic impact and there are no variables that could affect that conclusion.

3. **The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.**

   The bill transfers jurisdiction to hear WQPC appeals from the County Board of Appeals to the Maryland Tax Court and require that, like any other appealable tax decision, final appealable WQPC decisions be issued by the Director of Finance rather than the Director of Environmental Protection. The fiscal impact statement for the bill notes that since 2013, DEP has received three requests for reconsideration. This bill transfers reconsideration requests from DEP to Finance. However, DEP would still administer and conduct the technical review of the request for reconsideration and work in conjunction with Finance to issue the signed decision. The change will not alter the WQPC revenues or expenditures and will not have an impact on employment, spending, savings, investment, incomes, and property values in the County.

4. **If a Bill is likely to have no economic impact, why is that the case?**

   See number 2.

5. **The following contributed to or concurred with this analysis:**

   David Platt, Dennis Hetman, and Robert Hagedoorn, Finance.

Alexandre A. Espinosa, Director
Department of Finance

1/22/2018
Date