

**MEMORANDUM**

TO: County Council

FROM: <sup>M</sup>Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Bill 34-12, Stormwater Management – Water Quality Protection Charge

Bill 34-12, Stormwater Management – Water Quality Protection Charge, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on November 27, 2012. A public hearing is tentatively scheduled for January 15, 2013 at 1:30 p.m.

Bill 34-12 would

- subject all properties not otherwise exempt under state law to the Water Quality Protection Charge;
- allow certain property owners to obtain a credit equal to a certain percentage of the Charge;
- exempt certain property owners that are able to demonstrate substantial financial hardship;
- provide for a phase-in of certain increases to the Charge; and
- generally amend County law regarding the Water Quality Protection Charge.

This packet contains:

Bill 34-12

Legislative Request Report

Circle #

1

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Bill No. 34-12  
Concerning: Stormwater Management –  
Water Quality Protection Charge  
Revised: 11-20-12 Draft No. 2  
Introduced: November 27, 2012  
Expires: May 27, 2014  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the Request of the County Executive

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**AN ACT** to:

- (1) subject all properties not otherwise exempt under state law to the Water Quality Protection Charge;
- (2) allow certain property owners to obtain a credit equal to a certain percentage of the Charge;
- (3) exempt certain property owners that are able to demonstrate substantial financial hardship;
- (4) provide for a phase-in of certain increases to the Charge; and
- (5) generally amend County law regarding the Water Quality Protection Charge.

By amending

Montgomery County Code  
Chapter 19, Erosion, Sediment Control and Storm Water Management  
Sections 19-20, 19-28, 19-29, 19-35

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

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

**Sec. 1. Sections 19-20, 19-28, 19-29 and 19-35 are amended as follows:**

**19-20. Purpose of article; scope.**

\* \* \*

[Associated nonresidential property: A nonresidential property from which stormwater drains into a stormwater management facility that primarily serves one or more residential properties.]

\* \* \*

**Impervious area or impervious surface:** Any surface that prevents or significantly impedes the infiltration of water into the underlying soil, including any structure, building, patio, [deck,] sidewalk, compacted gravel, pavement, asphalt, concrete, stone, brick, tile, swimming pool, or artificial turf. Impervious surface also includes any area used by or for motor vehicles or heavy commercial equipment, regardless of surface type or material, including any road, [road shoulder,] driveway, or parking area.

\* \* \*

**Person:** An individual;[, corporation, firm, partnership, joint venture, agency, organization, municipal corporation,] a legal entity; or a department, agency, or instrument of the County or, [state agency, or any combination of them] to the extent allowed by law, of federal, state, or local government.

\* \* \*

**19-28. Inspection and maintenance of stormwater management systems.**

\* \* \*

(b) *Maintenance of new stormwater management systems.*

- (1) Before issuing a sediment control permit to develop any property that requires implementation of best management practices, the Department must require the property owner to execute an easement and an inspection and maintenance

agreement that is binding on each later [owner[s]] owner of the land to be served by any private stormwater management system.

- (2) The easement must give the County a perpetual right of access to the stormwater management system at all reasonable times to inspect, operate, monitor, install, construct, reconstruct, modify, maintain, clean, or repair any part of the stormwater management system [within] in the area covered by the easement as needed to assure that the system remains in proper working condition under approved design and environmental standards. The inspection and maintenance agreement must require the owner to be responsible for all maintenance of any completed ESD treatment system and nonstructural maintenance of any on-site stormwater management facility if the development consists of residential property or [associated] of nonresidential property that contains a stormwater management facility built or retrofitted by the County. Otherwise, the inspection and maintenance agreement must require the owner to be responsible forever for all maintenance of the entire on-site stormwater management system, including maintaining in good condition, and promptly repairing and restoring, each ESD practice, grade surface, wall, drain, dam and structure, vegetation, erosion and sediment control measure, and any other protective device [forever].
- (3) The owner must record the easement and agreement in the County land records and deliver a certified copy of each recorded document to the Departments of Permitting Services

and Environmental Protection before the Department may issue a completion certificate.

- (4) After the Department issues a completion certificate for construction of a new stormwater management facility, the County must perform all structural maintenance on the facility if the facility serves residential property or [associated] is a facility built or retrofitted by the County that serves nonresidential property. No other person may perform structural maintenance on a stormwater management facility that the County is required to structurally maintain without the County's written consent.
  - (5) Any repair or restoration and maintenance performed under this Section must comply with each previously approved or newly submitted plan and any reasonable corrective measure specified by the Director of Environmental Protection.
- (c) *Maintenance of existing stormwater management [facilities] systems.*
- (1) The owner of a stormwater management facility that is not subject to subsection (b) must perform all structural maintenance needed to keep the facility in proper working condition. The owner of a residential property or [associated] a nonresidential property that contains a stormwater management facility built or retrofitted by the County, or a homeowners' association that includes the residential property, may execute a stormwater management easement granting the County a perpetual right of access to inspect, operate, monitor, install, construct, reconstruct, modify, maintain, clean, or repair any part of the stormwater management facility [within] in the

easement as needed to assure that the facility remains in proper working condition under approved design standards.

- (2) If the owner of a stormwater management facility grants a stormwater management easement to the County, the owner must make any structural repairs needed to place the facility in proper working condition, as determined by the Department of Environmental Protection, before the County enters into an inspection and maintenance agreement with the owner that [obligates] makes the County [to assume responsibility] responsible for structural maintenance of the facility. After the owner and the County have agreed that the County will [assume responsibility] be responsible for structural maintenance of the facility, the owner must record in the County land records the easement and any other agreement executed in conjunction with the easement that binds any later owner of the land. The owner must deliver a certified copy of each recorded document to the Department of Environmental Protection.
- (3) After the Department of Environmental Protection receives a certified copy of the easement and agreements, the County must structurally maintain and inspect the facility as provided in subsection (b).
- (4) If a property contains an ESD treatment system that was installed or retrofitted by the County under a sediment control permit, the inspection and maintenance agreement may require the County to maintain the system.

\* \* \*

**19-29. Stormwater management loan program.**

- (a) The Department of Environmental Protection must create a Stormwater Management Loan Program. The Program must provide direct loans to eligible homeowners' associations and other residential [and associated nonresidential] property owners to:
  - (1) make structural repairs to restore a stormwater management facility to acceptable design standards before the owner petitions the County to assume responsibility for future structural maintenance of the facility under Section 19-28(d), or
  - (2) cover the cost of abandoning a facility under Section 19-28(e).

\* \* \*

**19-35. Water Quality Protection Charge.**

\* \* \*

- (b) The Charge must be imposed on each [residential property and associated nonresidential] property, as specified in regulations adopted by the Executive under Method (1) to administer this Section. The regulations may define different classes of real property, depending on the amount of impervious surface on the property, stormwater runoff from the property, and other relevant characteristics, for purposes of applying the Charge. A property owner may request a credit equal to a percentage, set by regulation, of the Charge if the property contains a stormwater management system that is not maintained by the County or the owner participates in a County-approved water quality management practice or initiative. To receive the credit, the property owner must submit a request to the Director of Environmental Protection in a form prescribed by the Director not later than October 31 of the year before payment of the Charge is due. Any credit granted under this subsection is valid for 3

years. The owner of an owner-occupied residential property that is able to demonstrate substantial financial hardship may request an exemption from the Charge for that property based on criteria set by regulation. The owner-occupant may apply for the exemption by submitting a written request to the Director of Environmental Protection not later than April 1 of the year before payment of the Charge is due.

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## **Sec. 2. Implementation.**

- (a) Notwithstanding County Code Section 19-35(b), as amended by Section 1 of this Act, the Director of Finance must phase in the Water Quality Protection Charge as provided in this Section.
- (b) The Director must phase in over 3 years any increase in the Charge that results from the application of Section 19-35(b), as amended by Section 1 of this Act, or any regulation adopted under that Section, by including:
  - (1) only one-third of the additional impervious surface that has been added to the calculation of the Charge in the fiscal year that begins on July 1, 2013;
  - (2) only two-thirds of the additional impervious surface that has been added to the calculation of the Charge in the fiscal year that begins on July 1, 2014; and
  - (3) the full amount of the additional impervious surface that has been added to the calculation of the Charge in the fiscal year that begins on July 1, 2015.
- (c) The phase-in established in this Section does not apply to any portion of the Charge that results from the inclusion in the calculation of the



Charge of any impervious surface area that is created after this Act takes effect.

- (d) To receive a credit under Section 19-35(b) for the fiscal year that begins on July 1, 2013, the property owner must submit a request to the Director of Environmental Protection on a form prescribed by the Director not later than July 31, 2013.

*Approved:*

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Roger Berliner, President, County Council

Date

*Approved:*

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Isiah Leggett, County Executive

Date

*This is a correct copy of Council action.*

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Linda M. Lauer, Clerk of the Council

Date

## LEGISLATIVE REQUEST REPORT

Bill 34-12

Stormwater Management – Water Quality Protection Charge

**DESCRIPTION:** Amends the law governing the Water Quality Protection Charge by requiring all property owners not otherwise exempt under state law to pay the Charge, allowing property owners to obtain credits for undertaking certain water quality protection measures on their properties, and authorizing financial hardship exemptions for certain owner-occupants of residential properties.

**PROBLEM:** County law does not currently authorize imposition of the WQPC on the owner of any nonresidential property unless a portion of that property's impervious area drains to a residential stormwater treatment facility. The existing law classifies these properties as associated nonresidential properties ("ANRs"). The County's inability to levy the Charge on nonresidential properties other than ANRs has resulted in a large number of properties whose impervious surfaces contribute to water quality impairments while their owners are effectively exempt from paying into the Water Quality Protection Fund despite benefiting from the County's watershed restoration and water quality remediation initiatives.

In 2010, the County received its third Municipal Separate Storm Sewer System ("MS4") Permit from the Maryland Department of the Environment. This permit, which is mandatory under the Federal Clean Water Act, requires the County to retrofit 4,300 impervious acres not currently treated to the maximum extent practicable. The intent of this Bill is to make the WQPC more equitable by spreading the cost of restoration over all properties contributing to the problem and whose owners benefit from the County's water quality protection programs.

The existing law provides credits specifically geared to property owners that have installed stormwater treatment facilities on their properties. The credits specified in the bill are intended to reduce the amount of the Charge paid by property owners whose actions have reduced stormwater runoff and thereby assisted the County's efforts to comply with its MS4 Permit.

Finally, state law enacted in 2012 mandates that County law exempt property owners who can demonstrate that paying the Charge would create a substantial financial hardship.

**GOALS AND OBJECTIVES:** To make the WQPC more equitable by spreading the cost of implementing the pollution control measures required under the County's MS4 Permit to all property owners not otherwise exempt under state law; create a systems of credits to encourage property owners to participate in certain water quality management practices; and bring County law into compliance with state law as it pertains to locally levied charges to pay for stormwater remediation.

**COORDINATION:** Department of Environmental Protection, Department of Finance

**FISCAL IMPACT:** See Fiscal and Economic Impact Statement

**ECONOMIC IMPACT:** See Fiscal and Economic Impact Statement

**EVALUATION:** To be determined.

**EXPERIENCE ELSEWHERE:** All the stormwater utilities run by other jurisdictions surveyed throughout the County charge nonresidential properties.

**SOURCE OF INFORMATION:** Steven Shofar, Division Chief, Watershed Management Division, Department of Environmental Protection (7-7736)

**APPLICATION WITHIN MUNICIPALITIES:** Does not apply in Rockville and Takoma Park. The County collects the Charge for Gaithersburg and provides the funds to the city minus an administrative fee.

**PENALTIES:** Class A