

Alert

Anne Arundel County Executive Vetoes Stormwater Utility Fee: Status of Fee Program Uncertain

April 25, 2013

On Thursday, April 25, 2013 newly-appointed Anne Arundel County Executive Laura Neuman vetoed Bill No. 2-13, which would have imposed a stormwater utility fee on all developed private property in Anne Arundel County. Anne Arundel County and nine other Central Maryland jurisdictions are mandated, by State law (House Bill 987), to have a stormwater utility fee program established and implemented by July 1, 2013. Fees generated from this program will help these jurisdictions to pay for the massive costs associated with achieving Chesapeake Bay cleanup goals established by the federal government. The County Executive's veto injects considerable uncertainty into Anne Arundel's stormwater utility program, and given the July 1, 2013 implementation deadline, there may be significant developments in this proposed fee program over the next sixty days.

The vetoed legislation was anticipated to generate on the order of \$20 to \$25 million in revenue annually in Anne Arundel County, and was to be used to fund restoration and mitigation projects needed for compliance with its obligations under federal EPA's "Total Maximum Daily Load" ("TMDL") program, as well as the federally-issued Municipal Separate Storm Sewer System ("MS4") permits. While styled as a "fee," the utility charges will be added into annual property tax bills. Given the State legislation, it is likely that some version of the stormwater utility fee will be adopted by the Council and signed into law prior to July 1, 2013. Thus, developments should be tracked carefully.

Linowes and Blocher attorneys lobbied amendments to this legislation and will continue to track this issue closely in Anne Arundel County as well as the other impacted jurisdictions. The vetoed bill contained the following features, which may serve as a framework for anticipated changes prior to the July 1, 2013 deadline.

Fee Structure:

The amount of the fee was to be calculated based upon zoning district for residential districts and impervious surfaces for non-residential districts. The base fees were as follows:

Developed Residential Property in RA, RLD, and R1 Zones: \$170/year

Developed Residential Property in R1, R2, and R5 Zones: \$85/year

Developed Residential Property in R10, R15, and R22 Zones: \$34/year

Non-Residential Zoning Districts: \$85 per 2,800 square feet of impervious area.

Phase In, Exemptions, Caps and Credits:

A number of provisions were incorporated in the vetoed legislation which softened the financial impact for certain properties. These include:

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- **Governmental Exemptions:** Federal, State, County, and City of Annapolis properties, as well as volunteer fire stations, were exempt from the fee.
- **Non-Residential Phase-In:** In the first year, multifamily residential and non-residential properties with a fee of \$500 or more would only pay 60% of the total fee. The phase-in lasts for only FY 2014.
- **Tax Cap:** For non-residential properties, the amount of the stormwater utility fee was capped at 35% of the base real property tax bill, prior to the application of other exemptions or reductions.
- **Churches:** Churches were charged a flat fee of \$1 per year.
- **HOAs:** Stormwater utility fees for property owned by homeowners' associations were capped at the number of property tax accounts within the HOA multiplied by \$34.
- **Marinas:** Marinas certified as "clean marinas" by the Department of Natural Resources and which have more than 7.5 acres of impervious surface pay \$34/2,800 sf of impervious surface in excess of 7.5 acres. There were separate credits available for clean marinas holding State and federal discharge permits which regulate stormwater.
- **Private Schools:** The rate for private academic schools was \$170/year.
- **Credits for Stormwater Management Devices:** Properties that have been developed (or redeveloped) recently in compliance with the Maryland Department of Environment's "Environmental Site Design" standards, which are covered by a National Pollution Discharge Elimination System ("NPDES") discharge permit which includes stormwater controls, or which otherwise have "existing on-site systems, facilities, services or activities that reduce the quantity or improve the quality of stormwater discharged from the property" were eligible for up to a 50% credit against the fee. The Department of Public Works was required to adopt rules and regulations to implement these crediting protocols.

Appeals: The vetoed legislation had an appeal provision allowing a property owner to challenge the calculation of the amount of impervious surface. The initial appeal is to the Director of the Department of Public Works. If a property owner is dissatisfied with the initial decision, there is an opportunity for subsequent appeals to Maryland Tax Court.

Impacts: The County estimates that the new stormwater fee would have generated on the order of \$20 to \$25 million per year for Anne Arundel County for remediation projects. The County was anticipating issuing bonds based upon the expected revenue stream. The County anticipates that bonding of this revenue stream would result in excess of \$70 million of funding annually for the initial years.

Assuming that some version of the legislation is eventually passed, the County will be able to fund a large number of new stormwater retrofit and stream restoration projects, both on privately and publicly-owned properties. Many of these projects will be put out for competitive bid through an RFP process. While there are significant contracting and business opportunities for design professionals and contractors, there are likely to be substantial associated procurement and permitting challenges, particularly for County-funded projects sited on private property.

Legal Challenges: Given the scope and expense of this program, legal challenges seem likely. Any litigation should be tracked closely, as it could result in significant changes to Anne Arundel County's program.

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Conclusion: Anne Arundel County's new stormwater utility fee, in whatever form it is finalized, is significant, and will impact a wide variety of property owners, from individual residences to large institutional and commercial property owners. The costs will be substantial. There will also be significant opportunities for developers, design professionals, and contractors to take advantage of the many stormwater and stream restoration projects that are likely to result from this new fee. While the legislation has been vetoed, the County (and nine other Central Maryland jurisdictions) remain under a July 1, 2013 deadline imposed by the State, and it is likely that some version of the legislation will be signed into law prior to that date. Thus, we encourage all Anne Arundel County property owners, businesses, and citizens to carefully monitor this legislation as it goes before the County Council for reconsideration.

For more information, or if you have questions regarding how this legislation may to affect your property or your business, do not hesitate to contact us:

David M. Plott, Esq. 443-949-3790 dplott@linowes-law.com

Charles R. Schaller, Jr., Esq. 443-949-3793 cschaller@linowes-law.com

Benjamin S. Wechsler, Esq. 443-949-3128 bwechsler@linowes-law.com

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