

T&E ITEM #4  
April 28, 2010

**Worksession**

**MEMORANDUM**

April 26, 2010

TO: Transportation, Infrastructure, Energy & Environment Committee

FROM: Amanda Mihill, Legislative Analyst *AMihill*

SUBJECT: **Worksession:** Expedited Bill 11-10, Stormwater Management – Water Quality Protection Charge –Debt Service

Expedited Bill 11-10, Stormwater Management – Water Quality Protection Charge –Debt Service, sponsored by the Council President at the request of the County Executive, was introduced on March 23, 2010. A public hearing was held on April 20.

Bill 11-10 would authorize the County to pledge the water quality protection charge as security for certain debt obligations. The Executive's Recommended FY11-16 CIP for Conservation of Natural Resources, which the Committee reviewed on March 9, assumed the use of bonds paid for with water quality protection charge revenue to fund the construction of stormwater management facilities. As noted by Analyst Keith Levchenko in his March 9 packet, and Bob Hoyt, Director of the Department of Environmental Protection, these bonds would be treated like revenue bonds and would not compete with the County's general obligation debt. The Committee and Council supported this approach. **Council staff recommends approval of Bill 11-10.**

This packet contains:

	<u>Circle #</u>
Expedited Bill 11-10	1
Legislative Request Report	3
Memo from County Executive	4
Fiscal Impact Statement	7
DEP Testimony	9

Expedited Bill No. 11-10  
Concerning: Stormwater Management –  
Water Quality Protection Charge –  
Debt Service  
Revised: 3-22-10 Draft No. 1  
Introduced: March 23, 2010  
Expires: September 23, 2011  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

---

By: Council President at the Request of the County Executive

---

**AN EXPEDITED ACT to:**

- (1) authorize the County to pledge the water quality protection charge as security for certain debt obligations; and
- (2) generally amend County laws related to stormwater management.

By amending

Montgomery County Code  
Chapter 19, Erosion, Sediment Control and Stormwater Management  
Section 19-35, Water Quality Protection Charge

<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. Section 19-35 is amended as follows:**

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

\* \* \*

(f) The Director must deposit funds raised by the Charge, and funds for this purpose from any other source, into a stormwater management fund. Funds in the stormwater management fund may be applied and pledged to pay debt service on debt obligations to finance the construction and related expenses of stormwater management facilities as approved in the Capital Improvements Program. [The Funds in the stormwater management fund must only be [appropriated] used for:

(1) construction, operation, financing, and maintenance of stormwater management facilities, and related expenses, including debt service payments related to construction and related expenses of stormwater management facilities;

\* \* \*

**Sec. 2. Expedited Effective Date.**

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date when it becomes law.

*Approved:*

\_\_\_\_\_  
Nancy Floreen, President, County Council

\_\_\_\_\_  
Date

*Approved:*

\_\_\_\_\_  
Isiah Leggett, County Executive

\_\_\_\_\_  
Date

## LEGISLATIVE REQUEST REPORT

Expedited Bill 11-10

Stormwater Management – Water Quality Protection Charge – Debt Service

**DESCRIPTION:** This Bill would authorize the County to pledge the water quality protection charge as security for certain debt obligations; and generally amend County laws related to stormwater management.

**PROBLEM:** In order to meet current fiscal challenges facing the County, the County must increase the amount of revenue available to maintain core Government programs and services.

**GOALS AND OBJECTIVES:** To enhance the amount of revenue available to support core government programs and services.

**COORDINATION:** Office of Management and Budget; Department of Finance

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** To be requested.

**EVALUATION:** Subject to the general oversight of the County Executive and the County Council.

**EXPERIENCE ELSEWHERE:**

**SOURCES OF INFORMATION:** Joseph Beach, Director of Management and Budget  
Kathleen Boucher, Assistant Chief Administrative Officer  
Marc Hansen, Acting County Attorney

**APPLICATION WITHIN MUNICIPALITIES:** To be researched.

**PENALTIES:** N/A.

F:\Law\Bills\1011 Water Quality Protection Charge\Lrr.Doc



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

March 18, 2010

TO: Nancy Floreen, Council President

FROM: Isiah Leggett, County Executive 

SUBJECT: FY 2011 Budget Reconciliation and Financing Act

2010 MAR 19 AM 9:26

RECEIVED  
MONTGOMERY COUNTY  
COUNCIL

I am attaching for Council's consideration a Budget Reconciliation and Financing Act (BRFA) which makes changes to the County Code that are necessary to reconcile my recommended FY 2011 operating budget with projected FY 2011 revenues. This bill will help the County address its current fiscal challenges by increasing the amount of revenue available to maintain and enhance core government programs and services. I am also attaching a Legislative Request Report for the bill. A Fiscal Impact Statement will be transmitted to Council soon.

The BRFA consists of five primary components. First, it increases the energy tax rates. Second, it temporarily redirects the portion of recordation tax revenues that are currently reserved for County Government capital projects and rental assistance programs to the general fund for general purposes. Third, it allows revenues generated by the Water Quality Protection Charge to be used to pay debt service on bonds that fund stormwater management infrastructure projects. Fourth, it transfers responsibility for administering equal employment opportunity programs from the Office of Human Resources to the Office of Human Rights. Fifth, it authorizes the Fire and Rescue Service to impose an Emergency Medical Services (EMS) Transport Fee.

As the Council knows, the County's energy tax is actually a tax on fuel oil, natural gas, and electric utility providers which is passed on to all utility customers. Because the energy tax is a broad-based tax, its impact on families is reduced by the fact that it is paid by businesses and households, and all levels of government, including federal agencies located in the County (that currently do not pay any other major County tax). Additionally, the energy tax is a consumption tax based on energy usage. It is not based on the overall size of the utility bill or the cost per unit of energy used as billed to the consumer. Therefore, the amount of the tax can be lessened by reduced energy usage. Based on existing usage patterns for the average homeowner, my recommended FY 2011 budget assumes an average increase in the energy tax of approximately \$2.90 per month. I have also recommended additional funding in the Health and

Human Services budget for the County's Energy Assistance Program to minimize the impact to low-income households.

My recommended FY11 budget contains several efforts to restructure County Government to improve responsiveness and efficiency. One of these changes is the transfer of the Equal Employment Opportunity program from the Office of Human Resources to the Office of Human Rights. This shift takes advantage of existing staff resources to reduce costs and leverage the efforts of County staff to produce better outcomes for the community. This bill modifies the County code provisions relating to the responsibilities of the Office of Human Resources and Office of Human Rights to reflect this change.

The EMS Transport Fee is needed to fund fire and rescue services in the County. Without this fee, emergency response to residents will be impaired. EMS Transport Fees are widely employed throughout the nation and by local governments throughout the Washington region. These jurisdictions have not experienced any indication that people decline to use emergency transports as a result of the imposition of an ambulance fee. By creating a prepaid fund for uninsured County residents, the legislation that I am transmitting imposes a fee only on County residents with health insurance which covers EMS Transports. This arrangement more equitably distributes the economic burden of providing EMS transport services in the County between residents and nonresidents. The legislation provides for a hardship waiver for nonresidents who fall below 300 percent of federal poverty guidelines.

To provide the Council with a complete picture of the EMS Transport Fee program created by this bill, I am attaching a copy of the proposed Executive Regulation to implement the fee. This proposed regulation will be published in the April 2010 County Register and submitted to Council after the 30-day public comment period ends on April 30.

Finally, I note that the BRFA is consistent with Bill 31-09, Consideration of Bills – One Subject (enacted on September 29, 2009), which requires that a bill “contain only one subject matter”. As noted in the Council staff packet for Bill 31-09, that bill was intended to adopt the “one subject rule” of the Maryland Constitution, which requires all laws enacted by the General Assembly to contain only one subject. The Maryland Attorney General has repeatedly concluded that budget reconciliation and financing bills do not conflict with the one subject rule. For example, in 2005, the Attorney General noted that “[f]or the past fourteen years, 15 budget reconciliation, budget reconciliation and financing acts or variations thereof, have been used to balance budgets, raise revenue, make fund transfers, redistribute funds, cut mandated appropriations and authorize or mandate appropriations.”<sup>1</sup> The Attorney General concluded that all of those bills were consistent with the one subject rule because the provisions of the bills were “clearly germane to the single subject of financing State and local government”. *See Panitz v. Comptroller of the Treasury*, 247 Md. 501 (1967) (Omnibus supplemental appropriation bill comprised a single subject for purposes of § 29 of Art III of the State Constitution even though

---

<sup>1</sup> See May 19, 2005 memorandum from Attorney General J. Joseph Curran, Jr. to Governor Robert Ehrlich regarding House Bill 147 (2005).

Nancy Floreen, Council President  
March 18, 2010  
Page 3

the bill combined such diverse elements as police aid to local government; teacher salaries and pensions; and general unrestricted grants to local government).

Attachments (3)

cc: Joseph Adler, Director, Office of Human Resources  
Jennifer Barrett, Director, Finance Department  
Joseph Beach, Director, OMB  
Kathleen Boucher, ACAO  
Richard Bowers, Fire Chief, MCFRS  
Marc Hansen, Acting County Attorney  
Robert Hoyt, Director, DEP  
Richard Y. Nelson, Jr., Director, DHCA  
James Stowe, Director, Office of Human Rights



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett  
County Executive

Joseph F. Beach  
Director

MEMORANDUM

April 12, 2010

TO: Nancy Floreen, President, County Council  
FROM: Joseph F. Beach, Director, Office of Management and Budget  
SUBJECT: Expedited Bill 11-10, Stormwater Management – Water Quality Protection Charge – Debt Service

2010 APR 14 AM 7:17

RECEIVED  
MONTGOMERY COUNTY  
COUNCIL

The purpose of this memorandum is to transmit a fiscal and economic impact statement to the Council on the subject legislation.

**LEGISLATION SUMMARY**

Bill 11-10 would authorize the County to pledge the water quality protection charge to pay debt service on debt obligations to finance the construction and related expenses of stormwater management facilities approved in the County's Capital Improvement Plan.

**FISCAL AND ECONOMIC SUMMARY**

The County is required to comply with the National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS-4) permit issued by the Maryland Department of the Environment. A new permit, with expanded requirements, was issued in February, 2010. The Water Quality Protection Charge (WQPC) is the appropriate funding source for County programs and projects needed to comply with the MS-4 permit, including related capital construction.

To the extent that debt is used to finance the cost of MS-4 compliance, the interest cost would be a fiscal impact of Bill 11-10. The cost of issuing, marketing, and servicing the bonds will be capitalized in keeping with standard County practices.

Bill 11-10 will authorize the County to issue bonds secured by the WQPC to finance the construction of stormwater management facilities, thereby moderating the economic impact on taxpayers by spreading the capital costs of MS-4 compliance over the lifetime of the bonds. Without Bill 11-10, capital costs for complying with MS-4 would be paid from WQPC current revenue (cash), resulting in a significantly higher WQPC rate per equivalent residential unit (ERU) to generate the resources needed to meet MS-4 requirements.

	<u>Estimated WQPC per ERU</u>	
	<u>FY11</u>	<u>FY12</u>
With MS-4 Capital Construction Funded Using Bonds	\$49.00	\$60.00
With MS-4 Capital Construction Funded from WQPC Current Revenue	\$78.50	\$90.00

Consequently, Bill 11-10 will moderate the economic impact of MS-4 compliance on County taxpayers.

Office of the Director

Nancy Floreen, President, County Council  
April 12, 2010  
Page 2

The following contributed to and concurred with this analysis: John Greiner, Office of Management and Budget; Glenn Wyman, Department of Finance; Bob Hoyt, Department of Environmental Protection; Gladys Balderrama, Department of Environmental Protection.

JFB:jg

- c: Kathleen Boucher, Assistant Chief Administrative Officer
- Dee Gonzalez, Offices of the County Executive
- Bob Hoyt, Director, Department of Environmental Protection
- Steve Shofar, Department of Environmental Protection
- Gladys Balderrama, Department of Environmental Protection
- Jennifer Barrett, Director, Department of Finance
- Glenn Wyman, Department of Finance
- John Greiner, Office of Management and Budget
- John Cuff, Office of Management and Budget

## **Expedited Bill 11-10**

### **Stormwater Management Protection Charge Debt Service**

**April 20, 2010 Public Hearing**

**Testimony of Robert Hoyt, Director, Department of Environmental Protection**

Good afternoon. My name is Bob Hoyt. I am the Director of the Montgomery County Department of Environmental Protection. Thank you for the opportunity to testify on behalf of the County Executive in support of Expedited Bill 11-10, Stormwater Management - Water Quality Protection Charge - Debt Service.

Bill 11-10 would authorize the County to issue bonds secured by the Water Quality Protection Charge (WQPC) to finance the construction of stormwater management facilities included in the County Executive's FY11-16 Capital Improvement Program.

A new stormwater permit was issued to the County on February 16, 2010. The permit includes a restoration requirement to treat the stormwater runoff from 20% of the County's impervious area not currently treated to the maximum extent practicable. This equates to approximately 4100 acres of impervious area. The restoration requirement will be met by implementing the projects identified in the Stormwater CIP for FY11-16. The CIP includes \$86 million dollars over the five-year permit term.

The financial investment would be challenging to meet even during prosperous economic times without a dedicated revenue stream or without having to redirect County GO bonds from other funding priorities.

DEP has worked closely with the Department of Finance and the Office of Management and Budget in developing Bill 11-10 to ensure a method of implementation that would minimize the impact to County property owners, and still meet our permit obligations. This bill effectively pledges a portion of the Water Quality Protection charge to pay debt service on bonds issued to construct stormwater management facilities. These bonds will, therefore, be self-supporting and not compete with the County's general obligation debt.

The Water Quality Protection Charge already provides pay-as-you go funding for a portion of the Stormwater Management CIP. Bond-funding backed by the Water Quality Protection Charge instead of cash funding will help mitigate the economic impact on property owners, and spread the capital costs of permit compliance over the life of the bonds.

Without approval of Bill 11-10, the County would need to establish a significantly higher WQPC rate per Equivalent Residential Unit (ERU) to fund the CIP. If we were to pay cash to fund the FY11-16 CIP, the WQPC rate charged to the taxpayers would be \$79.50 or 60% more than the County Executive recommended rate for FY11 of \$49.00 per ERU. This increase would represent an undue burden on Montgomery County property owners. County Executive Leggett urges your prompt and favorable consideration.

I would be happy to address any questions the Council may have.