

**MEMORANDUM**

March 16, 2012

TO: County Council

FROM: Jacob Sesker, Senior Legislative Analyst 

SUBJECT: **Introduction:** Expedited Bill 12-12, Bond Authorization – Stormwater Management

Expedited Bill 12-12, Bond Authorization Stormwater Management, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on March 20, 2012. A public hearing is tentatively scheduled for April 10 at 1:30 p.m.

Bill 12-12 authorizes the County to issue special limited obligation bonds for the purposes of financing the planning, design, acquisition, and construction of stormwater management facilities and other related projects.

This packet contains

Expedited Bill 12-12  
Legislative Request Report  
Memo from County Executive

Circle #

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Expedited Bill No. 12-12  
Concerning: Bond Authorization –  
Stormwater Management  
Revised: 3/9/2012 Draft No. 1  
Introduced: March 20, 2012  
Expires: September 20, 2013  
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 EXPEDITED ACT** to authorize the County to issue special limited obligation bonds to finance the planning, design, acquisition, and construction of stormwater management facilities and related projects.

By adding to the Laws of Montgomery County 2012

<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:*

1       **Sec. 1. The following is added to the Laws of Montgomery County**

2       **2012:**

3       (a)    The County may at any time and from time to time sell in one or more  
4            series an aggregate principal amount not to exceed \$95,000,000 in  
5            special limited obligation bonds (the “Bonds”) authorized under the  
6            authority of Section 5(P)(2) of Article 25A of the Maryland Code  
7            Title 4 of the Environmental Article of the Maryland Code (“Title  
8            4”), as amended and Chapter 19 of the County Code, as amended to  
9            finance the planning, design, acquisition, and construction of  
10           stormwater management facilities and related projects as approved in  
11           the County’s Capital Improvements Program.

12       (b)   The Bonds are special limited obligations of the County and must not  
13           constitute a pledge of the full faith and credit and unlimited taxing  
14           power of the County. The Bonds must be payable by the County from  
15           its water quality protection charges authorized to be imposed on  
16           certain real property in the County under Title 4 and Section 19-35 of  
17           the County Code (the “Water Quality Protection Charge”) and  
18           deposited into the stormwater management fund (the “Fund”). To pay  
19           the interest and redeem and pay the Bonds authorized by this Act as  
20           they respectively mature, the County must impose the Water Quality  
21           Protection Charge in each fiscal year in an amount sufficient to  
22           provide for the payment, when due, of the principal of and interest on  
23           all Bonds maturing in each fiscal year and all other costs and expenses  
24           authorized for payment and determined to be paid by the County from  
25           the Fund in that fiscal year under Chapter 19. If the revenue derived  
26           from the Water Quality Protection Charge imposed in any fiscal year  
27           proves inadequate for the listed purposes, additional charges must be

28 imposed in the next fiscal year to make up any deficiency. The  
29 County may apply to the payment of the principal of and interest on  
30 the Bonds and such other costs and expenses any other funds legally  
31 available and deposited to the Fund. To the extent such funds are  
32 received or are receivable in any fiscal year, the amount of the Water  
33 Quality Protection Charge required to be imposed may be reduced  
34 accordingly.

35 (c) The Bonds may be sold for a price at or above par, plus accrued  
36 interest to the date of delivery. The County Executive may sell the  
37 Bonds through a public sale or through a private (negotiated) sale  
38 without solicitation of competitive bids, as the County Executive by  
39 executive order after consulting the Director of Finance finds to be in  
40 the best interests of the County. Any sale of the Bonds by private  
41 negotiation is for the County's best interest.

42 (d) In accordance with this Act, the County Executive may determine by  
43 Executive Order, for each Bond or series of Bonds issued under this  
44 Act, all matters relating to the sale, issuance, delivery and payment of  
45 the Bonds, including the purposes for which the Bonds are issued, the  
46 date or dates of sale of the Bonds, the designation of the Bonds, the  
47 date of delivery of the Bonds, the authorized denominations for the  
48 Bonds, the redemption provisions, if any, pertaining to the Bonds, the  
49 manner of authentication and numbering of the Bonds, the date from  
50 which interest on the Bonds accrues, the rate or rates of interest borne  
51 by the Bonds or the method of determining the rates, the interest  
52 payment and maturity dates of the Bonds, including provisions for  
53 mandatory sinking fund redemption of any term bonds, the forms of  
54 the Bonds, whether the Bonds are to be issued in book-entry form and

55 all matters incident to the issuance of Bonds in book-entry form, and  
56 the provisions for the registration of Bonds. The execution and  
57 delivery of Bonds is conclusive evidence of the approval of all terms  
58 and provisions of the Bonds on behalf of the County.

59 (e) Except as otherwise provided in an Executive Order, the Bonds must  
60 be executed in the name of the County and on its behalf by the County  
61 Executive, whose signature may be by facsimile; an original or  
62 facsimile of the official seal of the County must be imprinted or  
63 otherwise reproduced thereon, attested by the manual or facsimile  
64 signature of the Director of Finance, and authenticated by the manual  
65 or facsimile signature of the Paying Agent/Registrar or any designated  
66 signer.

67 (f) The County hereby covenants that if the County Executive decides to  
68 issue the Bonds as tax-exempt bonds or bonds that must comply with  
69 regulations regarding tax-exempt bonds, the County will take, or  
70 refrain from taking, all actions necessary to comply with Section 103  
71 and Sections 141 through 150 of the Internal Revenue Code,  
72 applicable to the Bonds issued as tax-exempt bonds to preserve the  
73 status of the interest on the Bonds as excluded from gross income for  
74 Federal income tax purposes. Without limiting the generality of the  
75 covenant in the preceding sentence: (1) the County must not use or  
76 permit the use of any proceeds of the Bonds issued as tax-exempt  
77 bonds or any funds of the County in a manner as would cause the  
78 interest on the Bonds to be included in gross income for Federal  
79 income tax purposes; (2) the County must regulate the investment of  
80 the proceeds of the Bonds so as not to cause any of the Bonds to be an  
81 "arbitrage bond" within the meaning of Section 148 of the Internal

82 Revenue Code and the Income Tax Regulations thereunder; (3) the  
83 County must, if and to the extent necessary, make periodic  
84 determinations of the rebate amount and timely pay any rebate  
85 amount, or installment thereof, to the United States of America; (4)  
86 the County must prepare and timely file Internal Revenue Service  
87 Form 8038-G and 8038-B, Information Return for Tax-Exempt  
88 Governmental Obligations; and (5) the County Executive or the  
89 Executive designee must prepare and execute and certify any other  
90 document required to assure compliance with the applicable  
91 provisions of Section 103 and Sections 141 through 150 of the  
92 Internal Revenue Code, and the Income Tax Regulations thereunder.

93 The County Executive may take any actions necessary or desirable to  
94 assure that any Bonds authorized by this Act are allowed a tax credit,  
95 that the County is entitled to a subsidy from the United States or any  
96 agency or instrumentality thereof with respect to such Bonds or the  
97 interest payable thereon, or the interest thereon is entitled to any other  
98 available benefits under the Internal Revenue Code, as amended.

- 99 (g) In connection with the issuance of any Bonds under this Act, the  
100 County may enter into one or more agreements as the County  
101 Executive finds necessary or appropriate for the issuance, sale,  
102 delivery or security of the Bonds, which may include: (1)  
103 underwriting, purchase or placement agreements for Bonds sold at  
104 private (negotiated) sale in accordance with this Act; (2) trust  
105 agreements with commercial banks or trust companies for the  
106 issuance and security of the Bonds; (3) any dealer, remarketing or  
107 similar agreements for the placement or remarketing of the Bonds; (4)  
108 agreements for any credit or liquidity facilities supporting any Bonds;

109 (5) agreements with commercial banks or trust companies for the  
110 deposit of proceeds of any Bonds; (6) agreements with fiscal agents  
111 for the issuance of Bonds, their authentication, registration or payment  
112 or other similar services; and (7) continuing disclosure agreements,  
113 including any agreement required to enable the underwriters of any  
114 Bonds to meet the requirements of paragraph (b)(5) of Rule 15c2-12  
115 issued by the Securities and Exchange Commission. Each such  
116 agreement must take the form determined by the County Executive by  
117 Executive Order.

118 (h) The County Executive, the Chief Administrative Officer, the County  
119 Attorney, the Director of Finance and the Clerk of the Council, on  
120 behalf of the County, may execute all instruments and otherwise take  
121 any action necessary to carry out the authority conferred by this Act.

122 (i) The issuance and sale of any bonds under this Act are exempt from  
123 the provisions of Article 31, Sections 9, 10, and 11 of the Maryland  
124 Code.

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

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

129 *Approved:*

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Roger Berliner, President, County Council

Date

131 *Approved:*

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Isiah Leggett, County Executive

Date

## LEGISLATIVE REQUEST REPORT

Expedited Bill 12-12

*Bond Authorization – Stormwater Management*

- DESCRIPTION:** Legislation to authorize the issuance of special obligation bonds in an amount not to exceed \$95,000,000. The Bonds will be Special Limited Obligations of the County secured by the Water Quality Protection Charge and will not constitute a pledge of the full faith and credit and unlimited taxing power of the County.
- PROBLEM:** An Ordinance is necessary to establish the level of debt that may be secured by the Water Quality Protection Charge authorized under Section 19-35 of Chapter 19 of the County Code and to authorize actions by the County Executive to execute documents related to the issuance and delivery of Water Quality Protection Charge Revenue Bonds (the "Bonds").
- GOALS AND OBJECTIVES:** The goal is to provide new bond authorization for the planning, design, acquisition and construction of stormwater management facilities and other related projects. The bonds will be sold in one or more series in an aggregate amount not to exceed \$95,000,000 as currently approved for projects in the FY11-16 Amended Capital Improvements Program to be funded by Water Quality Protection Charge bonds.
- COORDINATION:** This bill is new legislation that does not duplicate or overlap existing law.
- FISCAL IMPACT:** Future annual debt service costs are incurred at the time the bonds are actually sold, and are included in the Approved Operating Budget and Annual Appropriations for Debt Service.
- ECONOMIC IMPACT:** To be requested.
- EVALUATION:** To be requested.
- EXPERIENCE ELSEWHERE:** To be researched.
- SOURCE OF INFORMATION:** Jacob Sesker, Senior Legislative Analyst, 240-777-7942
- APPLICATION WITHIN MUNICIPALITIES:** To be researched.
- PENALTIES:** Not applicable



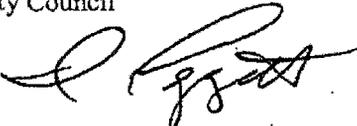
OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

March 2, 2012

TO: Roger Berliner, President  
Montgomery County Council

FROM: Isiah Leggett   
County Executive

SUBJECT: Legislation Related to Special Limited Obligation Bonds Financed by the Water Quality Protection Charge

I am transmitting the attached bill to authorize the County to issue Special Limited Obligation Bonds for the purpose of financing the planning, design, acquisition and construction of stormwater management facilities and other related projects. The bill was prepared by the County's bond counsel, McKennon Shelton & Henn LLP, approved by the County Attorney for legal sufficiency and reviewed by the Department of Finance. An Ordinance is necessary to establish the level of debt that may be secured by the Water Quality Protection Charge authorized under Section 19-35 of Chapter 19 of the County Code and to authorize actions by the County Executive to execute documents related to the issuance and delivery of Water Quality Protection Charge Revenue Bonds (the "Bonds").

The Bonds will be sold in one or more series in an aggregate amount not to exceed \$95,000,000 as currently approved for projects in the FY11-16 Amended Capital Improvements Program to be funded by Water Quality Protection Charge (WQPC) Revenue Bonds. The Bonds will be special limited obligations of the County secured by the WQPC and will not constitute a pledge of the full faith and credit and unlimited taxing power of the County. The Water Quality Protection Charge will be set annually at a rate to provide for payment of debt service on the Bonds and other costs of the stormwater management program authorized to be paid from the Charge.

I recommend that this bill be enacted on an expedited basis in order to comply with the need for a late spring 2012 bond issue.

If you have any questions please contact Joseph F. Beach at extension 7-8870.

IL:jc

Attachments

cc: Robert Hoyt, Director, DEP  
Jennifer Hughes, Director, OMB