

MEMORANDUM

October 22, 2015

TO: County Council

FROM: Amanda Mihill, Legislative Attorney *A. Mihill*

SUBJECT: **Introduction:** Expedited Bill 45-15, Stormwater Management - Water Quality Protection Charge – Curative Legislation

Expedited Bill 45-15, Stormwater Management - Water Quality Protection Charge – Curative Legislation, sponsored by Lead Sponsor Council President at the request of the County Executive, is scheduled to be introduced on October 27, 2015. A public hearing is tentatively scheduled for November 17, 2015 at 1:30 p.m.

Bill 45-15 would designate the Water Quality Protection Charge as an excise tax imposed under the County's general taxing authority; ratify the collection of stormwater management charges levied under Section 19-35 since July 1, 2013; and continue the levy and collection of the Water Quality Protection Charge from property owners under the same terms and conditions as set out in Section 19-35.

This packet contains:

Bill 45-15

Legislative Request Report

Memo from County Executive

Fiscal Impact Statement

Circle #

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Expedited Bill No. 45-15
Concerning: Stormwater Management –
Water Quality Protection Charge –
Curative Legislation
Revised: 10/22/15 Draft No. 2
Introduced: October 27, 2015
Expires: April 27, 2017
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 EXPEDITED ACT to:

- (1) designate the Water Quality Protection Charge as an excise tax imposed under the County's general taxing authority;
- (2) ratify the collection of stormwater management charges levied under Section 19-35 since July 1, 2013; and
- (3) continue the levy and collection of the Water Quality Protection Charge from property owners under the same terms and conditions as set out in Section 19-35.

By amending

Montgomery County Code
Chapter 19, Sediment Control and Storm Water Management
Sections 19-21 and 19-35

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

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:

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

2 **ARTICLE II. STORMWATER MANAGEMENT.**

3 **19-21. Definitions.**

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

6 * * *

7 Water Quality Protection Charge: An excise tax charged to a property owner
8 for the privilege of maintaining impervious surfaces on the owner's property.

9 **19-35. Water Quality Protection Charge.**

10 (a) As authorized by [State law] Section 52-17 (a) or Maryland Code,
11 Environment Art., § 4-204, or both, the Director of Finance must
12 annually impose and collect a Water Quality Protection Charge, as
13 provided in this Section. The Director must collect the Charge in the
14 same manner as County real property taxes, apply the same interest,
15 penalties, and other remedies (including tax sale) if the Charge is not
16 paid, and generally treat the Charge for collection and administration
17 purposes as if it were a County real property tax. The Director may
18 treat any unpaid Charge as a lien on the property to which the charge
19 applies.

20 * * *

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22 **Sec. 2. Expedited Effective Date:** The Council declares that this legislation
23 is necessary for the immediate protection of the public interest. This Act takes effect
24 on the date on which it becomes law.

Sec. 3. Curative Effect: This Act retroactively validates and ratifies the levy and collection under Section 19-35 of all stormwater management charges collected since July 1, 2013.

Expedited Bill 34-12 amended County Code Section 19-35 to subject all properties not otherwise exempt under State law to the Water Quality Protection Charge, allow property owners to obtain credits for undertaking certain water quality protection measures on their properties, and authorize financial hardship exemptions for certain owner-occupants of residential properties. The effective date of Expedited Bill 34-12 was July 1, 2013.

In *Paul N. Chod v. Board of Appeals for Montgomery County* (Civil No. 398704-V, entered July 23, 2015) the Circuit Court for Montgomery County opined that the Water Quality Protection Charge “is invalid per se because this charge need not reasonably relate to the stormwater management services provided by the County.” The County has appealed this decision. This Act is intended to correct the potential defect noted by the Circuit Court by designating the stormwater management charges imposed by Section 19-35 as an excise tax imposed under the general taxing authority of Montgomery County to levy excise taxes. This Act is not intended to alter the policy, purposes, or substance of Section 19-35.

The County Council finds that:

- (a) Montgomery County had the authority in 2013 to adopt Section 19-35 under the County’s taxing authority—see Section 52-17;
- (b) This Act furthers the original purpose of Section 19-35 to require individual owners of property with impervious surfaces to pay a share of the public costs associated with mitigating and remediating the environmental impact of stormwater runoff throughout the County;
- (c) The legal defect in the adoption of Bill 34-12 (if any) was minor, because the County had in 2013 and continues to have the authority to

levy and collect from property owners an excise tax for the purpose of producing revenue to fund the water quality protection measures needed to ameliorate the environmental impact of stormwater runoff;

(d) All property owners have benefitted from water quality protection and restoration measures made possible by the revenues generated from the stormwater management charges imposed under Section 19-35; and

(e) It is just and proper that this Act take effect as of July 1, 2013 in order that the public will continue to benefit from the water quality protection and restoration measures undertaken and to be undertaken as a result of the revenues provided by the Water Quality Protection Charge.

Approved:

George Leventhal, President, County Council

Date

Approved:

Isiah Leggett, County Executive

Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 45-15

Stormwater Management – Water Quality Protection Charge – Curative Legislation

DESCRIPTION: This legislation would correct a potential defect in Section 19-35 by explicitly designating the Water Quality Protection Charge as an excise tax authorized under the County's general taxing authority to levy excise taxes.

PROBLEM: The State law referenced in Section 19-35 as the enabling authority for the Water Quality Protection Charge ("WQPC") authorizes local adoption of a tax to provide the revenue needed to implement the water quality protection and restoration measures mandated by the State in accordance with the federal Clean Water Act. A court ruling has called into question the validity of the WQPC as a tax under the Environment Article of the Maryland Code. At the same time, Section 19-35 makes no reference to the general taxing authority that the State granted to the County under 1963 Md. Laws, ch. 808 which unequivocally authorizes local imposition of excise taxes.

GOALS AND OBJECTIVES: To clarify the County's authority to enact the Water Quality Protection Charge as an excise tax.

COORDINATION: Office of the County Attorney

FISCAL IMPACT: None

ECONOMIC IMPACT: None

EXPERIENCE ELSEWHERE: N/A

SOURCE OF INFORMATION: Marc Hansen, Office of the County Attorney, 240-777-6700,
Lisa Feldt, Department of Environmental Protection, 240-777-7700,
Joseph Beach, Department of Finance, 240-777-8860

APPLICATION WITHIN MUNICIPALITIES: Does not apply in Rockville, Takoma Park, or Gaithersburg.

PENALTIES: N/A




OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

October 21, 2015

TO: George Leventhal, President
County Council

FROM: Isiah Leggett 
County Executive

SUBJECT: Water Quality Protection Charge

The County's water quality protection charge produces approximately \$32 million in revenue per year. This revenue is critical to funding the water quality protection measures mandated by the State in accordance with the Federal Clean Water Act. The water quality protection charge, which is imposed under Section 19-35, was enacted pursuant to authority granted to the County under State law (Maryland Code, Environment Article, Section 4-204).

In *Paul N. Chod v. Board of Appeals for Montgomery County* (Civil No. 398704-V, entered July 23, 2015), the Circuit Court for Montgomery County opined that the water quality protection charge "is invalid *per se* because this Charge need not reasonably relate to the stormwater management services provided by the County."

Although the County has appealed this decision, the Circuit Court's opinion makes it impractical at this time for the County to issue revenue bonds predicated on the collection of the water quality protection charge. The County had planned to issue bonds in early 2016. Without these revenue bonds being issued in early 2016, the County will be unable to implement a significant portion of its stormwater management program that is mandated by the Clean Water Act and is necessary to address the cleanup of local water bodies and the restoration of the Anacostia River and Chesapeake Bay.

I am forwarding with this memorandum curative legislation that would correct the potential defect noted by the Circuit Court by designating the stormwater management charges as an excise tax imposed under the County's general authority to levy excise taxes.

George Leventhal, President
October 21, 2015
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The legislation, which I am proposing, would have a retroactive effective date of July 1, 2013. The retroactive nature of this legislation is justified because the County had, in 2013, and continues to have the authority to levy and collect from property owners an excise tax for the purpose of producing revenue to fund the water quality protection measures needed to ameliorate the environmental impact of stormwater runoff. Moreover, all property owners who have paid the water quality protection charge have benefited from water quality protection and restoration measures made possible by the revenues generated from the stormwater management charges imposed under current County law. The proposed legislation is not intended to alter the policy, purposes, or substance of the currently existing water quality protection charge.

Executive staff stands ready to work with the Council on this important curative legislation.

IL:tjs

Fiscal Impact Statement
Council Bill XX-15 – Stormwater Management – Water Quality Protection Charge

1. Legislative Summary.

Bill XX-15 is an expedited Act that would:

- (1) designate the Water Quality Protection Charge as an excise tax imposed under the County's general taxing authority;
- (2) ratify the collection of stormwater management charges levied under Section 19-35 since July 1, 2013;
- (3) continue the levy and collection of the Water Quality Protection Charge from property owners under the same terms and conditions as set out in Section 19-35; and
- (4) make a certain technical correction to Section 19-35.

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.

County Code Section 19-35 subjects all County properties not otherwise exempt under State law to the Water Quality Protection Charge (WQPC), allows property owners to obtain credits for undertaking certain water quality protection measures on their properties, and authorizes financial hardship exemptions for certain owner-occupants of residential properties.

Bill XX-15 designates the stormwater management charges imposed by Section 19-35 as an excise tax imposed under the general taxing authority of Montgomery County to levy excise taxes. This Act is not intended to alter the policy, purposes, or substance of Section 19-35.

Bill XX-15 would not change the total Water Quality Protection Charge (WQPC) revenues, estimated at \$32,633,364 in FY16, or estimated expenditures of the funds to support the County's stormwater management programs.

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

See #2 above. The approved FY16-21 Fiscal Plan includes long term projections for collections of the WQPC of \$235 million over the next six years.

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.

Bill XX-15 would not impact expenditures relating to the County's ERP or IT systems.

- 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.**

There would not be a need for staff time to implement Bill XX-15.

- 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.**

No additional appropriation is needed to implement Bill XX-15.

- 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.**

Bill XX-15 is not intended to alter the policy, purposes, or substance of the currently existing Water Quality Protection Charge. The purpose of the bill is to designate the stormwater management charges imposed by Section 19-35 as an excise tax imposed under the general taxing authority of Montgomery County to levy excise taxes.

- 13. Other fiscal impacts or comments.**

Bill XX-15 will ensure that collections of the WQPC continue as planned and that there will be no fiscal impact to the County's Stormwater Management program.

- 14. The following contributed to and concurred with this analysis:**

Marc Hansen, Office of the County Attorney

Walter Wilson, Office of the County Attorney

Joseph Beach, Department of Finance

Lisa Feldt, Department of Environmental Protection

Alex Espinosa, Office of Management and Budget
Matt Schaeffer, Office of Management and Budget

Jennifer A. Hughes
Jennifer A. Hughes, Director
Office of Management and Budget

October 20, 2015
Date