

## Maryland to Impose New Stormwater Remediation Fee; Virginia Enacts Congestion Relief Fee

by Roberto P. Garcia

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*Lawmakers in Maryland and Virginia have approved the imposition of certain new fees on property owners in various jurisdictions. Maryland property owners in nine counties and one city face the imposition of a Stormwater Remediation Fee, which could be substantial for owners of property with large amounts of impervious surfaces. In Northern Virginia, meanwhile, grantors of interests in real property will be required to pay an additional surcharge upon the recordation of deeds and other similar instruments.*

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### Maryland's "Rain Tax"

Effective July 1, 2013, property owners in nine counties and one city in Maryland will be assessed a "Stormwater Remediation Fee" (dubbed derisively by some as a "rain tax") as part of Maryland's new Watershed Protection and Restoration Program (WPRP), signed into law in April 2012. The new law aims to provide revenue for, among other things, stormwater management and stream and wetland restoration projects intended to reduce the flow of phosphorus and nitrogen into the Chesapeake Bay. While the effect on residential property owners will be modest, owners of property with large amounts of impervious surfaces, such as parking lots or large rooftops, could face substantial fees under the new law.

The new law requires each affected jurisdiction to implement by July 1 its own version of the WPRP for the collection of fees from property owners for stormwater runoff from impervious surfaces (including rooftops, driveways, sidewalks and pavement), and for the creation of a local watershed protection and restoration fund. The jurisdiction may assess fees based on a flat rate, a graduated rate determined by the amount and type of impervious surface, or another method of calculation selected by the jurisdiction. Harford County, for instance, has proposed annual fees of \$125 for residential properties, and of \$7 per 500 square feet of impervious area for commercial properties. Charles County is considering annual fees between \$11 and \$32 based on residential dwelling type, and of \$32 per 3,255 square feet of impervious area for nonresidential properties. Because each jurisdiction's fee is not required to be in place until July 1, the exact fee amount for certain jurisdictions may not be determined as of the time of publication.

The new law also requires affected jurisdictions to establish policies and procedures to reduce such fees to account for on-site and off-site systems, facilities, services or activities that reduce the quantity, or improve the quality, of discharged stormwater.

Only those jurisdictions subject to the U.S. Environmental Protection Agency's National Pollutant Discharge Elimination System Phase I municipal separate storm sewer system permit are affected by the WPRP. The jurisdictions affected by the new law, therefore, are Baltimore City and the counties of Montgomery, Prince George's, Howard, Anne Arundel, Carroll, Harford, Charles, Frederick and Baltimore. Note that Montgomery and Prince George's counties already charge a stormwater utility fee, but are both examining their current fee structures to confirm compliance with the new law. Further, a municipality may impose its own Stormwater Remediation Fee by giving notice to the applicable county of its intent to do so, and reasonable time for the county to discontinue collection of its own Stormwater Remediation Fee within the municipality. No property may be assessed a Stormwater Remediation Fee by both a county and a municipality.

### Virginia's Regional Congestion Relief Fee

Also effective July 1, 2013, a "Regional Congestion Relief Fee" will be imposed on grantors of real property in five cities and four counties in Northern Virginia. This fee, equal to \$0.15 per \$100 of the greater of the consideration paid for, or value of, the interest conveyed, must be paid by the grantor before any deed, instrument, or other writing conveying an interest in real property may be recorded. This fee is in addition to any transfer or recordation taxes due upon recordation of the instrument.

There are a number of codified exceptions to the fee, such as for deeds conveying property to a partnership or limited liability company when the grantors are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company (provided that the transfer to a limited liability company is not a precursor to a transfer of control of assets to avoid recordation taxes). Anyone contemplating the transfer of an interest in real property in the affected jurisdictions should consider the impact of this fee, and whether any of the available exemptions to the requirement to pay the fee may be applicable.

The Regional Congestion Relief Fee applies only to Planning District Commissions that, as of January 1, 2013, have a population of two million or greater, at least 1.7 million registered motor vehicles, and a total transit ridership of not fewer than 50 million riders per year across all transit systems in the Planning District Commission. Planning District Commissions are political subdivisions of the Commonwealth of Virginia intended to foster regional cooperation in the Commonwealth. Of the 21 Planning District Commissions in Virginia, only the Northern Virginia Regional Commission currently meets the criteria for the new fee. The affected jurisdictions are the cities of Alexandria, Fairfax, Falls Church, Manassas and Manassas Park, and the counties of Arlington, Fairfax, Loudoun and Prince William. Any Planning District Commission that meets the criteria set forth above, as determined by the most recent United State census, becomes subject to the fee effective as of July 1 immediately following the calendar year in which all of the criteria set forth above are met.

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