

SUNNY SKIES AHEAD? *Efforts to Repeal the “Rain Tax” Underway*

By: Patrick M. Martyn

The much scorned Maryland “rain tax” remains directly in the crosshairs of Governor Larry Hogan’s newly formed administration. Making good on his repeated campaign pledge to repeal the tax mandate imposed by the 2012 Maryland Watershed Protection and Restoration Program established by Section 4-201.1 of the Environment Article of the Annotated Code of Maryland, legislation was recently introduced in the General Assembly which would eliminate the requirement currently imposed on eight counties and the city of Baltimore to impose a stormwater levy or “rain tax” to fund certain stormwater remediation projects. Although a House of Delegates committee voted last week to kill Governor Hogan’s proposed legislation and a similar verdict was rendered by the Senate earlier this week, the Governor remains confident that the “rain tax” law will be repealed, even if it is accomplished by alternative legislation that is not introduced by his team.

The stated purpose of the so-called “rain tax” law was to establish county or municipal watershed protection and restoration funds to help fund federally-required stormwater remediation programs in an attempt to mitigate the stormwater pollution of the Chesapeake Bay and its tributaries. Under the law, these eight counties (in addition to Montgomery County which already had a program in place) and the city of Baltimore were to establish and annually collect stormwater remediation fees from owners of property within their respective jurisdiction. Since the law’s implementation in 2012, it has been applied very unevenly, with Harford County doing away with the rain tax entirely and certain other jurisdictions fees in widely varying amounts.

The “rain tax” has come under fire repeatedly by various groups including homebuilders who argue that such a tax represents an additional cost to already strapped homebuyers in a residential market that is trying to regain its footing following the Great Recession of ’08. And owners of large commercial and industrial buildings have complained bitterly that they are assessed exorbitant amounts for stormwater remediation fees based upon the square footage of their buildings and impervious surfaces on their property without taking into account the stormwater remediation and other environmental measures which they have implemented with respect to their property.

Although the Governor remains committed to repealing the “rain tax”, before owners of commercial real estate and homebuilders break out the champagne and shout “mission accomplished” it is worth bearing in mind that while the Governor’s proposed repeal legislation (which appears to have been rejected at this point by the General Assembly) would have eliminated the requirement imposed on the counties and the city of Baltimore to enact such stormwater remediation fees, it did not address the question of how those counties and Baltimore city would otherwise fund the federally mandated stormwater remediation projects if they elected to not impose the contemplated “rain tax”. As we all know, what is called a “rain tax” this year could easily become next year’s additional “permit fee.”

Anticipating this possible conundrum, Senate President Mike Miller has introduced a reform bill which will be discussed at a separate hearing in the near future. Under Miller’s proposed legislation, while the “rain tax” mandate would be repealed, the affected counties and city of Baltimore which opt not to impose such a fee would be required to submit plans demonstrating how the federally mandated stormwater remediation projects will be funded.

It promises to be an interesting ride as Governor Hogan attempts to make his campaign promise a reality. Stay tuned.

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