



Gregory J. Swain, County Attorney

## MEMORANDUM

**To:** Council Members, Anne Arundel County Council

**From:** Kelly Phillips Kenney, Supervising County Attorney /s/

**Via:** Gregory J. Swain, County Attorney /s/

**Date:** October 5, 2020

**Subject:** Bill No. 85-20 – Public Works – Utilities –Water and Wastewater System Connections and Charges

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### Legislative Summary

This summary was prepared by the Anne Arundel County Office of Law for use by members of the Anne Arundel County Council during consideration of Bill No. 85-20. The summary is intended to explain the purposes and legal effects of the bill.

**Purpose.** The primary purpose of Bill No. 85-20 is to eliminate the “user connection charge,” to eliminate the option to connect to public water or wastewater service under a private contract administered by the Department of Public Works (“DPW”), and to replace that process with a new tap connection permit or requirement for a public works agreement (“PWA”).

### Background.

The water and wastewater user connection charges in the current Code are charged when a property owner connects to the public water or sewer system. The charge generally applies for construction on one or two lots (not connections made by developers in large developments or for more complicated connections, both of which require a PWA). Currently, the County has a utility contractor under contract to install these connections. The user connection charge reflects the actual cost of construction of the water or sewer line from the property line to the water or sewer main. The current process in § 13-5-813(g) of the County Code requires the owner to pay an initial deposit, then pay the difference between the estimate and the deposit, and that the County reimburse the property owner if the actual cost of connection comes in lower than the contractor’s original estimate. If the actual cost is higher than the estimate, there is no provision allowing the County to recoup the excess cost.

**Note: This Legislative Summary provides a synopsis of the bill as introduced. It does not address subsequent amendments to the bill.**

Not only is this process somewhat convoluted, but property owners have not been using this utility contractor method of connection as much as in the past. Rather, owners have been opting to use the PWA process, which is the only other available option. The PWA process takes more time, but ends up being less costly than using the County's contractor in most situations. The new legislation would eliminate the private utility contractor arrangement in § 13-5-813(g). It also would provide owners with the option of applying for a tap connection permit for simple connections without the need to enter into a PWA. The PWA will still be required for certain connections outlined in the Bill.

### **Bill provisions.**

The Bill removes all references to “user connection charge” in §§ **13-5-110, 13-5-404, 13-5-815(b), 13-5-815.1(b), (c), (d), and (e)(i) and 13-5-805**. Additionally, §§ 13-5-813(c) and (e), which set forth the user connection charges, and (s), which sets forth the method of establishing the standard user connection charge, are all repealed.

**Section 13-5-113** is new and requires that a licensed utility contractor engaging in the installation of water or sewer services by performing a tap connection to a water or wastewater mainline to submit and maintain security in the amount of \$50,000 with DPW, which may serve as security for multiple permits as long as the constant balance is \$50,000. The section also provides that the work performed under a tap connection permit shall be subject to the same warranty and requirements for work in a County right-of-way set forth in §§ 13-3-208 and 13-3-301(c) through (e).<sup>1</sup>

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<sup>1</sup> Section 13-3-208 provides:

For a period of two years after satisfactory completion of work in a right-of-way, the owner and permittee warrant and guarantee the quality of the work performed and are responsible for maintaining the site free from any defects resulting from the quality of the work and, in the event of such defects, for repairing or restoring the site to a condition that complies with all applicable law, regulations, the Design Manual, and the County's Standard Specifications and Details for Construction. Any repair or restoration during the warranty period shall cause the warranty period to run for one additional year beyond the original two-year period.

Subsections 13-3-301(c) through (e) provide:

(c) **Form.** Security shall be in the form of cash, an irrevocable letter of credit, a bond, or other security acceptable to the Controller and the Director to secure the faithful performance of the obligations of the owner and applicant under the permit and compliance with all terms and conditions of this title.

(d) **Deductions.** The Director may make deductions from the security to pay fees, offset the costs for any excavations or other repairs made by the Department, or pay any fines or costs associated with violations of this title.

(e) **Retention.** The County shall retain the security for the warranty period set forth in § 13-3-208(a). Upon the expiration of the warranty period, on written request of the permittee, the security, less any deductions, shall be returned to the permittee, without interest.

Section **13-5-813(a)(1)** is new and adds the definition of “CPI”. Existing subsection (d) is renumbered to (c) and existing (f) is renumbered to (d). These subsections pertain to the water and wastewater capital facility connection charges, respectively. In both subsections, references are updated due to the renumbering changes in the bill. Additionally, the obsolete capital facility connection charge amount in both subsections is deleted and the remaining subsections are renumbered.

Existing subsection (g) is renumbered to (e). Most of the language in (g) is being repealed because it pertains to the connections under private contracts administered by DPW that are being eliminated. The language from existing (g)(2) is revised to require that, for properties with new improvements receiving an allocation under § 13-4-403, the capital facility connection charge shall be paid as required in that section.

Subsection (f) is new and sets forth the new options for connections to the County’s water or wastewater systems. Under (f)(1), an owner shall be required to enter into a PWA if (i) the service is to be installed in a State right-of-way; (ii) the water service pipe size is greater than two inches in diameter or the wastewater service pipe size is greater than six inches in diameter; (iii) there are three or more service connections to be installed within 500 feet; (iv) the depth of the distribution main is located 18 feet or greater; or (v) an easement is required for any part of the water or wastewater connection.

Subsection (f)(2) provides that, if a PWA is not required in accordance with (f)(1), the owner shall apply for a water or wastewater service tap connection permit. The fee for a tap connection permit shall be \$225 for each water or wastewater connection for each equivalent dwelling unit.<sup>2</sup> Additionally, the permit fee may be adjusted beginning on July 1, 2021, by a percentage change calculated by dividing the CPI for April of that calendar year by the CPI for April for the immediate preceding year. The Director shall give notice of the rate change to the Office of Finance and the County Council, and it shall be effective July 1 of each year.

Existing subsections (h), (i), and (r) are renumbered to (g), (h), and (q), respectively, and revised to remove all references to the user connection charge. The remaining subsections of § 13-5-813 not set forth in the Bill are to be renumbered without any changes.

**Section 4** provides that the Ordinance shall not be construed to apply to any connections to the County’s water or wastewater system installed prior to the effective date or for which a connection permit was issued prior to the effective date. In other words, any property that has a connection permit in process while the Bill is pending will still connect and be subject to the charges as provided under the existing Code.

**Section 5** provides that the Ordinance shall not be construed to apply to any user connection charge that was deferred, financed, or assessed prior to the effective date of the Ordinance, and any user connection charge that was deferred, financed, or assessed prior to the effective date. Those user connection charges shall continue to be deferred, financed, assessed,

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<sup>2</sup> “Equivalent dwelling unit” (“EDU”) is defined in § 13-5-401(4) as “a unit of 250 gallons of water, except that for property in the Mayo Water Reclamation Subdistrict, “equivalent dwelling unit” means a unit of 225 gallons of water.” One EDU is equal to one single family dwelling.

and paid and collected in accordance with the provisions of the Anne Arundel County Code in effect prior to the effective date.

**Section 6** provides that the Bill is effective 45 days from the date it becomes law.

The Office of Law is available to answer any additional questions regarding this Bill. Thank you very much.

cc: Honorable Steuart Pittman, County Executive  
Matt Power, Chief Administrative Officer  
Lori Rhodes, Deputy Chief Administrative Officer for Land Use  
Dr. Kai Boggess-de Bruin, PhD, Chief of Staff  
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