



## Senate Bill 863

### *Watershed Protection and Restoration Programs - Revisions*

MACo Position: **SUPPORT**  
**WITH AMENDMENTS**

Date: March 10, 2015

To: Education, Health, and Environmental Affairs  
Committee

From: Leslie Knapp, Jr.

The Maryland Association of Counties (MACo) **SUPPORTS SB 863 WITH AMENDMENTS**. MACo's amendments would maintain the fee requirement but allow counties not to charge a fee if the county creates a reasonable alternative plan to meet its stormwater remediation requirements. The amendments would also strike the other provisions of SB 863 that would impose new local mandates or limit the flexibility of counties to meet their stormwater pollution goals. MACo believes this approach acknowledges the responsibility counties have under their federal permits to address stormwater runoff pollution while also providing counties with the maximum flexibility possible to meet those goals.

SB 863 would repeal the 2012 mandate (HB 987) that required the 10 Maryland county jurisdictions subject to a federal National Pollutant Discharge Elimination System (NPDES) Phase I Municipal Separate Storm Sewer System (MS4) permit to adopt a stormwater remediation fee (also called the "rain tax" by the fee's opponents). The 10 jurisdictions include: Baltimore City, Anne Arundel, Baltimore, Carroll, Charles, Frederick, Harford, Howard, Montgomery, and Prince George's Counties. The bill also creates substantial new reporting and monitoring requirements that go beyond what is an already established permit oversight system and impose arbitrary fee caps for certain organizations that would shift stormwater remediation costs onto other fee payers.

MACo's position is that a county should not be subject to the fee mandate if that county chooses to go through a certification process with the Maryland Department of the Environment (MDE) and shows that it has a credible alternative plan or method to meet the stormwater pollution reduction goals required under its MS4 permit. The certification would be performance-based rather than tied to a specific amount of funding as funding estimates change based on the types of best practices used, the actual effectiveness of those practices, and the adoption of better practices and technologies.

The proposed amendments also recognize the vastly different burdens faced by the affected counties. Harford County's MS4 permit costs are estimated in the millions of dollars, Frederick County's costs are in the tens of millions of dollars, and a large county like Montgomery or Prince George's faces costs in the hundreds of millions of dollars. Certain counties cannot realistically meet their MS4 goals

without the fee, and the alternative plan approach would allow those counties to continue to use the fee while giving other counties the ability to consider different options.

Oversight and accountability are currently part of the permit system and would also apply to counties seeking to adopt an alternative plan. The stormwater requirements under the NPDES MS4 permit system are based on water quality standards set under the federal Clean Water Act and the permits are overseen by the United States Environmental Protection Agency (EPA). For Maryland, MDE is responsible for setting individual Phase I MS4 permit requirements and issuing the permits, subject to EPA oversight and sign-off. MDE, and ultimately the EPA, has oversight over the counties to ensure that they meet their permit goals.

With MACo's proposed amendments, SB 863 would grant counties maximum flexibility to meet their diverse MS4 permit requirements while still maintaining a system of accountability and oversight. Accordingly, MACo urges the Committee to adopt a report of **FAVORABLE WITH AMENDMENTS** for SB 863.

## MACo Proposed Amendments to SB 863

The proposed changes in SB 863 should be struck and the following amendments made to existing statute in lieu of the bill's proposed changes.

4-202.1.

(c) A watershed protection and restoration program established under this section shall include:

(1) A stormwater remediation ~~fee~~FEE, IF APPLICABLE; and

(k) (1) A COUNTY OR MUNICIPALITY MAY APPLY FOR CERTIFICATION FROM THE DEPARTMENT FOR AN ALTERNATIVE PLAN IN LIEU OF ADOPTING OR COLLECTING A STORMWATER REMEDIATION FEE UNDER SUBSECTION (E) OF THIS SECTION.

(2) THE ALTERNATIVE PLAN SHALL IDENTIFY:

(i) ACTIONS THE COUNTY OR MUNICIPALITY PLANS TO UNDERTAKE TO MEET THE REQUIREMENTS OF ITS NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PHASE I MUNICIPAL SEPARATE STORM SEWER SYSTEM REQUIREMENT; AND

(ii) ANY SOURCES OF FUNDS THAT WILL BE UTILIZED BY THE COUNTY OR MUNICIPALITY TO MEET THE REQUIREMENTS OF ITS NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PHASE I MUNICIPAL SEPARATE STORM SEWER SYSTEM REQUIREMENT.

(3) IF THE DEPARTMENT DETERMINES THAT THE ALTERNATIVE PLAN PROPOSED BY A COUNTY OR MUNICIPALITY IS REASONABLY LIKELY TO MEET THE REQUIREMENTS OF ITS NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PHASE I MUNICIPAL SEPARATE

STORM SEWER SYSTEM REQUIREMENT, THE DEPARTMENT SHALL CERTIFY THE COUNTY OR MUNICIPALITY'S ALTERNATIVE PLAN.

(4) THE CERTIFICATION FOR AN ALTERNATIVE PLAN LASTS UNTIL THE COUNTY OR MUNICIPALITY'S CURRENT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PHASE I MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT EXPIRES, AT WHICH TIME THE COUNTY OR MUNICIPALITY MAY SEEK TO RENEW ITS CERTIFICATION FROM THE DEPARTMENT.

(5) ALL OF THE DEPARTMENT'S EXISTING OVERSIGHT AUTHORITY REGARDING A COUNTY OR MUNICIPALITY'S NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PHASE I MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT SHALL APPLY TO A COUNTY OR MUNICIPALITY'S ALTERNATIVE PLAN.

(L) The Department may adopt regulations to implement and enforce this section.

SECTION 3. AND BE IT FURTHER ENACTED, That, a county that was found by the Maryland Department of the Environment to have an alternative funding source for a stormwater remediation fee prior to January 1, 2015, shall be deemed to have a certified alternative compliance plan in place for the duration of the county's current National Pollutant Discharge Elimination System Phase I Municipal Separate Storm Sewer System permit.