



House Bill 11

Environment – Bay Restoration Fund – Authorized Uses

MACo Position: **SUPPORT**

To: Environmental Matters Committee

WITH AMENDMENTS

Date: January 29, 2014

From: Leslie Knapp, Jr.

The Maryland Association of Counties (MACo) **SUPPORTS** House Bill 11 **WITH AMENDMENTS**. This bill from the Maryland Department of the Environment (MDE) would create a reasonable and beneficial “tool” for improving water quality and reducing nitrogen pollution.

HB 11 would allow monies within the septic system account of the Bay Restoration Fund (BRF) to be used to connect failing septic systems located outside of a priority funding area (PFA) to a wastewater treatment plant (WWTP) with excess capacity. The bill also provides that BRF septic system account funds may be used to cover the cost of principal on debt issued for connecting failing septic systems to a WWTP and repeals a problematic requirement that a local government guarantee that any future connection to an existing WWTP within a PFA meets several specified BRF requirements.

Since the Chesapeake Bay Total Maximum Daily Load (TMDL) was first proposed, MACo has advocated that counties should have the flexibility to access a broad range of water pollution reduction “tools” so that a county can achieve the most nutrient pollution reduction for the least amount of cost. HB 11 would provide the counties with such a tool for nitrogen reduction. In many circumstances, connecting a group of failing septic systems to a WWTP is cheaper and yields greater nitrogen reduction than upgrading each of the septic systems to the best available nitrogen removal technology (BAT).

The 2011 Task Force on Sustainable Growth and Wastewater Disposal recommended the expansion of BRF funding for WWTP hookups of failing septic systems outside of PFAs so

long as the process included adequate protections against sprawl development.¹ HB 11 provides such protections by requiring any proposed connections outside of a PFA to be in an area identified as a “public health area of concern” in a county’s water and sewer plan. Additionally, any connection proposal outside of a PFA will go through a Smart Growth exception review process that will include input by various State agencies. As part of any funding consideration, MDE will consider the potential for sprawl development and the protections the project will have in place (such as easements, denied access lines, and lot consolidation measures).

MACo has also worked with MDE in developing two amendments on the bill. The first amendment would allow MDE to consider granting BRF funds to connect failing septic systems to either a WWTP achieving enhanced nutrient removal (ENR) or biological nutrient removal. Current law only applies to ENR plants. This amendment would apply regardless of whether a failing septic system is located inside or outside of a PFA.

The second amendment addresses when a county would have to add an area identified as a public health area of concern to the county water and sewer plan. Currently the bill provides that area must be identified in the plan before a funding request can be made. However, plan amendments can be a costly and onerous process. MACo’s amendment would also allow for a certification by a county environmental health director, with a concurrence by MDE. However, if BRF funding were ultimately awarded, the county would subsequently have to add the identified area into its plan. Both amendments are attached to this testimony.

HB 11 would give county governments a sensible and cost-effective tool to address nitrogen pollution while providing adequate protections against sprawl. Accordingly, MACo recommends the Committee issue a **FAVORABLE WITH AMENDMENTS** report for HB 11.

¹ Final Report of the Task Force on Sustainable Growth and Wastewater Disposal, page 11 (December 2011).

MACo Proposed Amendments to HB 11

AMENDMENT NO. 1

On page 2, in line 27, after “removal” insert “OR BIOLOGICAL NUTRIENT REMOVAL”; and on page 4, in line 9, after “removal” insert “OR BIOLOGICAL NUTRIENT REMOVAL”.

Explanation: A wastewater treatment plant meeting biological nutrient removal (BNR) can still significantly reduce the nitrogen over most current onsite sewage disposal systems that utilize the best available technology for nitrogen removal (BAT) for less cost. Where the numbers prove this to be the case, the Maryland Department of the Environment (MDE) and other involved State agencies should be able to consider an exception under HB 11’s provisions.

Amended Bill Text:

E. The cost, up to the sum of the costs authorized under item C of this item for each individual system, of connecting a property using an onsite sewage disposal system to an existing municipal wastewater facility that is achieving enhanced nutrient removal OR BIOLOGICAL NUTRIENT REMOVAL level treatment, **INCLUDING PAYMENT OF THE PRINCIPAL, BUT NOT INTEREST, OF DEBT ISSUED BY A LOCAL GOVERNMENT FOR SUCH CONNECTION COSTS**; and

...

(iii) Funding for the costs identified in paragraph (2)(i)1E of this subsection may be provided only if all of the following conditions are met: ...

2. It can be demonstrated that:

A. The replacement of the onsite sewage disposal system with service to an existing municipal wastewater facility that is achieving enhanced nutrient removal OR BIOLOGICAL NUTRIENT REMOVAL level treatment is more cost-effective for nitrogen removal than upgrading the individual onsite sewage disposal system; or

AMENDMENT NO. 2

On page 4, in line 28 after “CONCERN” insert “; I.”; and in the same line, after “PLAN” insert: “; OR

II. CERTIFIED BY A COUNTY ENVIRONMENTAL HEALTH DIRECTOR WITH CONCURRENCE BY THE DEPARTMENT AND IF FUNDING IS APPROVED SUBSEQUENTLY ADDED TO THE COUNTY WATER AND SEWER PLAN WITHIN A TIME FRAME JOINTLY AGREED UPON BY THE DEPARTMENT AND THE COUNTY THAT TAKES INTO CONSIDERATION THE COUNTY'S WATER AND SEWER PLAN UPDATE AND AMENDMENT PROCESS".

Explanation: Amending a county water and sewer plan can be an onerous and somewhat costly process for some counties. While some counties may have pre-identified areas of public concern in a county water and sewer plan, others may not wish to undertake the effort unless they know funding under the exception will be provided. MACo believes that a public health area of concern could be certified by a county environmental health director, with the concurrence of MDE, in order to be considered for the funding. However, MACo recognizes that any projects that are granted funding should be subsequently amended into the county water and sewer plan to properly identify and integrate those areas into a county's long-term land use plans.

Amended Bill Text:

B. THE ON-SITE SEWAGE DISPOSAL SYSTEM WAS INSTALLED AS OF OCTOBER 1, 2008, THE PROPERTY THE SYSTEM SERVES IS NOT LOCATED IN A PRIORITY FUNDING AREA, AND THE PROJECT MEETS THE REQUIREMENTS UNDER § 5-7B-06 OF THE STATE FINANCE AND PROCUREMENT ARTICLE AND IS CONSISTENT WITH A PUBLIC HEALTH AREA OF CONCERN:

I. _____ IDENTIFIED IN THE COUNTY WATER AND SEWER PLAN; OR

II. CERTIFIED BY A COUNTY ENVIRONMENTAL HEALTH DIRECTOR WITH CONCURRENCE BY THE DEPARTMENT AND IF FUNDING IS APPROVED SUBSEQUENTLY ADDED TO THE COUNTY WATER AND SEWER PLAN WITHIN A TIME FRAME JOINTLY AGREED UPON BY THE DEPARTMENT AND THE COUNTY THAT TAKES INTO CONSIDERATION THE COUNTY'S WATER AND SEWER PLAN UPDATE AND AMENDMENT PROCESS.