



House Bill 1266

Energy – Landfill Diversion – Municipal Solid Waste Portfolio Standard

MACo Position: **OPPOSE**

To: Economic Matters Committee

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From: Leslie Knapp Jr.

The Maryland Association of Counties (MACo) **OPPOSES** House Bill 1266. The bill would require counties to adopt a “zero waste” policy for municipal solid waste by creating new recycling and waste diversion requirements for county governments and imposing financial penalties on those counties who cannot comply.

MACo POSITION ON ZERO WASTE AND RECYCLING

Unlike most other states, Maryland requires the counties to administer recycling programs and reach certain recycling goals. Despite originally being an unfunded mandate from the State, counties have supported recycling and now Maryland ranks above average among recycling states. Over time, county recycling rates have continued to increase. These positive results highlight that MACo and the counties are committed to recycling.

Under the zero waste concept, the goal is to eliminate (or more practically, significantly reduce) the amount of solid waste that goes into a landfill. The remainder of the waste is recycled, reused, or disposed of by other means. Zero waste has been implemented in parts of Europe and MACo believes that consideration of a zero waste policy in Maryland is a worthwhile endeavor. However, adopting a zero waste policy would have significant policy and cost implications and must be carefully considered.

THE BILL

There have been several stakeholder meetings prior to this bill hearing and MACo understands that HB 1266 will be significantly amended from its introduced form. Broadly, the bill would increase current county recycling requirements and also establish a waste diversion requirement that limits the percentage of municipal solid waste that could be

landfilled. Waste diverted from landfills would have to be reused, recycled, incinerated in a waste-to-energy plant, composted, or subjected to anaerobic digestion.

The recycling and waste diversion goals would increase over time. Counties failing to meet either of these goals would be subject to an “alternative compliance fee” that would also increase over time.

While MACo believes that zero waste is a concept that could be beneficial for Maryland, MACo has serious concerns about several key provisions of HB 1266 that prevent MACo from supporting the bill.

CRITICAL ISSUES

MACo has identified nine key areas of concern that have led MACo to oppose the bill. If these nine issues were addressed, MACo would reconsider its opposition.

(1) *Recycling and Landfill Mandates*

MACo is concerned that the recycling and waste diversion mandates in the bill are not realistically achievable for all jurisdictions. While some counties are already at or can achieve the bill’s 50% recycling goal, it will be extremely challenging or virtually impossible for others. In particular, the recycling and waste diversion goals will be difficult for some of the smaller rural jurisdictions, who have a dispersed population and lack the financial resources for major infrastructure upgrades.

Current State recycling goals recognize the differing capacities of large and small counties, but HB 1266 does not make such a distinction. Baltimore City also faces unique challenges. If new recycling and waste diversion goals are ultimately adopted, they must be realistically achievable and take into account different local circumstances.

(2) *Alternate Compliance Fee*

MACo is opposed to the imposition of any financial penalty or compliance fee for recycling or waste diversion. Counties were forced to assume recycling as an unfunded mandate and have continued to increase recycling rates over time without the need for a financial penalty. Given that counties have been “good actors” with respect to recycling, MACo does not understand the need to penalize the counties with a costly new fee.

Based on the latest Maryland Department of the Environment (MDE) data on county-by-county solid waste data, counties currently fall short of the original bill’s target of 50% recycling by roughly 435,000 tons, and they fall short of the 0% landfill limit by roughly 2.8 million tons. With the bill’s penalties set at \$25 per ton upon full phase-in, this translates to penalties of approximately \$80 million in current dollars. The bill specifically calls for the penalty to increase with inflation, and based on industry

estimates provided during workgroup discussions, they projected a final penalty of \$36 per ton. At that rate, the eventual possible penalties would reach \$115 million. A county's progress toward the goal would serve to reduce the final penalties, so if each county was able to halve its current deficit relative to the eventual goals, the total penalty would be dropped to \$40 million in current dollars, or \$57 million inflation-adjusted.

Rather than penalties, the State should provide incentives for counties to achieve any recycling and waste diversion goals.

(3) *Infrastructure and Siting Challenges*

Counties currently lack the infrastructure capacity to meet the bill's goals and would have to make substantial investments to create the needed facilities. Outside of several waste-to-energy facilities, there are few private waste diversion facilities that would meet the bill's requirements. Regulations governing the operation of large scale composting and anaerobic digestion facilities are also lacking. Counties not meeting the bill's recycling goal will also have to invest in additional recycling infrastructure or contract with third-party providers.

Additionally, the siting and location of recycling, waste-to-energy, and composting facilities is challenging. Like landfills, residents and community groups typically object to having such facilities in proximity to their neighborhoods and will often raise administrative and legal challenges. Simply siting recycling and waste diversion facilities will be time-consuming and potentially costly.

Revenue sources must be provided to help counties meet the potentially significant infrastructure costs required by the bill and technical assistance must be provided to establish appropriate regulations and assist with siting challenges.

(4) *County Landfill Investments*

Many counties have outstanding debt on their landfills and that debt is largely predicated on future income from tipping fees. HB 1266 would require a significant amount of waste to be diverted from landfills – creating an unanticipated long-term revenue shortfall and reducing the ability of a county to repay that debt. The bill must address how counties will be able to manage and repay their landfill debt.

As an example, Anne Arundel County currently has \$39 million in landfill debt, not including upcoming debt for the 2015 opening of Cell 9 at the Millersville landfill. Baltimore City has \$22 million in debt, Caroline County has \$19 million, and Washington County has \$22 million. While some current county landfill debt is for the short term, most extends to between 2020 and 2030.

(5) *Limiting Waste Disposal Choices*

MACo is concerned that HB 1266 could artificially limit waste diversion choices to a narrow set of technologies. While there is certainly a place for composting, anaerobic digestion, and waste-to-energy incineration, there are also other emerging technologies that should not be arbitrarily dismissed because the bill limits waste diversion efforts to specified technologies.

(6) *Reporting of Recycling Efforts With Municipalities and Private Providers*

A critical component for a county to meet any recycling and waste diversion mandate is accurate reporting and credit for recycling efforts. While counties are aware of their own efforts, the contributions of municipalities and private recyclers are not always captured and credited.

Municipal and private efforts must be accounted for if counties, especially smaller rural jurisdictions, are to have a realistic chance of meeting their recycling and waste diversion targets.

(7) *Definition of Municipal Solid Waste*

The bill's provisions apply to "municipal solid waste" which the bill defines as "solid waste, as defined in COMAR 26.13.02.02, that originates from households, private residences, schools institutions, businesses, or commercial enterprises or as the result of community activities."

MACo is concerned that this definition is overly broad and imprecise and believes that the definition needs careful consideration as what is defined as "municipal solid waste" will have a substantial effect on whether a county can realistically meet the bill's recycling and waste diversion goals.

(8) *MDE Solid Waste Plans*

MDE requires counties to adopt comprehensive solid waste management plans. The contents of those plans are established under COMAR 26.03.03 and the plans are required to include certain elements, including a capacity analysis for the next 10-years of projected growth and solid waste disposal needs. Consideration needs to be given as to how HB 1266 will interact with and potentially require changes to the solid waste management planning process.

(9) *Contributions of Non-Residential Waste Generators*

While HB 1266 specifically places the burdens of its lofty goals onto county governments, a more thorough debate about such effects includes other stakeholders. Private non-residential entities, including commercial and restaurant licensees, are necessarily a part of any overall plan to achieve the overall advances sought. An obligation by county governments (as the principal servers of residences) is only part of this effort, and should be complemented with a parallel assessment of appropriate obligations or requirements on non-residential waste contributors.

CONCLUSION

In conclusion, MACo acknowledges HB 1266's worthwhile goal of increasing recycling and reducing landfilled waste. However, the bill will have significant cost and policy impacts for county governments that need to be considered and addressed prior to any possibility of MACo supporting the bill. MACo has offered constructive criticism, highlighted areas of county concern, and is willing to work with other stakeholders on potential solutions. If MACo's concerns can be addressed, MACo would reconsider its position on the bill. However, MACo must oppose the HB 1266 as introduced and requests the Committee to give HB 1266 an **UNFAVORABLE** report.