MARYLAND Association of COUNTIES

Senate Bill 472

Environment – Municipal Stormwater Charges – Property Subject to Charges

MACo Position: **OPPOSE**

To: Education, Health, and Environmental Affairs and Budget and Taxation Committees

Date: February 14, 2017

From: Leslie Knapp, Jr.

The Maryland Association of Counties (MACo) **OPPOSES** SB 472. The bill would allow a municipality to charge a county for stormwater mitigation that may not be the responsibility of the municipality, upend current working agreements between counties and municipalities to address stormwater issues, and deny fee reciprocity for county governments.

SB 472 would provide that a municipality that has established a dedicated stormwater management fund and municipal stormwater charge under § 4-204 of the Environment Article that affects property owned by a municipality may also levy the charge against property located within the municipality that is owned by the State, a unit of State government, a county, a local school system, or an institution of higher education.

The core concept of a stormwater charge authorized under § 4-204 or a stormwater remediation fee established under § 4-202.1 of the Environment Article is to address runoff issues created by property owners and assist local governments in meeting their Phase I or Phase II Municipal Separate Storm Sewer System (MS4) permit requirements. The fees are not intended to create redundancies or place "double burdens" on governments, education entities, or taxpayers. However, SB 472 does not acknowledge actual mitigation responsibility, county government parity, or the flexibility to enter into other forms of mitigation agreements.

Actual Mitigation Responsibility Not Acknowledged

SB 472 mandates that governmental and educational property owners pay a municipal stormwater charge regardless of whether the municipality is actually responsible for the property under its MS4 permit. This requirement makes absolutely no sense if, for example, a county is responsible under its own MS4 permit for its own property, or school property, located in a municipality. In such a circumstance, imposing the municipal fee on the county's property is both redundant and lacks a reasonable rationale – the county would be paying a fee to the municipality for mitigation work that would be performed by the county.

County property may also be subject to stormwater mitigation requirements under the Chesapeake Bay Total Maximum Daily Load (TMDL) and applicable local TMDLs. Again, counties should not have to pay a fee for mitigation work for which they are already responsible.

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Lack of Flexibility

SB 472 mandates that a governmental or educational property owner pay a municipal stormwater charge regardless of local circumstances. Some counties have entered into alternative arrangements to mitigate their own properties or provide other assistance to municipalities. The bill would needlessly upend those agreements and impose a "one size fits all" solution in jurisdictions where there is no current problem.

Lack of Parity

The bill purports to establish an "everyone should pay" requirement that is based on a principle of fairness. However, the bill's provisions only affect governmental and school property located inside municipalities. Federal, State, school, and municipal property located within a county are not subject to the bill, creating an inherent unfairness. Neither does the bill reference county stormwater remediation fees established under § 4-202.1 of the Environment Article, which were also put into place as a means of MS4 assistance – something the bill allegedly seeks to address.

Government-on-Government Fee Issue Has Been Debated and Rejected Multiple Times

The General Assembly has already considered and essentially addressed the issue of one level of government charging another level of government a stormwater fee or charge. When the original legislation was adopted in 2012 requiring local governments subject to a Phase I MS4 permit to adopt a stormwater remediation fee, the legislation specifically exempted property "owned by the State, a unit of State government, a county, a municipality, or a regularly organized volunteer fire department that is used for public purposes" from being subject to the fee.[1]

In 2013, the General Assembly debated legislation that would have subjected property owned by the State or a unit of State government to the fee. This legislation was turned into a task force to study the issue, but did not pass.[2]

The stormwater omnibus legislation in 2015 addressed the issue by creating a process whereby a local government subject to a Phase I MS4 permit may charge the State or a unit of State government a stormwater fee. The bill also provided that beginning in FY 2017, if a county funds the cost of stormwater remediation by using general revenues or through the issuance of bonds, the county shall meet with each municipality within its jurisdiction to mutually agree that the county will: (1) assume responsibility for the municipality's stormwater remediation obligations; (2) for a municipality that has established its own stormwater fee, adjust the county property tax rate within the municipality to offset the municipality's fee; or (3) negotiate a memorandum of understanding with the municipality to mutually agree upon some other action.[3]

Finally, in 2016, the General Assembly again considered and rejected legislation that would have applied municipal stormwater charges to other levels of government, including a prior introduction of this bill.[4]

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[1] HB 987 of 2012
[2] HB 508 of 2013
[3] SB 863 of 2015
[4] HB 1108 and SB 719 of 2016

SB 472 would upend existing county/municipal mitigation agreements and previous General Assembly decisions, require payment of a fee regardless of whether a municipality is actually responsible for the property's stormwater mitigation, and create an unfair distinction between municipal MS4 permit holders and other levels of government subject to MS4 permits. Accordingly, MACo urges the Committee to give SB 472 an **UNFAVORABLE** report.