



Senate Bill 862

Environment – Hydraulic Fracturing – Moratorium and Referenda

MACo Position: **SUPPORT**
WITH AMENDMENTS

Date: February 28, 2017

To: Education, Health, and
Environmental Affairs Committee

From: Leslie Knapp, Jr.

The Maryland Association of Counties (MACo) **SUPPORTS SB 862 WITH AMENDMENTS**. The bill would mandate local governments to hold a referendum on natural gas hydraulic fracturing (commonly known as “fracking”) and set a precedent to bypass the rightful decision-making authority of local officials. MACo’s amendments focus on the “structure of government” issues in the bill, as opposed to the merits of fracking, and would remove the local referenda requirement.

The bill would extend a moratorium on hydraulic fracturing until October 1, 2019, and require the Maryland Department of the Environment to propose new regulations on fracking by October 1, 2018. During the 2018 gubernatorial election, each local jurisdiction must conduct a voter referendum on whether the local jurisdiction can authorize fracking. If a majority of voters support, the jurisdiction may authorize fracking. If the majority of voters oppose, the jurisdiction may not authorize fracking unless it is approved in a subsequent referendum. A local jurisdiction may still ban or enact a stricter version of fracking requirements than the State if the majority of voters support authorization.

MACo’s concern with SB 862 is not about whether to allow or ban hydraulic fracturing in the state. Rather, it is about the idea of ceding the decision-making authority of lawfully elected local officials to a populist decision. Our government is a representative democracy and local officials were elected to make difficult policy decisions – they are held accountable by their voters when they fail to meet their citizens’ expectations.

If fracking is permitted in Maryland, MACo believes each local government should have the authority to decide for itself whether to authorize the activity, impose stricter requirements on the activity, or ban it altogether. Forcing the question to a referendum undermines both the authority and proper role of local officials, whose responsibility it is to understand the potentially long-reaching effects of such legislation on their entire communities.

Additionally, the referendum requirement establishes a troubling precedent that could then be applied to other challenging policy issues. Ultimately, the State could begin requiring referenda on any contentious or challenging issue, undermining local decisions and authority altogether.

MACo recognizes the sensitive and difficult policy choices the State must make regarding fracking. However, the referenda requirement in SB 862 undermines local autonomy and establishes a worrisome precedent that could fundamentally alter the decision-making authority rightfully vested with local government officials. Accordingly, MACo urges the Committee to give SB 862 a report of **FAVORABLE WITH AMENDMENTS**.

MACo Proposed Amendments for SB 862

Amendment No. 1 (changes bill title and purpose paragraph)

On page 1, in line 2, strike “and Referenda”; and strike beginning with “prohibiting” in line 8 down through “regulation;” in line 15.

Amendment No. 2 (removes subsection (g) – the local referendum requirement – and its references from the bill)

On page 2, in line 30, strike “SUBJECT TO SUBSECTION (G) OF THIS SECTION, THE” and substitute “THE”.

On page 3, strike beginning with “(G)” in line 1 down through “REGULATION.” in line 20.