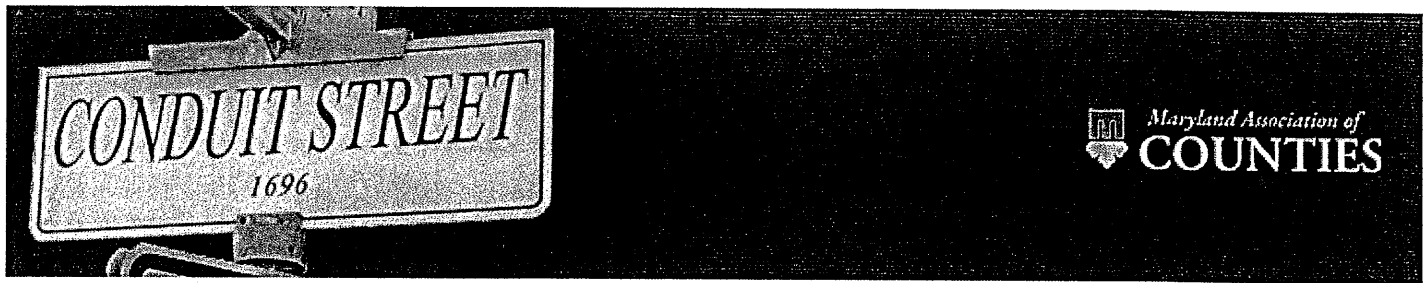


**PRESENTATION TO THE  
COUNTY ENGINEERS ASSOCIATION OF  
MARYLAND**

**SPRING 2012 CONFERENCE  
MAY 1, 2012  
GERMANTOWN, MARYLAND**

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## Two Special Sessions Likely – Budget in Mid-May, Gaming Over the Summer

April 25, 2012

As reported by the Gazette, a special session is likely to occur in mid-May to finalize the State's FY 2013 budget plan. From the article:

A breakfast meeting Tuesday morning between Gov. Martin O'Malley and legislative leaders appeared to end without resolving the disagreement over the state's budget, but both O'Malley and Senate President Thomas V. Mike Miller Jr. said reconvening in mid-May was likely.

O'Malley told reporters gathered at a State Board of Education meeting in Baltimore that he wanted to hold a meeting with his staff and budget negotiators from each chamber this week.

A budget resolution is necessary before May 23, when the state's Board of Public Works will meet to consider \$130 million in cuts required to balance the "doomsday budget," O'Malley said.

As previously reported on Conduit Street, some of the "doomsday" reductions cannot take effect since corresponding statutory changes were not made.

The Governor and presiding officers also discussed holding a second special session to address gaming. From a Washington Post article:

Pushing off the gaming debate by several months would allow House leaders to better gauge support for a Senate bill approved late in the session, legislative aides said. And it would also allow time to engage a consultant to better inform their decisions.

While August was mentioned as a likely time for the second special session, late July was also mentioned as a possibility.

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## What Happened on the Last Day of Session

April 11, 2012

As previously reported, the Maryland General Assembly session came to an end Monday evening with the passage of a “doomsday” budget, not the budget plan that had been adopted by House and Senate Budget Conferees. It seems that time ran out on the passage of the accompanying legislation that would have shifted teacher pension costs to county governments or enacted a number of revenue measures to fund certain priorities in the FY 2013 budget. Time also ran out on the passage of legislation that would have allowed a sixth casino to operate in Maryland and provide for the operation of table games.

As reported by the Baltimore Sun (limited free views available):

About 10:30 p.m. Monday, House Speaker Michael E. Busch walked across the State House and delivered a grim message to Senate President Thomas V. Mike Miller: There weren’t enough votes in the House to pass the gambling bill.

Everything was unraveling.

The legislature’s leaders had spent the day crafting a deal. The Senate would agree to the House approach to raising income taxes. The House would pass, or at least attempt to pass, a gambling bill that was a high priority for Miller.

However, other issues soon came into play that affected the votes on the gambling bill in the House.

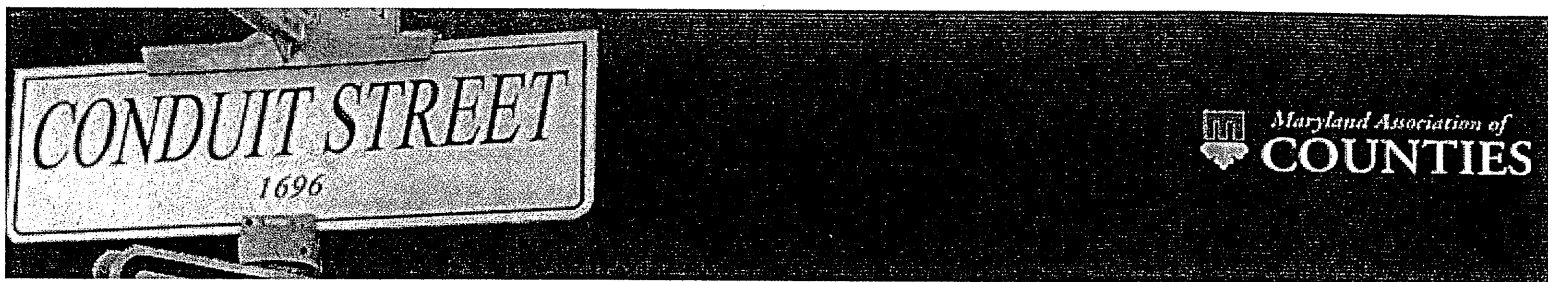
Side issues long considered dead in the Assembly session suddenly came to the forefront, including the composition of the Baltimore County school board and the Baltimore school system’s ability to finance renovations. The message to the speaker was clear as the night wore on — entire delegations in his Democratic caucus were withholding their votes on the gambling bill.

Now that the session has ended, there is speculation that a special session will be called to bring members back together to pass the remaining pieces of the FY 2013 budget plan and the gambling bill, but no action has been taken at this time. When asked about this issue during a bill signing yesterday morning, the Governor “did not heed appeals to call a special session that would allow the legislature to finish its work.”

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## Mandated Aid to Education Cannot Be Reduced Through “Doomsday” Budget

April 17, 2012

The FY 2013 budget (SB 150) as enacted by the General Assembly on the last day of the session contained a number of contingent reductions that would take effect if the Budget Reconciliation and Financing Act of 2012 and the State and Local Revenue and Financing Act of 2012 did not pass. These contingent reductions, otherwise known as the “Doomsday” budget, would cut local aid by \$262.2 million and cut other areas of the State budget by \$250 million.

Upon further review, it has been determined that the reduction to the per pupil foundation amount and the 10% reduction to the library and State library network cannot be made since it is constitutionally mandated aid to education. Reductions to mandated aid can only occur if changes are made to the education statute. The paragraph below from the “90 Day Report” summarizes this issue.

**Contingent Reductions:** Legislative action on the budget included two sections of contingent reductions, embodied in Sections 42 and 43 of Senate Bill 150 (enacted). Section 42 contains \$262.2 million in reductions that were contingent on the failure of Senate Bill 152 (failed) containing a provision to implement sharing of a portion of teacher retirement costs with local jurisdictions. Exhibit A-1.3 includes a detailed list of the reductions that went into effect when Senate Bill 152 did not pass. This includes elimination of the GCEI (\$128.8 million), local law enforcement grants (\$20.8 million), and supplemental disparity grants (\$19.6 million). Because constitutionally mandated aid to education cannot be reduced without enacting changes in underlying education statute, \$75.9 million of the reductions in Section 42 cannot be implemented.

### Exhibit A-1.3

A county breakdown of reductions in the “Doomsday” budget can be found here. This chart includes the reductions in the per pupil amount and library and library network, which cannot be reduced because they are constitutionally mandated.

A summary of all actions can be found in the State Aid to Local Government section of the “90 Day Report.”

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**Exhibit A-3.4**  
**State Aid Actions Resulting from the Failure to Pass Senate Bill 152 and Senate Bill 523 – Fiscal 2013**

County	Teachers Retirement	Program Open Space	GCEI Funding	Supplemental Grants <sup>1</sup>	Crime Grants	Disparity Grants	Amoss Fire Aid	Community College	Other Grants <sup>2</sup>	Total
Allegany	\$1,487,742	\$151,000	\$0	-\$1,632,106	\$0	-\$729,851	-\$43,919	-\$803,418	\$0	-\$1,570,552
Anne Arundel	11,493,684	1,634,000	-9,042,800	0	-295,855	0	-162,590	-3,297,394	0	329,045
Baltimore City	12,922,862	1,081,000	-22,396,367	-6,972,596	-7,908,419	-7,754,249	-185,687	0	0	-31,213,456
Baltimore	15,755,802	1,838,000	-5,478,127	-3,000,000	0	0	-232,934	-2,339,480	0	6,543,261
Calvert	2,835,938	163,000	-2,291,041	0	0	0	-40,000	-201,717	0	466,180
Caroline	793,934	71,000	0	-685,108	0	-213,178	-41,726	-144,209	0	-219,287
Carrall	4,005,782	365,000	-2,535,378	0	0	0	-52,107	-696,002	0	1,087,295
Cecil	2,459,819	189,000	0	0	0	0	-41,146	-476,129	0	2,131,544
Charles	3,936,516	334,000	-3,498,074	0	0	0	-48,871	-668,630	0	54,941
Dorchester	656,543	62,000	0	-308,913	0	-202,269	-41,342	-124,344	0	41,675
Frederick	5,893,461	386,000	-6,379,612	0	0	0	-73,021	-795,150	0	-968,322
Garrett	664,714	76,000	0	-406,400	0	-213,127	-40,000	-230,388	-1,161,009	-1,310,210
Harford	5,529,741	546,000	0	0	0	0	-76,477	-1,202,740	0	4,796,524
Howard	9,821,066	971,000	-5,119,581	0	0	0	-79,927	-876,537	0	4,716,021
Kent	366,147	46,000	-137,992	0	0	0	-40,684	-57,151	0	176,321
Montgomery	27,227,553	2,460,000	-32,796,296	0	0	0	-261,473	-4,655,504	0	-8,025,720
Prince George's	19,554,579	2,092,000	-38,292,762	-9,628,702	-3,760,902	-2,169,477	-228,227	-1,327,693	0	-33,761,184
Queen Anne's	1,105,527	99,000	-558,377	0	0	0	-40,000	-158,952	0	447,198
St. Mary's	2,485,697	185,000	-226,253	0	0	0	-40,000	-227,148	0	2,177,296
Somerset	480,124	44,000	0	-381,999	0	-490,817	-41,781	-61,662	0	-452,134
Talbot	628,456	105,000	0	0	0	0	-43,153	-138,484	0	551,819
Washington	3,094,113	287,000	0	0	0	0	-46,323	-857,169	0	2,477,621
Wicomico	2,173,593	191,000	0	-1,567,837	-327,254	-219,704	-46,333	-412,966	0	-209,500
Worcester	1,271,561	188,000	0	0	0	0	-52,279	-164,744	0	1,242,538
Unallocated	0	0	0	0	-5,714,386	0	0	0	-5,232,000	-10,946,386
<b>Total</b>	<b>\$136,644,954</b>	<b>\$13,564,000</b>	<b>-\$128,752,660</b>	<b>-\$24,583,662</b>	<b>-\$18,006,816</b>	<b>-\$11,992,672</b>	<b>-\$2,000,000</b>	<b>-\$19,917,609</b>	<b>-\$6,393,009</b>	<b>-\$61,437,474</b>

GCEI: Geographic Cost of Education Index

<sup>1</sup>Teacher Retirement Supplemental Grants.

<sup>2</sup>Includes funding for Quality Teacher Incentives, National Board Certification Fees, and the Hold Harmless Grant for Garrett County Public Schools.

**SB 152 Impact of County Maintenance of Effort Increase Due to Sharing of Pension Costs**  
**Appropriations Committee Plan – Fiscal 2013 and 2015**  
(\$ in Thousands)

County	Fiscal 2013										Fiscal 2015									
	MOE Increase Due to Pension Sharing	Teacher Retirement Sup. Grant	Indemnity Mortgage Rec. Tax	Local Income Reserve Relief	Local Income Tax Revenues	Net Impact	MOE Increase Due to Pension Sharing	Teacher Retirement Sup. Grant	Indemnity Mortgage Rec. Tax	Local Income Reserve Relief	Local Income Tax Revenues	Net Impact	MOE Increase Due to Pension Sharing	Teacher Retirement Sup. Grant	Indemnity Mortgage Rec. Tax	Local Income Reserve Relief	Local Income Tax Revenues	Net Impact	Restore Health Dept. Grants	Restore Police Aid
Allegany	-\$1,488	\$1,632	\$107	\$245	\$70	\$566	-\$2,273	\$1,632	\$107	\$245	\$70	\$566	-\$2,273	\$1,632	\$107	\$245	\$70	\$566	-\$69	\$362
Anne Arundel	-11,494	0	2,925	3,356	3,018	-2,195	-19,219	0	2,925	3,356	3,018	-2,195	-19,219	0	2,925	3,356	3,018	252	2,603	
Baltimore City	-12,923	10,048	400	2,105	1,011	640	-18,522	10,048	400	2,105	1,011	640	-18,522	10,048	400	2,105	1,011	534	0	
Baltimore	-15,756	3,000	2,100	4,840	3,237	-2,579	-25,571	3,000	2,100	4,840	3,237	-2,579	-25,571	3,000	2,100	4,840	3,237	352	3,768	
Calvert	-2,836	0	550	554	599	-1,133	-4,883	0	550	554	599	-1,133	-4,883	0	550	554	599	31	273	
Caroline	-794	685	100	100	35	126	-1,219	685	100	100	35	126	-1,219	685	100	100	35	40	124	
Carroll	-4,006	0	800	1,087	1,057	-1,062	-6,883	0	800	1,087	1,057	-1,062	-6,883	0	800	1,087	1,057	96	588	
Cecil	-2,460	0	2,195	441	270	446	-4,057	0	2,195	441	270	446	-4,057	0	2,195	441	270	63	380	
Charles	-3,937	0	1,000	823	842	-1,272	-6,769	0	1,000	823	842	-1,272	-6,769	0	1,000	823	842	79	511	
Dorchester	-657	309	185	97	31	-35	-964	309	185	97	31	-35	-964	309	185	97	31	33	146	
Frederick	-5,893	0	5,000	1,531	1,444	2,082	-10,125	0	5,000	1,531	1,444	2,082	-10,125	0	5,000	1,531	1,444	119	879	
Garrett	-665	406	220	96	28	86	-986	406	220	96	28	86	-986	406	220	96	28	85	85	
Harford	-5,530	0	1,020	1,531	1,291	-1,688	-9,058	0	1,020	1,531	1,291	-1,688	-9,058	0	1,020	1,531	1,291	137	1,081	
Howard	-9,821	0	2,903	2,918	3,514	-486	-17,720	0	2,903	2,918	3,514	-486	-17,720	0	2,903	2,918	3,514	99	1,324	
Kent	-366	0	70	91	45	-160	-550	0	70	91	45	-160	-550	0	70	91	45	25	79	
Montgomery	-27,228	0	11,000	10,503	10,203	4,479	-45,601	0	11,000	10,503	10,203	4,479	-45,601	0	11,000	10,503	10,203	257	5,802	
Prince George's	-19,555	9,629	2,500	4,097	3,273	-56	-30,547	9,629	2,500	4,097	3,273	-56	-30,547	9,629	2,500	4,097	3,273	408	2,741	
Queen Anne's	-1,106	0	500	293	266	-47	-1,814	0	500	293	266	-47	-1,814	0	500	293	266	32	184	
St. Mary's	-2,486	0	500	636	590	-760	-4,129	0	500	636	590	-760	-4,129	0	500	636	590	63	366	
Somerset	-480	382	40	58	11	11	-633	382	40	58	11	11	-633	382	40	58	11	96	96	
Talbot	-628	0	565	209	117	262	-973	0	565	209	117	262	-973	0	565	209	117	25	170	
Washington	-3,094	0	455	585	279	-1,775	-4,985	0	455	585	279	-1,775	-4,985	0	455	585	279	106	565	
Wicomico	-2,174	1,568	350	376	167	287	-3,341	1,568	350	376	167	287	-3,341	1,568	350	376	167	440	440	
Worcester	-1,272	0	250	107	53	-861	-2,012	0	250	107	53	-861	-2,012	0	250	107	53	25	253	
<b>Total</b>	<b>-\$136,645</b>	<b>\$27,659</b>	<b>\$35,735</b>	<b>\$36,678</b>	<b>\$31,451</b>	<b>-\$5,122</b>	<b>-\$222,835</b>	<b>\$27,659</b>	<b>\$35,735</b>	<b>\$36,678</b>	<b>\$22,799</b>	<b>\$2,983</b>	<b>-\$222,835</b>	<b>\$27,659</b>	<b>\$35,735</b>	<b>\$36,678</b>	<b>\$22,799</b>	<b>\$2,983</b>	<b>\$21,838</b>	

MOE: maintenance of effort

## **SB 848/HB 1412 as Amended – Maintenance of Effort Emergency Bill**

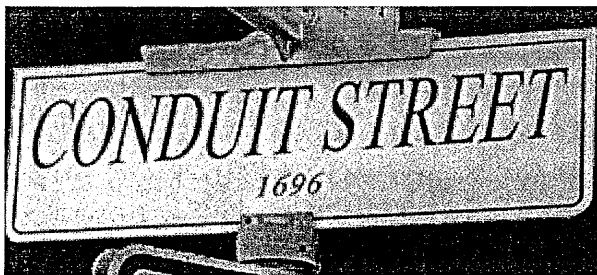
1. **Mandatory Waiver Request** – Requires counties to apply for a waiver if they will not meet the maintenance of effort.
2. **Waiver Process** – Incorporates the 2010 conference committee version of the process bill plus two additional factors.
3. **Maintenance of Effort Calculation** – Excludes the cost of debt service as a recurring cost.
4. **Rebasing Waiver Request** – Limits the ability of a county to rebase the maintenance of effort to a lower amount to counties whose education effort is at least equal to the five-year moving State average (1.31% in fiscal 2012). Counties with effort below that level may not permanently rebase. A rebasing waiver may be granted by the State Board after considering additional criteria, and is capped each year at 97% of the required maintenance of effort amount.
5. **Recurring Cost Waiver Request** – Allows a county to apply for a rebasing waiver if the county and county board agree on a reduction in recurring costs, which may be less than the total savings. Exclusive representative must agree if reduction in compensation.
6. **Assurance** – Alters the penalty for not meeting the maintenance of effort to the amount by which a county does not make the maintenance of effort. State exercises right of setoff against local income tax revenues and redirects to county board. If a county goes below the local share of the foundation amount, the State also exercises right of setoff for State and local share of foundation amount and redirects to board.
7. **“Bounce back”** – If a county does not meet the maintenance of effort, the next year’s per pupil maintenance of effort amount is set at the last time the county made the maintenance of effort unless a rebasing or recurring cost waiver is granted.



8. **Increase Required Maintenance of Effort Amount** – Beginning in fiscal 2015, requires counties to maintain a constant education effort if a county's effort is below 100.0% of five-year moving State average by adjusting the per pupil maintenance of effort amount by a county's increase in local wealth per pupil, capped at 2.5% annual increase.

9. **Miscellaneous Provisions**

- a. Authorizes charter counties to increase property tax revenues in order to fund education.
- b. Waives all penalties for not meeting the fiscal 2012 maintenance of effort (Montgomery, Queen Anne's, and Anne Arundel (if applicable))
- c. For fiscal 2013 only, allows counties that missed maintenance of effort in fiscal 2012 and have local income tax rate of 3.2% to rebase at 2012 level.
- d. Does not allow rebasing in fiscal 2013 for any county that does not qualify under item c. above.
- e. Reports requirement for the Maryland State Department of Education on waiver requests, etc.
- f. Alters the timeframe by which the Maryland State Department of Education must certify whether a county has met maintenance of effort.



## End of Session Wrap Up: Environment Legislation

April 10, 2012

This post summarizes the final status of various environmental bills that MACo either considered or took a position on.

**Septic System Legislation:** HB 445 / SB 236 is an Administration bill that would limit the use of septic systems for major subdivisions based on a set of four “land use tiers” that would be adopted by local governments. If a county chooses not to adopt the tiers, the county is limited to authorizing residential subdivisions on public sewer or minor subdivisions on septic systems. If a county chooses to adopt the tiers, the tiers must be integrated into the county’s comprehensive plan during the county’s next 6-year planning cycle. MACo initially took a position of support with amendments and outlined five key areas that needed to be addressed in the bill. MACo later changed its position to oppose after rejection of its proposed amendments in the Senate. Subsequently, the Administration agreed with MACo on a set of consensus amendments that addressed MACo’s concerns and MACo dropped its opposition after the amended bill passed the Senate. FINAL STATUS: After the Senate floor adopted the MACo and Administration amendments to SB 236, the bill was sent to the House. The House added three additional amendments that were accepted by MACo and other concerned stakeholders. The amendments: (1) deleted a provision in the bill intended to give farmers additional septic lots on their properties but may have unintentionally overridden local zoning; (2) required the Maryland Department of the Environment (MDE) to adopt regulations requiring nutrient offsets for new major subdivisions on septic systems (which MDE must already do under the State’s Watershed Implementation Plan); and (3) required the Maryland Department of Planning to file a report with the General Assembly next Session concerning county adoption of the tiers. The Senate accepted the additional House amendments. The House did not take action on HB 445.

MACo SB 236 Testimony

**Chesapeake and Atlantic Coastal Bays 2010 Trust Fund and Bay Restoration Fund:** HB 121 / SB 65 would have amended the Maryland Constitution to prohibit the State from transferring funds from the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund or the Bay Restoration Fund into the State’s General Fund. Consistent with its position regarding the State transferring dedicated transportation funding into the General Fund, MACo supported the bill. FINAL STATUS: *The House gave HB 121 an unfavorable report. The Senate gave SB 65 an unfavorable report.*

MACo HB 121 Testimony

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**Testing of Sediment from Stormwater Retention Structures:** HB 671 / SB 475 would require sediment dredged from stormwater retention structures, including ponds and wetlands, be tested for toxic substances. Sediment found to contain toxic substances cannot be used in an area that would jeopardize public health and safety. MACo opposed the bill, citing its cost and vagueness. *FINAL STATUS: The House gave HB 671 an unfavorable report. The Senate did not take action on SB 475.*

#### MACo HB 671 Testimony

**Exception to Forest Conservation Act for Stormwater Management Activity:** HB 854 would exempt stormwater management and stream restoration activities performed by a local jurisdiction from the requirements of the Forest Conservation Act. MACo supported the bill given the significant stormwater management requirements mandated by the Chesapeake Bay Total Maximum Daily Load. *FINAL STATUS: The bill's sponsor withdrew the legislation after the Department of Natural Resources promised to work with local governments directly to address their concerns regarding the interaction of the Act and the repair of stormwater management structures.*

**County Recycling Goals:** HB 929 would increase the county recycling targets. Counties with a population of 150,000 or less would have their target increase from 15% to 20%. Counties with a population of more than 150,000 would have their target increase from 20% to 35%. The bill also sets a voluntary statewide waste diversion goal of 60% and a recycling goal of 55% by 2020. MACo opposed the bill, citing the challenges that several rural jurisdictions would face in meeting the new goals. MACo dropped its opposition after MACo was successful in having the bill amended to allow a county with a population of less than 100,000 to combine its recycling rate with the rate of one or more adjacent counties, subject to certain restrictions. *FINAL STATUS: The General Assembly passed HB 929 with the proposed MACo amendments.*

#### MACo HB 929 Testimony

**Local Stormwater Utility Fee:** HB 987 / SB 614 would require counties and municipalities to adopt a local stormwater utility fee. The amount of the fee is set by the local government and must be used for stormwater mitigation purposes. MACo opposed the bill, noting that counties and municipalities already have the authority to enact a local fee and that stormwater runoff is not a major Chesapeake Bay pollutant in some counties. *FINAL STATUS: When it became clear that HB 987 was going to pass the House, MACo proposed an amendment limiting application of the bill to counties that supported the bill. The House passed HB 987 with a modified version of the MACo amendment, limiting the bill to those counties subject to a National Pollutant Discharge Elimination System (NPDES) Phase I Permit. Additional House amendments required the fee to be set based on the amount of stormwater services provided to the property and counties must create an offset system that provides a credit for stormwater mitigation activities on the property undertaken by the property's owner. Counties must also provide for a hardship exemption. MACo offered further amendments in the Senate to address implementation challenges created by the additional House amendments, including removing an annual inspection and monitoring requirement. The General Assembly passed HB 987 with the MACo amendments. The Senate did not take action on SB 614.*

#### MACo HB 987 Testimony

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**Waterworks and Wastewater Works Certified Operators:** SB 115 would remove the requirement that a municipal or private waterworks or wastewater works serving less than 500 persons have a certified superintendent, subject to approval by MDE. Instead, a certified operator may supervise the plant. MACo supported the bill, citing the cost savings for local governments. *FINAL STATUS: The General Assembly passed SB 115.*

#### MACo SB 115 Testimony

**Application of Sewage Sludge on Farmland:** SB 594 would limit the time period when a person could apply animal manure or sewage sludge to agricultural land. The bill would also prohibit the use of certain high phosphorus fertilizers on agricultural land. MACo opposed the bill, arguing the time restrictions for the application of manure and sewage sludge were unnecessarily prescriptive and that certain counties would have to construct new storage facilities at a significant cost. *FINAL STATUS: The Senate did not take action on SB 594.*

#### MACo SB 595 Testimony

**Water Appropriation and Use Permit Fees:** As introduced, SB 635 would have required MDE to create fees for water appropriation and use permits in amount necessary to cover MDE's regulatory and enforcement costs regarding the permits and to conduct watershed and aquifer studies. The bill was subsequently amended by the Senate to become a workgroup composed of various stakeholders, including MACo, that would recommend a fee structure necessary to meet the requirements of the bill. MACo opposed the bill even in its workgroup form, as county governments would be subject to the new fees. *FINAL STATUS: The Senate passed the bill with amendments turning the bill into a workgroup. The House did not take action on the bill.*

#### MACo SB 635 Testimony

**Sewage Overflow Fines and Penalties:** SB 877 would double the civil and administrative penalties MDE can charge for sewage overflows. MDE must also post sewage overflows and any penalties collected online. MACo opposed the bill based in its longstanding position that the State should not charge civil or administrative penalties on local governments but should instead work with the jurisdiction to collaboratively resolve problems. *FINAL STATUS: The Senate passed SB 877 but the House did not take action on the bill.*

#### MACo SB 877 Testimony

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## KEY PROVISIONS OF SUSTAINABLE GROWTH AND AGRICULTURAL PRESERVATION ACT OF 2012 (SB 236)

*Prepared by MACO 2012-04-13*

- After December 31, 2012, a county may not authorize a major residential subdivision on septic systems unless it has adopted a series of four land use tiers. If a county chooses not to adopt the tiers, it is limited to subdivisions on public sewer or minor subdivisions on septic systems.
- There is a grandfathering provision in place that has a series of deadlines a project must meet, based on the varied local requirements for soil percolation tests and preliminary plan submissions. In every instance, however, the final grandfathering "cut-off" date is October 1, 2016 – all projects that are to be considered grandfathered must have preliminary plan approval by this date.
- A county may set a definition of what constitutes a major and minor subdivision for the purposes of this bill by December 31, 2012. However, a county may not define a minor subdivision as having more than 7 housing units. If a county does not elect to set a new definition, its existing definitions as of January 1, 2012, will apply.
- The State approval of the tiers and the expanded State approval of subdivisions have been removed from the bill. Instead, local governments will adopt the tiers based on statutorily defined criteria. If a county adopts the tiers, it must adopt Tiers I, III, and IV and may adopt Tier II. If a municipality adopts the tiers, it must adopt Tier I and may adopt Tier II. A county may adopt the tiers administratively at first and then must incorporate the tiers into their comprehensive plans during their next comp plan cycle (which could be up to 6 years away for some counties).
- The State will keep two "backstops." The first is that the Maryland Department of Planning (MDP) will review the tiers and if it has a problem, can require a local government to hold a public hearing on the issue. However, MDP cannot force a local government to adopt any recommendations it may offer concerning the tiers. The second backstop rests with the Maryland Department of the Environment (MDE). As part of its existing review of subdivisions, MDE will now perform an additional check to make sure a proposed subdivision is located in an appropriate tier. This is essentially a simple check against a county's tier map.
- If two or more local jurisdictions adopt conflicting tier designations, the MDE and MDP must confer with the local jurisdictions and seek a resolution. If the conflict is not resolved, MDE may decide which tier designation will apply. MDP must offer a recommendation to MDE on the tier designation, but MDE is not required to accept MDP's recommendation.

- After December 31, 2012, residential minor subdivisions and any remainder parcels or land tracts in Tiers II – IV may not be resubdivided or further subdivided unless: (1) the subdivision is within a Priority Funding Area (PFA) and is designated for public sewerage service in the 10-year water and sewer plan; or (2) the initial subdivision specified the total number of lots, plats, and building sites for the subdivision and the subdividing is done in stages over time.
- A local jurisdiction may allow an owner of land used for agricultural activities to transfer up to 7 lots to another agricultural landowner. A landowner subject to this provision is limited to a total of 15 lots on the property and must cluster the lots. An owner cannot transfer lots from a Tier III area to a Tier IV area.
- If community sewerage systems or shared facilities are used, they must be under the supervision of a “controlling authority”, which could be a local government, a body public or corporate (like Maryland Environmental Services), or an authorized intercounty agency.
- MDE must propose regulations that establish nutrient offset requirements for new residential major subdivisions on septic systems within Tier III areas. MDE must consult with counties and other stakeholder groups during the drafting process and shall brief the General Assembly prior to submission of the proposed regulations to the Joint Committee on Administrative, Executive, and Legislative Review (AELR).
- MDP, in consultation with MDE, must report to the General Assembly by February 1, 2013, on the status of local governments in defining and adopting the tiers, any MDP comments on the tiers, and any new local major/minor subdivision definitions for the purposes of this bill.

# EXPLANATION OF THE TIERS AND RESTRICTIONS FOR SB 236 WITH ADMINISTRATION/MIDDLETON AMENDMENTS

2012-03-23

## TIER I CRITERIA

A Tier I area must:

- (1) be a mapped locally designated growth area served by public sewerage; OR
- (2) a municipal corporation that is a priority funding area and served by public sewerage.

*Only subdivisions on public sewerage systems are allowed in Tier I areas.*

## TIER II CRITERIA

A Tier II area must:

- (1) be planned to be served by public sewerage in a municipal growth element or a mapped locally designated growth area; AND
- (2) be needed to satisfy the demand for development at densities consistent with the jurisdiction's long-term development policy. Must consider capacity of land areas available for development, including in-fill and redevelopment.

*Subdivisions on public sewerage systems and minor subdivisions on septic systems are allowed in Tier II areas.*

## TIER III CRITERIA

A Tier III area must:

- (1) not be planned for sewerage service;
- (2) not be dominated by agricultural or forest land;
- (3) not be planned or zoned by a local jurisdiction for land, agricultural or resource protection; AND
- (4) fall in one of the following categories: (i) a municipal corporation not served by public sewerage; (ii) a rural village as defined by statute; (iii) an area planned or zoned for large lot development; or (iv) a mapped locally designated growth area.

*Major and minor subdivisions on septic systems are allowed in Tier III. Major subdivisions on septic must be recommended by the local planning board or equivalent agency.*

## **TIER IV CRITERIA**

A Tier IV area must:

- (1) be planned or zoned for land, agricultural, or resource protection , preservation, or conservation;
- (2) be an area dominated by agricultural lands, forest lands, or other natural areas; OR
- (3) be a Rural Legacy area, a Priority Preservation Area, or land subject to a State or local conservation or preservation covenant, restriction, or easement.

*Only minor subdivisions on septic systems are allowed in Tier IV UNLESS the Department of Planning verifies that the subdivision and zoning requirements in a jurisdiction's total Tier IV area results in an actual overall yield of not more than one dwelling unit per 20 acres. If the Department verifies, major subdivisions on septic systems are allowed in Tier IV.*

## **OTHER NOTES ON TIER ADOPTION**

A local jurisdiction may choose not to adopt the tiers but then is limited to subdivisions on public sewerage in Tier I areas or minor subdivisions on septic systems, shared systems, or community systems.

If a county chooses to adopt the Tiers, it must adopt Tiers I, III, and IV (II is optional).

If a municipal corporation chooses to adopt the Tiers, it must adopt Tier I (II is optional). A municipal corporation cannot adopt Tier III or IV.





## End of Session Wrap Up: Planning & Zoning Legislation

April 10, 2012

This post summarizes the final status of various planning and zoning legislation that MACo either considered or took a position on.

**MACo PlanMaryland Legislation:** HB 1201 / SB 532 is MACo legislation that would define the scope and application of the State Development Plan (PlanMaryland). As introduced, the bill would prohibit PlanMaryland from being used to deny State permits, approvals, or mandated funding. The bill would also provide that in the event of a conflict between the State and a local government over the planning area designations in the Plan, the local government's comprehensive planning and zoning classifications would prevail. MACo supported the bill. Subsequently, MACo and the Maryland Department of Planning (MDP) agreed upon amendments to the bill stating that the Plan may not be used to deny a State-issued permit, deny mandated funding, supersede State or local statutes or regulations, overturn a decision of a local government to fund a project, or require a local government to amend its comprehensive plan or zoning. *FINAL STATUS: The General Assembly passed HB 1201 with the MACo/MDP consensus amendments and also added a requirement that the Smart Growth Subcabinet meet biennially with local governments to discuss land use issues. The Senate passed SB 532 in a form identical with the House Bill but the bill did not pass the House.*

MACo HB 1201 Testimony

**Prohibition on PlanMaryland to Deny Permits or Mandated Funding:** HB 932 and SB 701 are similar bills that include language similar to the MACo PlanMaryland legislation and would prohibit the use of PlanMaryland to deny State permits or mandated funding. MACo supported the bills as they contained similar provisions to the MACo legislation. *FINAL STATUS: The House gave HB 932 an unfavorable report. The Senate gave SB 701 an unfavorable report.*

MACo HB 932 Testimony

MACo SB 701 Testimony

**PlanMaryland Conflict :** SB 835 includes language similar to the MACo PlanMaryland legislation and would provide that in the event of a conflict between the State and a local government over the planning area designations in the Plan, the local government's comprehensive planning and zoning classifications would

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prevail. MACo supported the bill as it contained a similar provision to the MACo legislation. *FINAL STATUS: The Senate gave SB 835 an unfavorable report.*

#### MACo SB 835 Testimony

**Approval of PlanMaryland By General Assembly:** HB 32, HB 36, HB 931, and SB 829 are similar bills that would require General Assembly approval of PlanMaryland. MACo supported the bills, citing the traditional oversight role of the General Assembly in significant land use policy changes. *FINAL STATUS: HB 32 was withdrawn by the bill's sponsor. The House gave HB 36 and HB 931 an unfavorable report. The Senate gave SB 829 an unfavorable report.*

#### MACo HB 36 Testimony

#### MACo HB 931 Testimony

#### MACo SB 829 Testimony

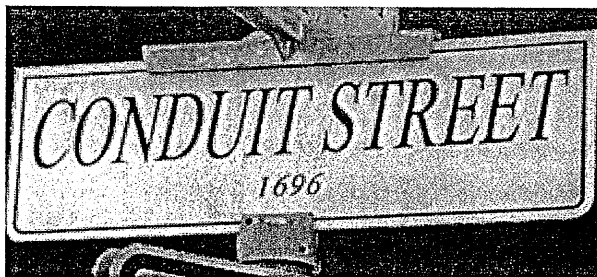
**Prohibition on Restricting Local Land Use Authority:** SB 826 would prohibit MDP, the Office of Smart Growth, the Special Secretary of Smart Growth, and the Smart Growth Subcabinet from adopting regulations or taking an action that would restrict the land use power of any local government or regional planning agency. MACo supported the bill, citing the traditional oversight role of the General Assembly in significant land use policy changes. *FINAL STATUS: The Senate gave SB 826 an unfavorable report.*

#### MACo SB 826 Testimony

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## End of Session Wrap Up: Finance and Procurement Legislation – Transportation Issues

April 9, 2012

This post summarizes the status of various finance and procurement bills relating to transportation issues that MACo either considered or took a position on.

**Constitutional Amendments to Protect Transportation Funds:** A number of bills have been introduced to seek constitutional amendments to protect the transfer of funds from the Transportation Trust Fund (TTF) to the State's general fund. Some of these bills extend the protections to the distribution of Highway User Revenues (HUR) to local governments and restore the distribution to back to the 70% State/30% local split ([HB 23](#), [HB 146](#)). While others just provide the protections to the TTF ([HB 695](#), [SB 403](#), [SB 441](#), [SB 619](#)). MACo supported these bills or supported them with amendments to protect and restore the local share of HUR. *Status: HB 23, HB 146, and HB 695 have been voted unfavorable by the House Appropriations Committee. SB 403, SB 441, and SB 619 have been heard in the Senate Budget and Taxation Committee and SB 619 has been voted unfavorable.*

[Testimony HB 23](#)

[Testimony HB 146](#)

[Testimony HB 695](#)

[Testimony SB 403](#)

[Testimony SB 441](#)

[Testimony SB 619](#)

**Restoration of Highway User Revenues:** [HB 845](#) and [SB 440](#) would both restore the local share of HUR. HB 845 would restore the local distribution back to the historical 70% State/30% local share beginning in FY 2013. SB 440 would incrementally restore the local share in 5% increments beginning in FY 2014. MACo supported both bills. *Status: HB 845 has been voted unfavorable by the House Appropriations Committee and SB 440 failed in the Senate Budget and Taxation Committee.*

[Testimony HB 845](#)

[Testimony SB 440](#)

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**Transportation Revenues:** HB 1302 and SB 971 would phase-in the application of a 6% sales tax to the price of motor fuel over a three year period and establish a new Local Transportation Infrastructure Aid Account to distribute a portion of the new revenue to local jurisdictions. MACo opposed this legislation because it doesn't restore the local government's share of Highway User Revenue (HUR) or provide protections against transferring local HUR to the State's general fund. *Status: HB 1302 failed in the House Environmental Matters and Ways and Means Committees and SB 971 failed in the Senate Budget and Taxation Committee.*

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