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2004 LEGISLATIVE SUMMARY

COUNTY IMPACT LEGISLATION FROM THE 2004 SESSION

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INTRODUCTION

This report provides a summary of statewide legislation affecting county government enacted during the 2004 General Assembly Session. The bills and resolutions are grouped into categories or topic areas. A brief synopsis of each bill or resolution is provided. In addition to the bill summary, you will find an explanation of the MACo Legislative Committee's position taken on the bill, if applicable.

New in recent years' reports is a series of more detailed articles, describing the process or background surrounding several key legislative issues. In this year's publication, we have focused on four major issues: new tools for school construction financing, the "flush fee" to support wastewater system upgrades, the effort to protect Program Open Space funding, and the State's efforts to balance its FY 2005 budget.

During the 2004 session, the 47 Senators and 141 Delegates introduced 2,482 bills. The total number of legislative proposals introduced during the 2004 Session averages about 13.2 bills per legislator.

MACo staff reviewed all legislation and presented 111 bills to the Association's Legislative Committee for consideration. The bills presented were those staff viewed as having a county impact and a reasonable chance of passing. The Legislative Committee took positions on 68 bills. A breakdown of MACo's "legislative statistics" is included as Appendix A of this report. The Committee also adopted three legislative initiatives, led by the dominant issue of the year – County Budget Security. The discussion on "budget balancing" on page 16 of this report details some of the trials facing local governments through this difficult budget year.

The Session produced many positive results for county governments. MACo's participation affected legislation in a wide range of issues- from fiscal effects of budget balancing to coordinating strategies for environmental protection. In each case, counties involvement was a critical factor in the Annapolis decision-making process, and MACo's voice on behalf of county governments was clearly heard.

County elected and appointed officials continued to assume a significant role in presenting MACo's legislative agenda during the 2004 Session. The committee presentations by county elected and appointed officials furthered local government's General Assembly credibility.

In addition to the Association's standing and special ad hoc committees, MACo's ten affiliate organizations provided important information to the Legislative Committee during the Session. The Affiliates represent county administrators, attorneys, planners, health officers, engineers, human service directors, aging services directors, environmental health directors, park and recreation officials, and correctional officers. Affiliate representatives often testified before General Assembly committees.

This report is the product of the hard work of the MACo staff, including Ellen Clarke, Erin Favazza, Leslie Velasco, and Michael Sanderson.

If you need additional information regarding any legislation reviewed in this report, or on any other issues addressed by the 2004 General Assembly, please feel free to contact MACo Legislative Director Michael Sanderson, or any MACo staff member.

Business Affairs

HB 1308 / SB 869
(Chapter 488/487) ELECTRICITY REGULATION – RENEWABLE ENERGY PORTFOLIO STANDARD AND CREDIT TRADING - MARYLAND RENEWABLE ENERGY FUND – Requires the Public Service Commission to adopt renewable energy portfolio standards for retail electricity sales, and establishes a system of transferable renewable energy credits to be usable in reaching the portfolio requirements. Energy from county waste-to-energy facilities is included in the definition of renewable resources, strengthening the market for this product. Effective October 1, 2003.

Community and Economic Development

HB 806 / SB 323
(Chapter 206/449) ECONOMIC DEVELOPMENT FINANCIAL ASSISTANCE - MINORITY BUSINESS ENTERPRISE PROCUREMENT GOALS – This bill requires a county government that receives State funds in excess of \$100,000 from the Economic Development Opportunities Program Fund (Sunny Day) or the Maryland Economic Development Assistance Authority and Fund (MEDAAF) to agree to encourage the procurement from minority businesses of goods and services purchased with the proceeds from the financial institutions. The bill also authorizes the Department of Business and Economic Development to require all counties that receive financial assistance from the Sunny Day Fund or MEDAAF to maintain a list of certified MBE's utilized in the procurement of goods and services. Effective January 1, 2005.

Education

HB 172
(Chapter 325) HIGHER EDUCATION – RESIDENT TUITION CHARGES – UNITED STATES MILITARY PERSONELL, SPOUSES, AND DEPENDENTS – This bill codifies the tuition practices of community colleges and 4-year institutions concerning the treatment of military personnel by exempting military personnel and their family members from paying nonresident tuition at the college as long as the active duty member is stationed, resides, or is domiciled in Maryland. The bill also extends the exemption to honorably discharged veterans. If the active duty member's status changes, the bill provides that the spouse or dependent child may continue to be exempt from the nonresident tuition charges. Effective July 1, 2004.

HB 199
(Chapter 326) EDUCATION – PUBLIC SCHOOL CONSTRUCTION – MODULAR CONSTRUCTION - This bill requires the Board of Public Works (BPW) to consider modular construction as an approved school construction or capital cost, for purposes of receiving State funding for school construction projects. The bill also requires the BPW to develop regulations that define modular construction and that outline the minimum specifications for modular construction to be considered an approved school construction cost. Effective October 1, 2004.

HB 345
(Chapter 6)

BRIDGE TO EXCELLENCE IN PUBLIC SCHOOLS ACT – TRIGGER PROVISION - REPEAL - This bill repeals an unconstitutional provision in the Bridge to Excellence for Public Schools Act of 2002 (Ch. 288) that required the General Assembly to pass a joint resolution by the 55th day of 2004 General Assembly Session affirming the fiscal ability of the State to fund the additional \$1.1 billion State funding commitment enacted under the Bridge to Excellence or “Thornton” legislation. The bill reaffirms the State’s commitment to fund the full \$1.1 billion additional education aid required under Thornton. Effective March 8, 2004, emergency measure.

HB 356
(Chapter 172)

EDUCATION – SCHOOL VEHICLES – LENGTH OF OPERATION - ZONE ACADEMY BONDS - This bill extends the permissible time of operation of transit-style school vehicles currently in operation or purchased before July 1, 2004 from 12 to 15 years. The vehicles still must comply with vehicle specifications iterated by the Department of Transportation and the Motor Vehicle Administration for transit-style school vehicles. Effective July 1, 2004.



MACo supported this bill as it will provide needed relief from unnecessary school bus acquisitions. MACo believed the bill reflected a responsible balance between the operational safety of transit-style school buses and the increasing costs of public education.

HB 1230/SB 787
(Chapter 307/306)

PUBLIC SCHOOL FACILITIES ACT OF 2004 - This bill includes the recommendations of the Task Force to Study Public School Facilities with provisions that address the adequacy of the State’s public school construction funding and the equity of the existing Public School Construction Program. Included in the numerous statutory changes, the bill authorizes county commission governments to issue debt for school construction without first seeking General Assembly approval, requires relocatable classrooms to be eligible for State school construction funding, and alters the existing State and local cost share formula and the Aging Schools Program. Effective July 1, 2004.



MACo supported this bill as a step forward in addressing the current school construction funding crisis. The legislation provides county governments some flexibility in financing the local portion of school construction projects. For a complete discussion about this legislation, please see page 10.

SB 1
(Chapter 240)

EDUCATION – TEACHERS – STATE AND LOCAL AID PROGRAM FOR CERTIFICATION - This bill extends the State and Local Aid Program for Certification by the National Board for Professional Teaching Standards for an additional four years through May 31, 2008. The State pays two-thirds of the certification fee, and local school systems pay one-third of the fee. The program was scheduled to terminate May 31, 2004. Effective April 8, 2004, as an emergency measure.

Focus on: Tools for School Construction Financing

Through the passage of House Bill 1230/Senate Bill 787 (Chapter 307/306) the General Assembly attempted to provide some relief to county governments struggling to deal with the growing costs for school construction. The State Public School Construction Program has been funded at \$500 million for FY 2005 through 2010, that's approximately \$100 million annually to meet the growth and maintenance needs of the State's 24 school jurisdictions. Currently, there is a \$256 million backlog of State approved public school construction requests. That does not even address the \$4 billion identified by the Task Force to Study Public School Facilities as needed to bring all school facilities up to adequacy. The Task Force met over the last two interims to assess the status of public school facilities, and make recommendations for adequacy, improvement, and funding, as the second component to Thornton.

Chapter 307 and 306 did create a couple of helpful school construction financing tools for county governments. County commission governments no longer need to seek General Assembly authority to issue bonds to finance school construction debt, probably the most worthwhile piece of the entire legislation. The laws also outline and encourage the use of alternative financing mechanisms such as sale-leaseback, lease-leaseback, and performance contracting, that are useful in a finite number of school projects that need immediate construction, etc.

Much to the opposition of MACo, the laws also alter the State and local cost share formula for school construction beginning in FY 2006 with every jurisdiction receiving at least the same State share under the old formula. Without a new revenue source, MACo felt it was illogical to rearrange the formula. The new formula is based on the State foundation amount under Thornton and then adjusted by various economic factors such as local school construction debt, including, eligibility as a qualified distressed county, and number of students receiving free and reduced priced meals.

The bill also requires the Governor to appropriate an additional \$1 million for FY 2006 through 2008 for State funding of relocatable classrooms, currently ineligible for State funding.

SB 894
(Chapter 148)

EDUCATION FISCAL ACCOUNTABILITY AND OVERSIGHT ACT OF 2004 -

This bill requires each local superintendent of schools or chief executive officer to file a biannual report on the financial status of the local school system with the State Superintendent of Schools and the county governing body and attest to the accuracy of the report. The bill also establishes a process for review by the State Superintendent of a school system that identifies a deficit, or a negative fund balance of 1% or more at the end of a fiscal year. Additionally, the Department of Legislative Services is authorized to conduct an audit of each local school system to evaluate the effectiveness and efficiency of the system's financial management practices. Finally, the bill also extends the deadline for filing the annual comprehensive master plan updates from July 1 to August 15 to enable the inclusion of more budget and expenditure information. Effective April 27, 2004.



MACo supported SB 894 with an amendment to add county governing bodies to the list of entities that should receive a copy of the biannual financial report submitted by the school system. MACo felt the legislation promoted enhanced accountability for local school system expenditures of State and county education funding. Furthermore, although counties typically allocate over 50% of their budgets for public education, budget oversight is significantly limited by State law.

Environment

HB 109
(Chapter 154)

ENVIRONMENT – ELECTRONIC WASTE COLLECTION SYSTEMS -

This bill requires the Maryland Department of the Environment (MDE) to convene a group of interested stakeholders, including local government representatives, to study establishing and implementing an electronic waste collection system by January 2006. Electronic waste includes used computer monitors and television screens with cathode ray tubes, containing hazardous substances. MDE must report its funding recommendations by December 31, 2004, and its final recommendations for establishing and implementing a system by July 1, 2005. Effective October 1, 2004.



Electronic waste recycling was the subject of many bills this legislative session. MACo did not take an official position on HB 109, because as introduced it did not impact county governments in that it imposed electronic recycling requirements on the manufacturers of the product. However, MACo did oppose House Bill 111, which failed, but which would have banned the disposal of electronic waste, subjecting counties to countless fines and the burden of implementing a compliant electronic waste recycling system. MACo supported the amendments to conduct a comprehensive study of implementing a State electronic waste system that would be supported with State funding.

HB 136
(Chapter 494)

ENVIRONMENT – PRODUCTS THAT CONTAIN MERCURY - LABELING AND RECLAMATION OR DESTINATION –

This bill establishes requirements concerning the sale and disposal or recycling of mercury-added products such as fluorescent lamps and thermostats. Under the bill, beginning April 1, 2006, a mercury-added product may not be sold in the State unless the manufacturer affixes a specified label informing the consumer that the product contains

mercury and must be disposed according to State and federal environmental standards. Effective October 1, 2004.

HB 294/ SB 186
(Chapter 73/72)

BROWNFIELDS REDEVELOPMENT REFORM ACT – These bills streamline the application process for participation in the Voluntary Cleanup Program (VCP) which encourages the investigation, cleanup, and redevelopment of eligible brownfields properties. To encourage county government participation as an owner and developer, the bills clarify that a county government is entitled to “inculpable person” status, which provides funding opportunities and liability relief at the same time. The bills also authorize Baltimore City and Montgomery County to enter private land in order to perform certain tests to determine the possibility of public use of a property. Effective October 1, 2004.



MACo supported these bills, recognizing that the VCP is a useful component of urban redevelopment programs. Enhancing the program, the bills enable counties to receive the liability and financial benefit incentives of the program, furthering participation in the program from both the private and public sector.

HB 493
(Chapter 504)

ENVIRONMENT – HAZARDOUS MATERIAL SECURITY- This departmental bill requires owners and operators of facilities with reportable hazardous materials to conduct a self-audit of the security of the facility every five years and submit the analysis to the Maryland Department of the Environment (MDE). County governments are subject to the reporting requirements for the storage and use of chlorine, used in drinking water and wastewater treatment facilities. Effective October 1, 2004.



As introduced HB 493 included a \$2,500 filing fee, which MACo strongly opposed. The final bill exempts county governments from the filing fee. While MACo continues to oppose the duplicative federal reporting requirements, over time the effect of the bill should be minimalized, as most wastewater treatment facilities are currently phasing out the use of chlorine, a reportable hazardous material.

SB 320
(Chapter 428)

WATER POLLUTION – STATE WATERS – BAY RESTORATION FUND- Establishes a dedicated State Fund for providing grants to upgrade the 66 major wastewater treatment plants to enhanced nutrient removal technology and to septic system owners for failing septic systems. The fund is supported by collections of the newly established Bay Restoration Fee from wastewater system and septic system users which will generate an estimated \$70 million. Effective July 1, 2004.



MACo supported the Governor’s initiative, applauding the State for stepping forward to help local governments meet this future environmental unfunded mandate. MACo’s initial concerns with the bill centered on the financial responsibility for collecting the fee and being subject to the fee. Through extended advocacy, both of these issues were addressed in a light favorable to county governments. For more information see page 13.

Focus on: Flush Fee to Fund Upgrades to Wastewater Treatment Plants

The centerpiece of the Governor's environmental package, commonly referred to as the "flush fee," Senate Bill 320 (Chapter 428) passed in the waning hours of the last day of session. The legislation creates a State fund to provide grants to local jurisdictions to upgrade the 66 major wastewater treatment plants to enhanced nutrient removal technology. This state-of-the-art technology is supposed to reduce the nutrient loading from wastewater treatment plants into the Chesapeake Bay down to 3 mg/l for nitrogen and 0.3 mg/l for phosphorous. MACo supported the general intent and goal of the bill, but requested needed amendments to ease the local government burden in collecting this fee for the State.

Beginning January 2005, residential wastewater systems users will be charged a \$2.50 monthly fee, and non-residential users will be charged a sliding fee depending on the level of consumption. To address concerns about the nutrient loading from septic systems, the law also established a \$2.50 monthly fee on residential and nonresidential septic system owners that will be collected beginning October 2005. However, onsite septic system owners who receive a water bill will be charged the fee beginning January 2005.

After countless hours of lobbying, the final bill addressed most, if not all, county governments concerns. First and foremost, the law exempts local government users (schools, jails, community colleges, housing authorities, bi-county agencies, etc.) from being charged the fee. Based on MACo surveys, this amounts to a savings of \$2.5 million. Second, the law authorizes an administrative cost recovery of up to 5% of the fees collected.

The law also establishes the Bay Restoration Fund Advisory Committee composed of various stakeholders, including two publicly owned wastewater facilities owners, one MACo representative, and two local health department representatives with expertise in septic systems. The Committee is charged with recommending the method of collecting the fee from septic system owners who do not receive a water bill. The recommendation is due January 2005. The fees collected from septic system owners will be placed in a separate fund to be used for failing septics and cover crops on a 60/40 split.

Finance

- HB 180
(Chapter 40) REAL PROPERTY - RECORDATION OF DEEDS AND INSTRUMENTS OF WRITING – Streamlines the deed recordation process, requiring county treasuries and finance offices to collect intake data previously gathered at local assessment offices. Effective July 1, 2005.
-  *MACo supported HB 180, successfully seeking an amendment to delay the implementation to July, 2005. Approximately half of Maryland's counties had voluntarily adopted the two-step recordation process, with generally positive results. This policy change, with the additional transition time afforded by the delayed effective date, will better serve customers and improve efficiencies in the recordation process.*
- HB 216
(Chapter 43) HOMESTEAD TAX CREDIT - DAMAGED PROPERTY – Allows for the continuation of Homestead Property Tax Credits for the current taxable year and two succeeding taxable years even if the property has been removed from the assessment roll because of property damage due to an accident or natural disaster. Effective June 1, 2004, and affects all taxable years beginning after June 30, 2003.
- HB 323
(Chapter 501) HOMESTEAD TAX CREDIT - AGRICULTURAL LIMITED LIABILITY COMPANY Allows an owner of agricultural property to establish an agricultural limited liability company to hold the property (subject to various restrictions to avoid tax avoidance loopholes), while retaining eligibility for owner-occupied programs such as semiannual payment and the Homestead Property Tax Credit. Effective June 1, 2004, and applicable to all taxable years beginning after June 30, 2004.
- HB 804
(Chapter 519) PROPERTY TAX CREDIT - HIGH PERFORMANCE BUILDINGS - Authorizes county and municipal governments to grant a property tax credit against the local property tax for specified high performance buildings. The county or municipal corporation may provide for the amount of the credit, the duration of the credit, the criteria and qualifications necessary to receive the credit, and any other necessary provisions. The bill takes effect June 1, 2004 and applies to all taxable years beginning after June 30, 2004.
- HB 820
(Chapter 379) PROPERTY TAX AND TRANSFER AND RECORDATION TAXES - LAND TRUSTS - CREDITS AND EXEMPTIONS - This bill grants a 15-year State and local property tax credit for property subject to a perpetual conservation easement that is donated to the Department of Natural Resources (DNR) and identifies DNR as a grantee. The bill also authorizes a local tax credit on property owned by a land trust that is used to conserve agricultural land and promote continued agricultural use. In addition, the bill exempts the transfer of conservation easements and fee simple interests from recordation and transfer taxes if the transfer to a land trust and the land is used to preserve a natural area; for environmental education of the public; for agricultural preservation; for conservation; or for maintenance of a natural area for public use or wildlife sanctuary. Effective July 1, 2004.

HB 1162
(Chapter 538)

CODE HOME RULE COUNTIES - DEVELOPMENT EXCISE TAXES – MAXIMUM AMOUNT PER LOT - This bill increases, from \$2,000 to \$5,000, the maximum development excise tax that can be imposed to finance public school facilities or improvements by a code home rule county on the Eastern Shore, and repeals a previous termination for this authority. Effective June 1, 2004.

SB 452
(Chapter 460)

STATE BOAT ACT - WATERWAY IMPROVEMENT FUND – AUTHORIZED USES - This bill repeals previous limitations on the Department of Natural Resources use of funds collected from the vessel excise tax for administrative and enforcement costs. The bill newly authorizes an appropriation from the Waterway Improvement Funds to support DNR Police marine operations not exceeding \$1.7 million in Fiscal 2006 and \$2 million annually thereafter. Effective July 1, 2005.

SB 508
(Chapter 430)

BUDGET RECONCILIATION AND FINANCING ACT OF 2004 – Effects a variety of fund transfers, tax changes, and financing provisions necessary to balance the FY 2005 budget. This omnibus legislation included dozens of individual provisions, all under the general intent of enabling a balanced budget. For more detail on the provisions affecting county governments, see *Focus on: Budget Balancing* on page 16, and Appendix B. Various effective dates.



MACo opposed one related budget balancing bill, and sought amendments to another – generally raising concerns about county role in resolving the State's budget woes. MACo objected to the various components that reduced state support for several county government functions, and redirected some of the local share of Highway User Revenues to the state general fund. Several changes were made to the legislation in response to local government objections, though the final legislation did require counties to "participate" in the various budget reductions enacted.

Government Liability and Courts

HB 551
(Chapter 355)

VEHICLE LAWS – TRAILERS AND SEMITRAILERS – SURGE BRAKES - This bill authorizes the use of surge brakes on certain trailers and semitrailers. Surge brakes are the brakes of a vehicle being towed that are activated as a result of the forward pressure of the vehicle against the towing vehicle during deceleration. Beginning June 1, 2004, the Secretary of Transportation is required to adopt regulations authorizing the use of surge brakes by October 1, 2004. Effective October 1, 2004.

SB 275
(Chapter 446)

REAL PROPERTY – TASK FORCE ON BUSINESS OWNER COMPENSATION IN CONDEMNATION PROCEEDINGS – This bill establishes an 18-member task force of key stakeholders, including one representative of MACo appointed by the Governor, to study revisions to the statute dealing with business owner compensation in condemnation proceedings. Some of the various charges of the task force include considering the appropriateness of requiring compensation for business good will, the feasibility of requiring a displacing agency to conduct an impact study of the condemnation on small businesses, and the feasibility of shortening the condemnation process. The Task Force report is due December 31, 2005. Effective July 1, 2004.

Focus on: Budget Balancing

As the Governor and General Assembly yet again faced a substantial budget imbalance, local governments were again called upon to “participate” in the balancing solution to the FY 2005 budget. With some reductions from FY 2004 already “promised” in advance (including an anticipated reduction to Highway User Revenues, and a cut to Program Open Space funding), counties were surprised to see some \$260 million in aggregate reductions to local governments in the Governor’s originally proposed budget plan.

As the budget-balancing plan evolved, several components of major interest to counties took shape – some for better, some for worse. Most changes took place in SB 508, the Budget and Reconciliation Act of 2004 (BRFA), signed into law as Chapter 430 of the Acts of 2004.

? *Utility Grants Restored* – *The \$30.6 million electric utility grants to 11 jurisdictions were slated for permanent elimination by the Governor. The General Assembly restored that cut, fully funding the grants for FY 2005, but requiring a study of their effect to be conducted in time for FY 2006 deliberations.*

? *Education Reductions Taken* – *Several components of state education funding were contemplated for reduction or elimination, including several proposed cuts with permanent and escalating effects. Eventually, a proposal for reductions to school bus transportation was defeated, and a proposed phase-out of state funding for nonpublic placement costs was scaled back to a one-year formula reduction. However, a permanent change to funding responsibilities for State-run Regional Institutes for Children and Adolescents (RICAs) was enacted, creating additional funding burdens for local education agencies.*

? *One-Time Income Tax Distribution* – *The BRFA amended the management of the Local Income Tax Reserve Account, which freed up \$162 million. That amount was divided in half, with one half being distributed to local governments, and the other half to the State General Fund. Debate continued even after the legislative session ended about whether the additional distribution to local governments (of revenues collected on their behalf) constituted additional “local aid,” or whether the direction of half of these funds to State uses amounted to an additional reduction from local funds.*

? *Jail Reimbursement Secured* – *A multi-year problem with local jail reimbursement (identified by legislative analysts as totaling \$13 million) has been resolved with an amendment to the BRFA legislation, to affect future years’ funding requirements. The per diem payments, calculated for each county’s facility, amount to some \$20 million in annual funding from the state – to cover a share of costs associated with a broadened range of sentenced prisoners sent to county correctional centers. The language in the BRFA assures proper funding in future years, cutting off a practice of underfunding this item and using future years’ funding to resolve the shortfall.*

More information about the overall effect of budget reductions and transfers on county governments may be located in the table on page 23.

Health

HB 295/ SB 194
(Chapter 238/237) CRIMES - SUBSTANCE ABUSE - PAROLE - CIVIL COMMITMENT – DIVERSION - Provides for the evaluation of nonviolent offenders for drug or alcohol dependency and for the diversion of such defendants to treatment services rather than incarceration. Counties are required to establish a local council to manage and coordinate county treatment efforts, and to review grant applications. Effective October 1, 2004.



MACo supported HB 295, seeking amendments to clarify the county health department's role in the evaluation of potential treatment candidates, and to specify the nature and composition of the locally-established councils. The bill as enacted contains language ensuring that programmatic mandates are only applicable if appropriate state funding is provided, and providing flexibility in establishing the councils, whose role will be advisory.

SB 839
(Chapter 312) BED AND BREAKFAST ESTABLISHMENTS - FOOD SERVICE - REGULATION
Exempts bed and breakfast establishments with eight rooms or less from State or local regulations governing food service facilities relating to the construction or installation of commercial grade kitchen equipment. Each establishment that intends to serve hot meals to renters must be licensed to operate a food establishment and is subject to State and local health regulations that govern food safety and contamination. The county health officer must inspect each establishment for regulatory compliance. Effective October 1, 2004.

Parks and Recreation

SB 713
(Chapter 135) STATE FINANCE – STATE PROJECTS OR PROGRAMS – FUNDING -
Clarifies application of recently enacted restrictions on capital funding to Program Open Space (POS). Specifies that POS funds included in county's annual park planning documents are to be considered encumbered, and not subject to return to the State General Fund under other laws. Effective June 1, 2004. For more details, see *Protecting Program Open Space* on page 18.

Planning and Zoning

HB 777
(Chapter 375) MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION - EASEMENT TERMINATION – Under this bill, an easement purchased by the Maryland Agricultural Land Preservation Foundation (MALPF) on or after October 1, 2004, is perpetual. The bill also requires MALPF to provide landowners with the opportunity for a hearing prior to making a termination decision and establishes an appeals process for landowners applying for easement termination. Effective October 1, 2004.



This bill was a recommendation of the Task Force to Study the Maryland Agricultural Land Preservation Foundation and was also a recommendation of several county attorneys concerned that the first easement is up for termination beginning in 2005. The bill was introduced to clarify the original intent of the General Assembly, that MALPF easements be considered perpetual. MACo supported the bill.

Focus on: Protecting Program Open Space

In 2003, the General Assembly passed HB 444 (Chapter 316 of the Acts of 2003), a bill creating new “use it or lose it” rules for capital programs. The legislation was intended to address the occasional situation where capital funds are appropriated for a project, but the project fails to move forward. The new law calls for these unused funds to be recycled back for general fund use if they are not encumbered within a two-year period, or spent within a seven-year period.

A letter of advice from the Office of the Attorney General in the summer of 2003 presented a surprise finding, not discussed when HB 444 was considered. The letter advised the Department of Natural Resources that the “use it or lose it” law would also apply to funding from Program Open Space (POS) and the other programs that are traditionally funded through the receipts of the state transfer tax. While the Rural Legacy and Agricultural Land Preservation program were nominally affected, their program practices did not raise any conflict with the new “use it or lose it” law. However, POS suddenly found millions of outstanding local appropriations in jeopardy due to the legal ruling.

The POS conflict arises from the common county practice of “saving up” annual allocations in order to support a significant land acquisition. Especially in smaller counties, this is a routine practice – jurisdictions frequently store several years of allocations, to establish a reserve adequate to act when a significant or sensitive property becomes available for purchase. This widely accepted practice enhances the effectiveness of the program, allowing jurisdictions to react to a change in market availability of sensitive lands.

SB 713 was introduced by Senator Mac Middleton, at the request of MACo and the Maryland Recreation and Parks Association (MRPA). Initially, that legislation would have simply excluded the transfer-tax funded programs from the effects of HB 444 of 2003, a broad-based approach to the potential conflict.

In advance of the bill hearing, representatives from the Treasurer and Comptroller’s office met with MRPA and MACo, to discuss the impacts of the proposed legislation. They sought to retain an appropriate level of accountability through the Board of Public Works, and offered to negotiate an appropriate resolution to accommodate the concerns of the POS community, while retaining the accountability objectives of the new laws.

After the hearing before the Senate Budget and Taxation Committee, which expressed interest in resolving the issue and protecting POS, a compromise bill was crafted. The amended version of the bill ultimately received support from that Committee, and also from the House Appropriations Committee. In fact, House supporters added the entirety of SB 713 (in its final version) to the annual capital budget bill, to ensure that these important protections were enacted into law.

The final version of the bill provides that POS appropriations are considered to be encumbered for purposes of the “use it or lose it” law when the county receives approval for its annual park planning documents. A retroactive application ensures that funding for the upcoming year will not be compromised. And the text of the bill clearly indicates how future allotments of POS capital funding should be treated, for purposes of determining encumbrance and expenditure.

HB 1009
(Chapter 526)

CHESAPEAKE AND ATLANTIC COASTAL BAYS CRITICAL AREA
PROTECTION PROGRAM – MISCELLANEOUS ENFORCEMENT
PROVISIONS

This bill clarifies a local jurisdictions review process for variance requests within the Chesapeake and Atlantic Coastal Bays Critical Area by outlining the burden of proof of the applicant for a variance and the government entity in its review. The bill also increases the fines for violations of the Critical Area and provides needed enforcement support to local jurisdictions through the Critical Area Commission and the Office of the Attorney General. Effective June 1, 2004.



MACo supported this bill which was intended to override the Court of Appeals decision in Lewis v. Department of Natural Resources, 377 Md. 382, that essentially reversed the denial of a critical area law variance.

The Court's opinion suggested that local governments now have a heightened burden in the administrative review process of Critical Area variances to produce empirical data to support the government's position. This was adverse to years of administrative review practice both in the Critical Area and general land use and zoning.

HB 1345
(Chapter 546)

CHESAPEAKE AND ATLANTIC COASTAL BAYS CRITICAL AREA
PROTECTION PROGRAM – DWELLING UNITS

– This bill defines dwelling unit for purposes of determining the density calculation permitted in the Critical Area. The bill also excludes certain types of guest or accessory houses from the density calculation requirement if the guesthouse meets specified criteria including location to primary dwelling unit, maximum size limits, and shared sewerage system with primary dwelling unit. Finally, for purposes of tracking the number and extent of guest and accessory houses, the bill requires local jurisdictions to report to the Critical Area Commission the number of guest house building permits granted within the Critical Area. Effective June 1, 2004.



As introduced, MACo opposed this uniform definition of "dwelling unit, noting that it did not reflect the current practice of a few jurisdictions. MACo worked consistently with the sponsors of the legislation, the Critical Area Commission, and the Chesapeake Bay Foundation on a compromise that respected the policy decisions of local jurisdictions while still serving to protect the waters of the Chesapeake Bay by limiting development in the Critical Area.

Public Ethics and Information

SB 111
(Chapter 440)

STATE GOVERNMENT – OPEN MEETINGS ACT – PUBLIC BODY

This bill expands the definition of "public body" under the Open Meetings Act to include a board, commission, or committee appointed by an official who is subject to the policy direction of the Governor or chief executive authority of a political subdivision, but exempts a subcommittee of the public body unless created by the county charter, rule, ordinance, bylaw, State statute, or executive order of the political subdivision. The bill also changes provisions concerning the responsibility of a public body when responding to a complaint filed with the Open Meetings Compliance Board and authorizes a public body to tape record any session, not just a closed session. Effective October 1, 2004.

HB 666
(Chapter 59)

BIOLOGICAL AGENTS REGISTRY PROGRAM – Requires the Department of Health and Mental Hygiene to adopt regulations providing for the release of specified information in the Biological Agents Registry to state and local agencies. The Department must consult with local jurisdictions in adopting and implementing the regulations regarding informing the jurisdictions of the biological agents in their area. Effective October 1, 2004.



MACo supported HB 666, with amendment language ensuring that local government agencies – notably first responder public safety units – would be ensured proper and timely access to this potentially critical information about the location and nature of biological agents.

HB 971
(Chapter 213)

MARYLAND COMMISSION ON CORRECTIONAL STANDARDS – SANCTIONS
Alters the authority of the Maryland Commission on Correctional Standards, including the authority to order the closure or cessation of operations of a correctional facility. If an area of noncompliance is identified, and a follow-up audit determines that the facility has still not complied, the Commission may seek a court order to require compliance or to shut down the facility. Effective October 1, 2004.



MACo originally opposed HB 971, responding to the bill's provisions for assessing monetary penalties on correctional facilities (potentially including those run by county governments). Amendments responded to MACo's concerns, keeping the enforcement on an operational basis.

SB 67
(Chapter 246)

CORRECTIONS - LOCAL CORRECTIONAL FACILITIES – FINANCIAL ASSISTANCE FOR COUNTIES – Clarifies the provisions regarding state support for jail capital costs, basing the required state support on the inmates serving sentences between 6 and 12 months. Effective July 1, 2004.



MACo originally opposed SB 67, as its original language altered the nature of the state capital funding commitment, and the prisoner population upon which the funding is based. The Department of Public Safety and Correctional Services amended the bill, with input from county corrections officers and MACo, and restored the bill to its originally stated intent – to simply clarify the current practice for capital reimbursement, and conform the statutory language with the Department's long-standing practice.

SB 883
(Chapter 147)

CORRECTIONAL SERVICES - STANDARDS FOR CORRECTIONAL FACILITIES - VICTIM NOTIFICATION AND RESTITUTION – Requires the Secretary of Public Safety and Correctional Services to adopt regulations that establish minimum mandatory standards applicable to victim notification and restitution. Effective October 1, 2004.

Taxes and Revenues

HB 159
(Chapter 497)

PROPERTY TAX – EXEMPTIONS – Modifies provisions regarding tax exemptions when property is transferred. For real property, the new owner must file for the appropriate tax exemption by September 1 of the following taxable year to receive the exemption; for personal property, the new owner must apply within a six month period. Effective October 1, 2004, and applicable to all taxable years beginning after December 31, 2004.



MACo supported HB 159, recognizing that these provisions added certainty and predictability to property tax collections, particularly regarding personal property. Past instances have seen taxpayers inadvertently pay taxes, then claim substantial refunds from taxes paid due to exemptions they did not initially seek. HB 159 places certainty on the applicable timeline for new property owners claiming appropriate property tax exemptions.

Transportation and Public Works

HB 1467
(Chapter 9)

TRANSPORTATION TRUST FUND – TRANSPORTATION FINANCING - INCREASED REVENUES – This bill provides new funding to the Transportation Trust Fund by raising the vehicle registration fees and enabling the Motor Vehicle Administration to increase other miscellaneous fees. The bill ensures county governments will receive an additional \$47 million in highway user revenues beginning in Fiscal Year 2005. Effective July 1, 2004.



MACo supported this Administration bill because it provides some relief to county governments for highway funding. In Fiscal Years 2004 and 2005, the State budget reduced highway user revenue to county governments by \$102 million. This funding is used by counties for road maintenance, tree and snow removal, in addition to funding for new projects and transportation debt. The bill came from the recommendations of the Governor's Transportation Task Force which identified \$10.5 billion in under funded capital transportation needs over the next six years, laying the groundwork that at least \$300 million in new revenues annually is needed.

Appendix A - MACo Legislative Statistics, 1992-2004

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
# OF BILLS INTRODUCED BY GENERAL ASSEMBLY	2402	2598	2592	2294	2299	2385	2227	2049	2347	2408	2427	1959	2482
# OF BILLS PASSED BY GENERAL ASSEMBLY	751	748	911	788	803	899	901	830	884	941	918	629	851
# OF BILLS PRESENTED TO LEGISLATIVE COMMITTEE <i>% OF TOTAL BILLS INTRODUCED BY GENERAL ASSEMBLY</i>	167 7%	165 6%	127 5%	125 5%	127 5%	115 5%	95 4%	87 4%	107 5%	86 4%	78 3%	87 4%	110 4%
# OF BILLS COMMITTEE TOOK POSITION ON <i>% OF BILLS PRESENTED</i>	151 90%	146 88%	111 87%	72 57%	80 63%	61 53%	60 65%	52 60%	58 54%	56 64%	51 65%	53 61%	68 62%
# OF BILLS ACTION TAKEN W/O PRIOR LEGISLATIVE COMMITTEE APPROVAL	-	-	-	4	7	3	3	3	12	6	4	3	1
# OF BILLS SUPPORTED	87	66	48	44	51	38	40	38	55	42	31	32	49
# OF BILLS OPPOSED	64	57	38	29	29	23	23	17	15	20	24	24	20
# OF BILLS NO POSITION TAKEN	-	23	41	48	47	54	35	35	46	31	27	29	32

Measuring MACo's Success for 2004

Text in Bold = MACo Victory *Text in Italics = MACo Loss*

MACo Supported		MACo Supported only with requested Amendments		MACo Opposed	
Bill passed	18	Bill passed with MACo amendments	12	Bill failed	14
<i>Bill passed with amds eliminating support</i>	<i>0</i>	Bill failed	8	Bill passed with amendments acceptable to MACo	3
<i>Bill failed</i>	<i>11</i>	<i>Bill passed without MACo amendments</i>	<i>0</i>	<i>Bill passed despite MACo objections</i>	<i>3</i>
Success Rate	62%	Success Rate	100%	Success Rate	85%

MACo's 2004 Overall Success Rate = 55/69 = 79%

FY 2005 Local Government Budget Cuts and Transfers

Reductions from Pre-FY2004 Baseline or Formula Amounts

	FY 2005 local effects			
	<u>Governor</u>	<u>Senate</u>	<u>House</u>	<u>Conference</u>
<u>Fund Transfers</u>				
Highway User Revenues <i>(half of this cut was enacted in 2003)</i>	102.4	102.4	102.4	102.4
Program Open Space <i>(part of this cut was enacted in 2003)</i>	50.7	50.0	50.0	50.0
<u>Requiring County "Payments"</u>				
State Police Crime Lab <i>(continued from 2003 action)</i>	2.5 ◀	2.5 ◀	2.5 ◀	2.5 ◀
Circuit Court Law Clerks <i>(continued from 2003 action)</i>	1.4 ◀	1.4 ◀	1.4 ◀	1.4 ◀
<u>K-12 Budget Cuts</u>				
Teacher Salary Challenge Program	12.6	20.9	20.4	20.9
Geographic Cost of Education Index	49.2 ◀	---	49.2 ◀	49.2 ◀?
Pupil Transportation (eliminate minimum CPI)	3.0 ◀	3.0 ◀	---	---
Nonpublic Placements (county share raised)	6.4 ◀	6.4 ◀	6.4 ◀	6.4
Additional Miscellaneous K-12 Reductions	6.6	6.6	6.6	6.6
RICA Placement costs to county boards	---	3.8 ◀	3.8 ◀	3.8 ◀
Extended Elementary Education	---	2.4	---	2.4
Classroom Wiring Lease Payments	---	---	---	2.5
<u>Community College Reductions</u>				
Innovative Partnership Grants	1.6	1.6	1.6	1.6
Additional Formula Reductions	3.2	3.2	3.2	3.2
<u>Budget Cuts - Direct to Counties</u>				
Electricity Grants	30.6 ◀	---	4.4 ◀	---
Law Enforcement grants	0.5	0.5	0.5	0.5
Senior Centers	0.1	0.1	0.1	0.1
<u>Offsetting Additional Distributions</u>				
Supplemental Disparity Grant (Garrett County)	0.5	0.5	0.5	0.5
State's Attorneys Supplement (Baltimore City)	0.7	0.7	0.7	0.7
Rural Aging Hold Harmless distributions	---	---	---	0.4
TOTAL COUNTY REDUCTIONS	269.6	203.6	251.3	251.9
DIRECT COUNTY/MUNICIPAL IMPACT (excluding school boards and comm colleges)	187.0	155.7	160.1	155.3

NOTE: The symbol ◀ indicates reductions with a continuing effect beyond FY 2005