

April 1, 2015

SB863 - Watershed Protection and Restoration Programs - Revisions

Maryland House - Environment and Transportation Committee

POSITION: SUPPORT WITH AMENDMENTS

On behalf of the undersigned organizations, the *Clean Water, Healthy Families Coalition* respectfully requests a favorable report on SB 863 with amendments.

The 2012 Watershed Protection and Restoration Program provided the momentum for several of our largest jurisdictions to create robust stormwater management programs and to generate funding necessary to reduce urban and suburban runoff pollution that degrades local rivers and streams, and the Chesapeake Bay.

However, a number of other jurisdictions have insisted that the 2012 law - which mandates jurisdictions to establish a dedicated funding source for reducing stormwater pollution - limits jurisdictions' ability to determine their own approach to addressing water pollution and therefore impedes local flexibility. As a result, some jurisdictions have opted out of the program or repealed a previously established fee program on the local level.

SB 863 responds to the jurisdictions' call for more flexibility to generate needed funding, and attempts to address some of the issues that have remained unresolved in the 2012 law. Two of these important issues are:

- exemptions of state and federal properties that exist in current law; and
- lack of accountability and transparency of the jurisdictions' funding sources and plans¹

We strongly support the inclusion of state and federal properties in the jurisdictions' stormwater management programs as provided for in this bill. This provision will ensure a long-overdue expansion and strengthening of stormwater programs across the state.

As amended, SB863 provides greater accountability and transparency of jurisdictions' funding plans and sources by establishing provisions that were not in the original 2012 legislation. Under the federal Clean Water Act and federal regulations implementing the Act, Maryland's 10 most densely populated

¹ The Municipal Separate Storm Sewer System permit (known as MS4 permit), already requires jurisdictions to submit annual fiscal analyses of costs needed to comply with the permit. These requirements are enforceable in federal court, however, in practice the jurisdictions have provided somewhat less detail than the financial assurance plans required in SB 863.

jurisdictions need to address polluted runoff from local sources that is fouling local creeks, rivers and streams. In administering this Clean Water Act requirement, and in recognition of what needs to be done to clean our local waters, Maryland is requiring these 10 jurisdictions to restore 20% of their paved surfaces to reduce or eliminate the pollution flowing from those surfaces. The 20% impervious surface restoration requirement is a significant challenge for most of these jurisdictions, considering that many of them have not adequately funded or implemented their previous, and less stringent, requirement to restore just 10% of their impervious surface area. Transparency of funding sources and plans is needed to ensure that adequate funding is collected and spent on reducing urban runoff.

However, the accountability section in SB 863 as currently written is not independently enforceable. There is nothing in SB 863 that prevents MDE from rubber-stamping a deficient financial assurance plan, because the bill provides no role for independent third parties to challenge a decision by MDE to approve deficient plans. This directly undermines the bill's goal of creating greater accountability. For SB 863 to build actual accountability rather than the mere appearance of accountability, it must include a role for citizen enforcement, also known as a judicial review provision. Additionally, there should be an objective set of criteria or benchmarks for what constitutes "sufficient" funding. For the undersigned groups to be fully supportive of SB863, additional amendments are needed to 1) ensure that MDE is carefully reviewing the County reports and 2) provide for a clear way to test whether county efforts are "sufficient."

In addition, we are concerned that the bill as currently written could interfere with citizens' ability to enforce the program funding requirements in federal municipal separate storm sewer (MS4) permits, which come with an established process for enforcement. To ensure that SB 863 does not interfere with this established process, or make it more difficult or impossible for citizens to challenge insufficient permit implementation in court, we recommend the inclusion of language making clear that the intent of SB 863 is to bolster, rather than undermine, the transparency and accountability provided under MS4 permits.

We respectfully request a favorable report on SB 863 with the amendments as specified.

Members of the Clean Water, Healthy Families Coalition include: 1000 Friends of Maryland, Anacostia Watershed Society, Audubon Naturalist Society, Blue Water Baltimore, Chesapeake Bay Foundation, Chester River Association, Clean Water Action, Dorchester Citizens for Planned Growth, Earth Forum of Howard County, Eastern Shore Land Conservancy, Environment Maryland, Friends of Lower Beaverdam Creek, Interfaith Partners for the Chesapeake, Maryland Conservation Council, Maryland League of Conservation Voters, Maryland Native Plant Society, Maryland Pesticide Network, Mid-shore Riverkeeper Conservancy, Montgomery Countryside Alliance, National Aquarium in Baltimore, Neighbors of Northwest Branch, Port Tobacco River Conservancy, Potomac Conservancy, Potomac Riverkeeper, Rock Creek Conservancy, Savage River Watershed Association, Severn Riverkeeper, Maryland Chapter of the Sierra Club, South River Federation, Trash Free Maryland, Trout Unlimited, West/Rhode Riverkeeper and Wicomico Environmental Trust. . More information is available at www.cleanwaterhealthyfamilies.org.