



Maryland

Department of the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

February 19, 2020

The Honorable Kumar P. Barve
Environment and Transportation Committee
Room 251, House Office Building
Annapolis, Maryland 21401

Re: House Bill 614 – State Government - Office of the Environmental and Natural Resources Ombudsman - Establishment (Environmental Accountability and Transparency Act)

Dear Chairman Barve and Members of the Committee:

The Maryland Department of the Environment (MDE) has reviewed Senate Bill 460, entitled State Government - Office of the Environmental and Natural Resources Ombudsman - Establishment (Environmental Accountability and Transparency Act) and would like to offer a letter of concern.

SB 460 would create an independent Office of the Environmental and Natural Resources Ombudsman, which would be appointed by the Attorney General and housed within the Office of the Attorney General. The purpose of the bill is to enhance transparency and public oversight of complaints and enforcement activities of environmental agencies. MDE fully supports information sharing and public participation opportunities to find the best possible and science-based solutions in order to protect and restore the environment for the health and well-being of all Marylanders. However, this bill would have the opposite effect: the bill would significantly hinder and slow down environmental investigations and compliance process, provide the ombudsman with overly broad powers beyond MDE's control to pursue its mission, and have a strong fiscal and operational impact to multiple state agencies.

SB 460 would be an expansion of the reporting requirements that are imposed on the Department as part of a prior action of the General Assembly – SB324 of 1997. Where the prior bill focused on reporting the number of complaints, inspection, enforcement actions and permitting activities, SB 460 imposes the requirement on the Department to provide information to the Ombudsman on each individual inspection, enforcement action and complaint and on certain permitting actions, and to do so frequently and with great specificity that would be available on a website managed by the Ombudsman's Office.

Specifically, the website would include a list of complaints received not only by the ombudsman, but by the Department and the other affected agencies. The Ombudsman's website would also provide a list, to be updated monthly, of all air and water quality related inspections occurring within the prior 365 days, along with several items of information regarding the inspections; a list of all air and water quality related enforcement actions occurring within the prior 365 days, along with several items pertaining to the particular agency actions that took place as part of the enforcement effort; and a list of violations discovered within the prior 365 days that rise to the level of significant noncompliance or are considered a high priority, along with several items of information that pertain to the resolution of those violations. This public information would alert violators of potential enforcement actions being considered by the Department. Finally, the website is to include a list of expired and administratively extended

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environmental permits, along with information relating to the status of issuing those permits. An unintended consequence of this bill is that it will likely increase the number of Public Information Act (PIA) requests received. As more information is made publicly available, which the Department does not oppose, the public would likely be more frequently aware of the availability of documents that are mentioned by name within the website, including in relation to an inspection, enforcement action or any permit action. In addition, it is also likely that any dissatisfaction on the part of the public with how the Department resolves a complaint or in the means chosen to address complaints and violations will give rise to a new complaint with the Ombudsman.

The likely result of this new process would be a burdensome reporting process to both agencies and regulated entities that would create an adversarial relationship that would slow down the entire compliance process. Instead of focusing on the overall mission to protect the environment, this process would necessitate MDE to refocus a larger share of resources to sole purpose of responding and reporting of frequent inquiries. MDE would also need to carefully examine whether the disclosure of certain investigatory records when compiled for law enforcement purposes could be contrary to the public interest. Disclosure could prejudice MDE's investigation, it could tip off the violator of possible enforcement action to be taken by MDE against the violator, or it could deter an individual from reporting a complaint if the individual does not want the public to know it was him or her that complained, especially if the complaint involves a neighbor.

SB 460 would ultimately provide the Office of the Environmental and Natural Resources Ombudsman with not only the power of maintaining a detailed record of complaints involving the environment and the State's natural resources, but with the power to shape the compliance process at a significant level. This would negatively interfere with MDE's ability to set its own public health and environmental priorities. The Ombudsman would have a term of eight years and would necessitate roughly \$700,000 of general fund expenditures in Fiscal Year 2021, with a significant upward cost trend in the future.

Thank you for your consideration. We will continue to monitor Senate Bill 460 during the Committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-260-6301 or by e-mail at tyler.abbott@maryland.gov.

Sincerely,



Tyler Abbott

cc: The Honorable Brooke E. Lierman