

MPEN 2022 HB 402 - MDE Enforcement Authority - TES

Uploaded by: Bonnie Raindrop

Position: FAV



The Maryland Pesticide Education Network urges the committee's favorable report for **HB 402**. We strongly support the extent to which this bill alters the enforcement authority of the Department of the Environment (MDE) as it addresses existing gaps in the State's authority to enforce laws governing **safe drinking water**, wastewater facility operation, waterway construction and dam safety, and tidal and nontidal wetlands. We also support the provisions relating the requirement that certain information be reported to the MDE annually.

We are concerned that the enforcement provisions of the affected statutes have not been amended in many years, and even decades ago, and are incomplete or fail to provide sufficient deterrence. **HB 402** would ensure the State retains primacy and funding under the **Safe Drinking Water Act** and authorizes the State to enforce existing laws and regulations more effectively to protect public health and the environment, and especially our drinking water – a primary concern of our Network.

Our Network works to protect Marylanders from exposure to hazardous pesticides, which can and do migrate into our waterways including groundwater accessed by wells. The impact of pesticides on the health of our watershed is a public health issue. Not only because the watershed is the source of drinking water, but also because these are the waterways where we and our children live, work, learn and play. Comprehensive oversight by MDE of our watershed that includes enforcement authority will help to ensure that harmful pesticides do not find their way into our water, including our groundwater and other sources of drinking water.

We recognize that the current lack of injunctive relief and administrative and civil enforcement authority makes it difficult for the MDE to enforce **Safe Drinking Water Act** testing and recordkeeping requirements against the laboratories that perform these verifications on behalf of public and private drinking water systems – which we believe weakens the State's regulatory system that protects our drinking water.

We believe that MDE's lack of enforcement authority makes it difficult to even require public water systems to have certified operators. We are aware that The United States Environmental Protection Agency (US EPA) recommended that the MDE develop and implement a strategy to increase compliance with State and federal operator requirements under the **Safe Drinking Water Act**. **HB 402** could be part of that strategy to close the gaps in enforcement of our existing tools designed to protect one of our most precious resources, our water.

US EPA also requires Maryland to have injunctive relief and administrative and civil enforcement authority for its operator licensing laws as a condition of the delegation of primary enforcement responsibility to Maryland for the **Safe Drinking Water Act**. We fear that failure to have adequate enforcement authority could also jeopardize the federal **Drinking Water State Revolving Loan Fund Capitalization Grant**, which Maryland receives each year, and upon which Maryland's Water Supply Program and Drinking Water State Revolving Loan Fund depend.

Section 5-911 (Enforcement) currently provides for civil penalties and criminal fines for violations of the **Maryland Nontidal Wetlands Protection Act** (Environment Article Title 5, Subtitle 9), but Maryland currently has no administrative penalty authority. This is also true for the **Maryland Tidal Wetlands Act** (Environment Article Title 16). The current lack of administrative penalty authority limits the enforcement tools available to MDE in certain instances. **HB 402** would provide MDE the ability to recover administrative penalties for violations of the Title.

By passing **HB 402**, Maryland will continue to demonstrate its leadership and dedication to protecting our water quality, public health, and environment with comprehensive enforcement of existing protections under the laws of our state – especially those protecting our water from contamination by pesticides. Our Network recommends a favorable report on **HB 402**.

Bonnie Raindrop, Program Director

Maryland Pesticide Education Network | 1501 St. Paul St., Suite 123, Baltimore, MD 21202
raindrop@mdpestnet.org 410.404.3808

2022-02-25 HB 402 (Support).pdf

Uploaded by: Brian Frosh

Position: FAV

BRIAN E. FROSH
Attorney General



ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.

WRITER'S DIRECT DIAL NO.

410-576-6584

February 25, 2022

TO: The Honorable Kumar P. Barve
Chair, Environment and Transportation Committee

FROM: Brian E. Frosh
Attorney General

RE: HB 402 – Department of the Environment – Enforcement Authority – **Support**

Chair Barve, Vice Chair Stein, and distinguished members of the Environment and Transportation Committee, I appear before you today to urge your favorable report on House Bill 402. This legislation will assist our lawyers at the Maryland Department of the Environment (“Department”) in more efficiently and effectively doing their work and protecting public health and the environment.

Overview

House Bill 402 would address gaps in the State’s authority to enforce laws governing safe drinking water, wastewater facility operation, waterway construction and dam safety, and tidal and nontidal wetlands by authorizing or augmenting civil, administrative, and/or injunctive remedies. The bill would also revise certain, existing criminal remedies to reflect civil penalty thresholds. The bill also requires drinking water and wastewater facilities to report to the State the certified superintendents, certified operators, and certified industrial operators who are participating in the operation of, or are in responsible charge of, those facilities. Specifically, the bill would amend Maryland’s drinking water statute (Environment Article Title 9, Subtitle 4); the Maryland Water Quality Laboratory Certification Act (Environment Article Title 9, Subtitle 10); and the Maryland Waterworks and Waste Systems Operators Act (Environment Article Title 12) to strengthen the State’s regulation of drinking water safety, testing, and wastewater operations. The bill would also amend Maryland’s waterway construction and dam safety statutes (Environment Article Title 5, Subtitle 5); the Maryland Nontidal Wetlands Protection Act (Environment Article Title 5, Subtitle 9); and the Maryland Tidal Wetlands Act (Environment Article Title 16). The enforcement provisions of the affected statutes have not been amended in

many years—sometimes decades—and are incomplete or fail to provide sufficient deterrence. In fact, several of the affected statutes lack civil, administrative, and/or injunctive relief entirely and provide only criminal penalties. The amendments would ensure the State retains primacy and funding under the Safe Drinking Water Act and authorize the State to enforce existing laws and regulations more effectively to protect public health and the environment.

Drinking Water

House Bill 402 would amend the State’s drinking water statutes (Environment Article Title 9, Subtitle 4) to authorize the Department to pursue injunctive relief and administrative and civil enforcement and penalties against persons who violate the State’s drinking water rules and regulations. This bill would also align the Drinking Water statute with other enforcement provisions under the Environment Article. The bill would allow civil penalties for any violation of the subtitle, remove the requirement that the Department prove that civil violations or breaches of administrative orders were “willful” before liability can be imposed, and increase the civil penalty for drinking water violations and violations of administrative orders from \$5,000 to \$10,000 per day. Currently, there is no civil or administrative penalty authority for violations by persons under Section 9-412(b). The bill would also authorize the Department to assess administrative penalties against persons who violate drinking water rules and regulations. This would address the anomalous wording in Section 9-413(d)(1), which authorizes the Department to impose administrative penalties against persons, then limits the Department’s authority to public water systems in Section 9-413(d)(2) et seq. In addition to Section 9-413(d)(1), Subtitle 4 provides certain enforcement mechanisms for violations by “persons” in Section 9-413, Section 9-414, Section 9-415, and Section 9-416. However, Section 9-412 differentiates between violations by a public water system and violations by a “person”, severely constraining the Department’s authority to enforce the statute against persons notwithstanding the broad authority that otherwise exists in the statute.

Maryland Water Quality Laboratory Certification Act

If enacted, House Bill 402 would amend the Maryland Water Quality Laboratory Certification Act (Environment Article Title 9, Subtitle 10) to authorize the Department to pursue injunctive relief and administrative and civil enforcement and penalties against water quality laboratories. The statute governs the certification and operation of laboratories that perform testing and certification of drinking water under the Safe Drinking Water Act. Currently, the sole provisions to enforce Subtitle 10 are reprimanding, suspending, or revoking a water quality laboratory’s certification under Section 9-106 and Section 9-1017, or a criminal misdemeanor in Section 9-1026. These provisions have not been amended since 1982. Section 9-1024 and Section 9-1025 within Part III (Prohibited Acts; Penalties) are currently reserved. These sections would be replaced with authority for the Department to issue administrative orders and conduct hearings. The bill would also amend Section 9-1026 to include civil and administrative penalties and add Section 9-1027 to authorize the Department to pursue injunctive relief. The Department currently has no injunctive relief, or administrative or civil enforcement authority in the Maryland Water Quality Laboratory Certification Act, and the Department cannot effectively enforce laboratory suspensions or revocations without the proposed authority.

The lack of injunctive relief and administrative and civil enforcement authority makes it difficult for the Department to enforce Safe Drinking Water Act testing and recordkeeping requirements against the laboratories that perform these verifications on behalf of public and private drinking water systems and weakens the State's regulatory system that protects drinking water.

Maryland Waterworks and Waste Systems Operators Act

House Bill 402 seeks to amend the Maryland Waterworks and Waste Systems Operators Act (Environment Article Title 12) to add sections with injunctive relief and administrative and civil enforcement and penalties. The statute requires drinking water and wastewater facilities to employ a superintendent or operator who is licensed by the State Board of Waterworks and Waste Systems Operators to oversee operations and ensure compliance with State and federal law. Currently, the sole provision to enforce Title 12 against drinking water or wastewater facilities is a criminal misdemeanor of \$25 per day in Section 12-504. This provision has not been revised since 1987. Section 12-501 would be amended to require drinking water and wastewater facilities to annually report to the State the superintendents, operators and industrial operators who are participating in the operation of or are in responsible charge of those facilities. Section 12-502 and Section 12-503 within Subtitle 5 (Prohibited Acts; Penalties) are currently reserved. These sections would be replaced with authority for the Department to issue administrative orders and conduct hearings. The bill would also amend Section 12-504 to include civil and administrative penalties and add Section 12-505 to authorize the Department to pursue injunctive relief. The Department currently has no injunctive relief, or administrative or civil enforcement authority in the Maryland Waterworks and Waste Systems Operators Act. Finally, the bill would amend Section 12-101 to add a definition of "person" which is used throughout the statute but not defined. The lack of enforcement authority makes it difficult for the Department to require public water systems to have certified operators. The U.S. Environmental Protection Agency ("EPA") has recommended that the Department develop and implement a strategy to increase compliance with State and federal operator requirements under the Safe Drinking Water Act. This legislation could be part of that strategy.

EPA requires Maryland to have injunctive relief and administrative and civil enforcement authority for its operator licensing laws as a condition of the delegation of primary enforcement responsibility to Maryland for the Safe Drinking Water Act. Failure to have adequate enforcement authority could also jeopardize the federal Drinking Water State Revolving Loan Fund capitalization grant, which Maryland receives each year, and upon which Maryland's Water Supply Program and Drinking Water State Revolving Loan Fund depend.

Waterway Construction and Dam Safety

House Bill 402 amends the Maryland waterway construction and dam safety statutes (Environment Article Title 5, Subtitle 5) to provide MDE the ability to recover civil penalties and provide for administrative enforcement and penalties. Section 5-514 (Violations and penalties) currently provides for civil penalties for violations of subtitle 5 but only as relates to the water appropriation and use provisions of subtitle 5. Maryland currently has no administrative or civil penalty authority for the waterway construction or dam safety provisions of subtitle 5. The lack of administrative and civil penalty authority limits the enforcement tools available to MDE in

certain instances. Section 5-515 similarly allows MDE to issue administrative orders for violations of the water appropriation and use provisions of subtitle 5, but not the waterway construction or dam safety provisions of subtitle 5. However, MDE has promulgated regulation allowing it to issue corrective orders for waterway construction and dam safety violations. COMAR 26.17.04.12.

Nontidal Wetlands Protection Act and Tidal Wetlands Act

Finally, House Bill 402 would amend the Maryland Nontidal Wetlands Protection Act (Environment Article Title 5, Subtitle 9) and the Maryland Tidal Wetlands Act (Environment Article Title 16) to provide MDE the ability to recover administrative penalties for violations of both titles. Section 5-911 (Enforcement) currently provides for civil penalties and criminal fines for violations of subtitle 9, but Maryland currently has no administrative penalty authority. The lack of administrative penalty authority limits the enforcement tools available to MDE in certain instances. Similarly, Section 16-502 (Civil penalty) currently provides for civil penalties for violations of Title 16, but the statute does not specify any administrative penalty authority. The lack of administrative penalty authority limits the enforcement tools available to MDE in certain instances.

For the foregoing reasons, the Office of the Attorney General urges a favorable report of the House Bill 402.

cc: Committee Members

HB402_MDSierraClub_fav 25Feb2022.pdf

Uploaded by: Josh Tulkin

Position: FAV



P.O. Box 278
Riverdale, MD 20738

Committee: Environment and Transportation

Testimony on: HB402 “Department of the Environment – Enforcement Authority”

Position: Support

Hearing Date: February 25, 2022

The Maryland Chapter of the Sierra Club strongly supports HB 402, which updates, expands, and strengthens enforcement authority of the Maryland Department of the Environment (MDE) on matters involving waterway construction and dam safety, tidal and nontidal wetlands, drinking water, waterworks, wastewater works, and industrial wastewater works. The bill increases the amounts of monetary penalties for violations, adds civil or administrative penalties, provides for injunctive relief, and enables potential reduction of fines based on a variety of factors. These changes are intended to enhance the State’s ability to protect our waters by providing alternatives to criminal enforcement.

Clean water is critical to public health and the health of the Chesapeake Bay and other watersheds. Taking initiative to protect our natural and manmade water systems can save us from expensive and harmful events. The bill would make many impactful changes in the law, including the following.

Updates to the State’s drinking water statutes (Environmental Article Title 9, Subtitle 4) would include changing the requirement that MDE prove a civil violation be “willful” in order to take action. The bill would also allow for penalties to be levied against persons who violate drinking water regulations. These two changes could be substantial in protecting drinking water quality.

The bill would also update the Maryland Water Quality Laboratory Certification Act (Environmental Article Title 9, Subtitle 10). Laboratories that test drinking water are governed under this statute, which has not been updated since 1982. This bill would give MDE more authority over operations of these labs and would allow better enforcement of the Safe Drinking Water Act’s testing and recordkeeping requirements.

This bill also would amend the Maryland Waterworks and Waste Systems Operators Act (Environmental Article Title 12) to increase the operators’ recordkeeping requirements. The bill would allow MDE to take action when the law is not being followed in a water or wastewater plant. This section satisfies recommendations by the EPA and helps Maryland qualify for the annual federal Drinking Water State Revolving Loan Fund capitalization grant that is used to fund Maryland’s Water Supply Program.

Founded in 1892, the Sierra Club is America’s oldest and largest grassroots environmental organization. The Maryland Chapter has over 70,000 members and supporters, and the Sierra Club nationwide has over 800,000 members and nearly four million supporters.

Finally, the bill would expand MDE's civil and administrative enforcement tools related to waterway construction and dam safety. It would also provide new administrative authorities for tidal and nontidal wetlands protection.

In summary, HB 402 takes a comprehensive approach to address the many factors that affect water quality as well as manmade and natural water systems by updating, expanding, and strengthening the enforcement actions that MDE can take. The authorities provided would be helpful in addressing some of the important and longstanding water quality enforcement challenges that the State has faced. We urge a favorable report

Randy Lyon
Legislative Chair
randy.lyon@mdsierra.org

Josh Tulkin
Chapter Director
josh.tulkin@mdsierra.org

HB 402- MDE Enforcement Authority - NAIOP Testimo

Uploaded by: Tom Ballentine

Position: FAV



February 25, 2022

The Honorable Kumar P. Barve, Chair
House Environment and Transportation Committee
House Office Building, Room 251
6 Bladen St., Annapolis, MD 21401

Support: HB 402 – Department of Environment - Enforcement Authority

Dear Chair, Barve and Committee Members:

The NAIOP Maryland Chapters representing more than 700 companies involved in all aspects of commercial, industrial and mixed-use real estate. NAIOP supports HB 402 as introduced.

HB 402 reconciles inconsistencies that have existed since MDE was created by combining separate agency functions some of which had been enforced using administrative actions and others that relied on civil citations.

We see the bill as equalizing enforcement mechanisms across a broad set of permitted activities. Where it adds administrative penalties to MDE's enforcement options, the underlying requirements remain the same. The administrative penalties are added in situations where similar regulations already feature administrative penalties as an enforcement option.

While it is good government to make enforcement more consistent, the new administrative penalties do reduce the opportunity cost of taking enforcement actions through litigation and provide a new authority that should be used prudently.

For these reasons NAIOP respectfully requests your favorable report on HB 402

Sincerely;

A handwritten signature in blue ink, appearing to read "T.M. Ballentine".

Tom Ballentine, Vice President for Policy
NAIOP Maryland Chapters -*The Association for Commercial Real Estate*

cc: House Environment and Transportation Committee Members
Nick Manis – Manis, Canning Assoc.

HB 402_FAV_MML.pdf

Uploaded by: Angelica Bailey

Position: FWA



Maryland Municipal League

The Association of Maryland's Cities and Towns

TESTIMONY

February 25, 2022

Committee: Senate Education, Health, and Environmental Affairs

Bill: _____ HB 402 – Department of the Environment – Enforcement Authority

Position: Support with Amendment

Reason for Position:

This measure would expand the Maryland Department of the Environment's (MDE's) enforcement authority. While MML appreciates the need for enforcement and climate protection, we are concerned that some of these proposed provisions go too far. Under this bill, something as simple as letting a certification lapse could result in civil penalties of up to \$10,000 per day, up to \$100,000 in new administrative penalties, and up to a year in jail and a \$10,000 criminal penalty for municipal wastewater employees like plant superintendents and operators. The increased personal and financial risk will disincentivize retention of current employees and dissuade potential new applicants.

This bill also greatly expands potential liability by removing "willfulness" as an element of violation. Under current law, MDE is charged with focusing on "willful" violations by water suppliers. This measure removes "willfulness," meaning that anyone who violates the standards is liable for the penalties detailed above regardless of intent. Acts of God, or simple human error, are equated with intentional malfeasance. This is unreasonable and unfair.

Attracting and retaining employees is already a challenge in this industry; this bill would exacerbate this problem. MML echoes the concerns of the Maryland Association of Counties (MACo) and the Maryland Association of Municipal Wastewater Agencies (MAMWA), and requests amendments removing the enforcement risk for local employees. The current penalties are more than sufficient. With adoption of these amendments, MML would respectfully request a favorable report.

FOR MORE INFORMATION CONTACT:

1212 West Street, Annapolis, Maryland 21401

410-268-5514 | 800-492-7121 | FAX: 410-268-7004 | www.mdmunicipal.org

Scott A. Hancock
Angelica Bailey
Bill Jorch
Justin Fiore

Executive Director
Director, Government Relations
Director, Research & Policy Analysis
Manager, Government Relations

HB0402-ET_MACo_SWA.pdf

Uploaded by: Dominic Butchko

Position: FWA



House Bill 402

Department of the Environment – Enforcement Authority

MACo Position: **SUPPORT**
WITH AMENDMENTS

To: Environment and Transportation
Committee

Date: February 25, 2022

From: Dominic J. Butchko

The Maryland Association of Counties (MACo) **SUPPORTS** HB 402 **WITH AMENDMENTS**. The bill sets forth a wide array of clearer and stronger tools for the Maryland Department of the Environment to use to enforce violations of departmental permits. **MACo urges that any such framework recognizes the specific contours applicable to public sector actors, with an eye toward the presumably desired outcomes of remediation and prevention, rather than punishment.**

HB 402 is clearly introduced with the goal of improving compliance with environmental regulations and policies. Counties both recognize and support their proper role in a productive regime to hold all players properly accountable for misdeeds and failures in this essential task. As joint custodians of our precious resources, we share these objectives.

At the same time, counties recognize that parts of the bill, as introduced, appear to present either untenable or deeply impractical burdens on locally-owned facilities, and in some cases, their individual employees. MACo urges the Committee to commit to the work needed to balance out the language in the actual bill with the best means of achieving its goals, particularly as regards publicly operated facilities.

To that end, MACo offers three principles to guide bill amendments:

Recognize “Willfulness” as a Principal Tenet Before Applying Punitive Measures.

Under current law, the Department is charged with focusing on “willfull” violations occurring with water suppliers (see Title 9, Subtitle 4, beginning on page 9 of the first reader bill). Here, the framing clearly reflects a deliberate threshold for applying the fines envisioned:

“a person who willfully violates [specific provisions] of this subtitle is subject to a civil penalty of up to \$5,000 for each day...” (*emphasis added*)

HB 402 would rewrite that standard to eliminate both its specificity and breadth, to read:

“a person who violates [any provisions at all] of this subtitle is subject to a civil penalty of up to \$10,000 for each day ...” (*emphasis added*)

Were HB 402 to pass in this posture, the willfulness of the violation is relegated to a secondary matter in assessing the fines – phrased merely as “consideration given to.” Willfulness should remain a central component of the administration and severity of any fines assessed through these laws. Examples of unwilful violations arising from *force majeure* circumstances are plentiful, and should appropriately be treated with a different posture than a deliberately poor practice.

Preserve and Encourage Practical Solutions, Before Applying Punitive Measures.

Currently, the Department routinely opens communications with a water treatment facility, or comparable public sector operation, when a suspected or known violation has occurred. The goal of such interactions is compliance – recognizing that public facilities are not driven by profits or shareholders, but by public service. A county or municipal water facility may indeed suffer a failing, through any number of reasons – but a collaborative approach to focus its local resources on repair and remediation, rather than payments to a State fund, is the surest means to effect that primary end.

Public sector operators, relevant under a number of the subtitles amended in HB 402, simply lack the direct resources to respond to punitive financial penalties. A water system overrun by flood waters well beyond its control could be found to be in extended violation of multiple requirements – and HB 402’s regimented approach may obligate the system to levy special assessments on water users across the community. This yields a deeply regressive and unsound outcome from a natural disaster, and places accountability at the wrong level.

Across public sector actors, a collaborative and informal effort to seek mutual outcomes is ideal. To the extent HB 402 removes this flexibility and accelerates the application of fines and penalties, it misses the mark for our best policy outcomes.

Prevent Individual Employee Liability, Unless High Standard Reached.

HB 402 and the many components of the Environment article it amends make reference to a “person” as the subject of the various fines and penalties it creates and strengthens. The Environment article already broadly defines this term, but HB 402 deliberately details a rather extended definition of “person” under Title 12, governing

“waterworks,” to clearly include individual people in their professional roles as operators, testers, collectors, and the like.

Opening the door, so clearly, to individual liability of public employees is unwise and not merited by the goals of the legislation, particularly given the reduction of the “willfulness” standard and the diminution of informal remedies under the bill as a whole. HB 402’s combined effect could catapult these professional roles into unwanted positions fraught with unreasonable personal downside.

As a standard for comparison, Maryland’s Local Government Tort Claims Act governs the circumstances when an employee action is properly excluded from the employer’s indemnification and charge, for general tort liability purposes. That law, under Title 5, Subtitle 3 of the Courts and Judicial Proceedings article, specifies that an employee forfeits the employer coverage under those laws if he or she is found to have “acted with actual malice,” a decidedly high judicial standard (*Courts and Judicial Proceedings*, §5-302(b)(2)). No similar standard is envisioned in HB 402, leaving an unclear but seemingly wide-open route to target fines on individual operators or other employees.

Malicious acts by rogue employees may merit proper attention through either fines or civil penalties. HB 402 does not adequately frame this avenue to enforcement and should be addressed with a balanced approach.

The policy choices posed by HB 402 are substantial. Counties recognize that the concerns noted above may apply, to varying degrees, on other permit holders, whose circumstances are likely beyond the expertise of local officials.

HB 402 advances scrutiny and accountability for environmental permit holders to advance goals shared by all stakeholders. Bill amendments could help to reframe the specific interaction of these laws with local government facilities and employees, and promote intergovernmental collaboration where it appears productive. Accordingly, MACo urges the Committee to give HB 402 a **FAVORABLE WITH AMENDMENTS** report, preserving a reasonable framework for Departmental interactions with public sector providers.

Support HB 402 with Amendments - Enhance MDE's Enf

Uploaded by: Greg Smith

Position: FWA

Support House Bill 402

Enhance the Maryland Department of the Environment's Capacity to Protect Communities, Public Health and the Environment

Written Testimony to the House Environment and Transportation Committee

Sustainable Hyattsville respectfully urges the Committee to issue a Favorable with Amendments report on House Bill 402. This thoughtful, targeted legislation will provide the Maryland Department of the Environment with essential tools to enforce the law, hold violators accountable, and protect communities, public health, and the environment. We incorporate by reference the testimony that the Chesapeake Bay Foundation, the Center for Policy Reform, and Shore Rivers submitted regarding Senate Bill 221 to the Senate Education, Health, and Environmental Affairs Committee. We urge the Committee to strengthen HB 402 by supporting the amendments that those organizations proposed in their SB 221 testimony.

On a related note, in addition to providing the essential enforcement tools enumerated in HB 402, the General Assembly and the Administration must hire, train and retain enough excellent staff to inspect and enforce, and they must give them the resources, and the required political and moral support to do their jobs. The Compliance Program of MDE's Water and Science Administration has lost a huge percentage of its staff over the past decade, so that even when residents and nonprofits document violations, sometimes chronic violations, MDE may be unable to conduct timely inspections, or to bring timely, meaningful enforcement actions. This is grossly unfair to hard-working staff and to the public, and it undermines the public's faith in Maryland's willingness and ability to enforce state and federal laws.

Sustainable Hyattsville is a grassroots nonprofit organization dedicated to promoting sustainability, protecting communities, public health and the environment, and promoting good government.

Thank you for your time and consideration. Please support this vital legislation.



Senate Bill 221

Department of the Environment – Enforcement Authority

Date: February 2, 2022

Position: **Support with Amendments**

To: Education, Health, and Environmental Affairs From: Robin Clark, Chesapeake Bay Foundation

Matt Pluta, Shore Rivers

Katlyn Schmitt, Center for Progressive Reform

Chesapeake Bay Foundation (CBF), Center for Progressive Reform (CPR), and Shore Rivers **SUPPORT SB 221 WITH AMENDMENTS**. This legislation would increase administrative penalties and tools the Department can employ in enforcement, including enforcement of drinking water, wastewater, and surface water permit violations.

This legislation makes many positive changes to existing environmental enforcement authorities

This comprehensive environmental bill would address gaps in the State's authority to enforce laws governing safe drinking water, wastewater facility operation, waterway construction and dam safety, and tidal and nontidal wetlands by authorizing or augmenting civil, administrative, and injunctive remedies. The bill would also revise certain, existing criminal remedies to reflect civil penalty thresholds. The bill also requires drinking water and wastewater facilities to report to the State the certified superintendents, certified operators, and certified industrial operators who are participating in the operation of, or are in responsible charge of, those facilities.

The enforcement provisions of the affected statutes have not been amended in many years—sometimes decades—and are incomplete or fail to provide sufficient deterrence. In fact, several of the affected statutes lack civil, administrative, and injunctive relief entirely and provide only criminal penalties. The amendments would ensure the State retains primacy and funding under the Safe Drinking Water Act and authorize the State to enforce existing laws and regulations more effectively to protect public health and the environment.

We support this legislation while offering the following strengthening suggestions:

1. The legislation should require the Maryland Department of the Environment to provide written notice to the Attorney General's Office of all administrative enforcement actions taken on an ongoing basis.

Maryland Office • Philip Merrill Environmental Center • 6 Herndon Avenue • Annapolis • Maryland • 21403
Phone (410) 268-8816 • Fax (410) 280-3513

2. The legislation should further increase the penalty caps for civil enforcement actions to reflect the effect of inflation and narrow the gap between state and federal penalties for the same violation.
3. The legislation should add the opportunity for citizen participation in administrative proceedings brought under Section 9-1025 and Section 12-503. Citizens should be afforded the same opportunity as violators to request a hearing, intervene and participate in any administrative proceedings.

With additional amendments, this legislation could supplement the State's dedication to pursuing civil and criminal cases.

The legislation appropriately updates administrative penalties. While administrative penalties should be increased, those higher penalties should supplement, not supplant, the ability and dedication of the State to pursue civil and criminal actions and penalties where appropriate. Increased availability of administrative penalties should not result in fewer civil enforcement actions. Civil and criminal penalties can often more accurately reflect the harm to the public caused by an incident. These legal actions also create judicial oversight, and, in the case of civil suits, allow citizens to participate in the process through citizen intervention.

Currently only a small fraction of environmental violations are litigated. The vast majority of violations are addressed through administrative proceedings. One way to ensure the opportunity and function of civil suits would be to require the Department to notify the Office of Attorney General any time administrative action is taken. This would give a greater opportunity to the Office of Attorney General to request a referral of the case.

With additional amendments, this legislation could ensure penalties to reflect the economic benefit a violator gained from failing to comply with the law.

The legislation, as drafted, states in 12-504 (on page 21 of SB 221) that the penalties will be assessed based on several factors, including willfulness of the violation, harm to the environment, cost of clean-up and other considerations. While these are positive improvements to the current law, the legislation should also consider the economic benefit the violator received for not complying with the law when assessing penalties. This inclusion alongside other considerations already stated would be consistent with how other forms of penalties are calculated and would more completely address the trade-offs for a business entity failing to comply with the State's laws, permits, and regulations. This consideration could be added to the list within 12-504 and other sections of the bill as appropriate.

With additional amendments, this legislation could increase the public's opportunity to participate in administrative proceedings.

In recent work on state general permits CBF's litigation team is finding that MDE's responses to comments and the administrative process with respect to citizen participation is sorely outdated and limits the ability of the public, and, in particular, most vulnerable communities to meaningfully participate and challenge MDE decisions. This change will facilitate greater access to the court for those most affected by decisions about the fate of pollution. This legislation could add the opportunity for citizen participation in administrative proceedings brought under Section 9-1025 and Section 12-503. Where there is the right for the violator to request a hearing, it would be good for impacted community members to have the opportunity to intervene and participate.

We urge the Committee's FAVORABLE report on SB 221 WITH AMENDMENTS and would be happy to work with the Committee to accommodate any strengthening amendments. For more information, please contact Robin Clark, Maryland Staff Attorney, CBF, at rclark@cbf.org and 443.995.8753.

HB0402_FWA_City of Rockville_Department of the Env

Uploaded by: Pam Kasemeyer

Position: FWA



Mayor and Council of Rockville

Telephone: 240-314-8870

Email: jwoods@rockvillemd.gov
CONTACT: James Woods,
Deputy Director of Public Works

HB 402: DEPARTMENT OF THE ENVIRONMENT – ENFORCEMENT AUTHORITY

FAVORABLE WITH AMENDMENTS

The Rockville Mayor and Council are thankful to the Chair and members of the House Environment and Transportation Committee for the opportunity to comment on HB 402: Department of the Environment – Enforcement Authority. The Mayor and Council supports HB 402 with amendments.

This bill expands the Maryland Department of the Environment’s (MDE’s) enforcement authority. While the City appreciates the need for enforcement and climate protection, we are concerned that some of these proposed provisions have a negative impact on the City’s employees. Under this bill, simple infractions such as letting a certification lapse could result in civil penalties of up to \$10,000 per day, up to \$100,000 in new administrative penalties, and up to a year in jail and a \$10,000 criminal penalty for municipal wastewater employees like plant superintendents and operators. The increased personal and financial risk will disincentivize retention of current employees and dissuade potential new applicants.

This bill also greatly expands potential liability by removing “willfulness” as an element of a violation. Under current law, MDE is charged with focusing on “willful” violations by water suppliers. This measure removes “willfulness,” meaning that anyone who violates the standards is liable for the penalties detailed above regardless of intent. Acts of God, or simple human error, are equated with intentional malfeasance. This is unreasonable and unfair.

Attracting and retaining employees is already a challenge in this industry; this bill would exacerbate this problem. The City of Rockville echoes the concerns of the Maryland Municipal League (MML) and the Maryland Association of Counties (MACo) and the Maryland Association of Municipal Wastewater Agencies (MAMWA), and requests amendments removing the enforcement risk for local employees. With adoption of these amendments, the City of Rockville would respectfully request a favorable report.

HB 402 Department of the Environment Enforcement

Uploaded by: Robin Jessica Clark

Position: FWA



House Bill 402

Department of the Environment – Enforcement Authority

Date: February 25, 2022
To: Environment and Transportation

Position: **Support with Amendments**
From: Robin Clark, Chesapeake Bay Foundation
Matt Pluta, Shore Rivers
Evan Isaacson, Chesapeake Legal Alliance
Katlyn Schmitt, Center for Progressive Reform

Chesapeake Bay Foundation (CBF), Chesapeake Legal Alliance, Center for Progressive Reform (CPR), and Shore Rivers **SUPPORT HB 402 WITH AMENDMENTS**. This legislation would increase administrative penalties and tools the Department can employ in enforcement, including enforcement of drinking water, wastewater, and surface water permit violations.

This legislation makes many positive changes to existing environmental enforcement authorities

This comprehensive environmental bill would address gaps in the State's authority to enforce laws governing safe drinking water, wastewater facility operation, waterway construction and dam safety, and tidal and nontidal wetlands by authorizing or augmenting civil, administrative, and injunctive remedies. The bill would also revise certain, existing criminal remedies to reflect civil penalty thresholds. The bill also requires drinking water and wastewater facilities to report to the State the certified superintendents, certified operators, and certified industrial operators who are participating in the operation of, or are in responsible charge of, those facilities.

The enforcement provisions of the affected statutes have not been amended in many years—sometimes decades—and are incomplete or fail to provide sufficient deterrence. In fact, several of the affected statutes lack civil, administrative, and injunctive relief entirely and provide only criminal penalties. The amendments would ensure the State retains primacy and funding under the Safe Drinking Water Act and authorize the State to enforce existing laws and regulations more effectively to protect public health and the environment.

Maryland Office • Philip Merrill Environmental Center • 6 Herndon Avenue • Annapolis • Maryland • 21403
Phone (410) 268-8816 • Fax (410) 280-3513

The Chesapeake Bay Foundation (CBF) is a non-profit environmental education and advocacy organization dedicated to the restoration and protection of the Chesapeake Bay. With over 300,000 members and e-subscribers, including over 109,000 in Maryland alone, CBF works to educate the public and to protect the interest of the Chesapeake and its resources.

We support this legislation while offering the following strengthening suggestions:

1. The legislation should require the Maryland Department of the Environment to provide written notice to the Attorney General's Office of all administrative enforcement actions taken on an ongoing basis.
2. The legislation should further increase the penalty caps for civil enforcement actions to reflect the effect of inflation and narrow the gap between state and federal penalties for the same violation.
3. The legislation should add the opportunity for citizen participation in administrative proceedings brought under Section 9-1025 and Section 12-503. Citizens should be afforded the same opportunity as violators to request a hearing, intervene and participate in any administrative proceedings.

With additional amendments, this legislation could supplement the State's dedication to pursuing civil and criminal cases.

The legislation appropriately updates administrative penalties. While administrative penalties should be increased, those higher penalties should supplement, not supplant, the ability and dedication of the State to pursue civil and criminal actions and penalties where appropriate. Increased availability of administrative penalties should not result in fewer civil enforcement actions. Civil and criminal penalties can often more accurately reflect the harm to the public caused by an incident. These legal actions also create judicial oversight, and, in the case of civil suits, allow citizens to participate in the process through citizen intervention.

Currently only a small fraction of environmental violations are litigated. The vast majority of violations are addressed through administrative proceedings. One way to ensure the opportunity and function of civil suits would be to require the Department to notify the Office of Attorney General any time administrative action is taken. This would give a greater opportunity to the Office of Attorney General to request a referral of the case.

With additional amendments, this legislation could ensure penalties to reflect the economic benefit a violator gained from failing to comply with the law.

The legislation, as drafted, states in 12-504 (on page 21 of SB 221) that the penalties will be assessed based on several factors, including willfulness of the violation, harm to the environment, cost of clean-up and other considerations. While these are positive improvements to the current law, the legislation should also consider the economic benefit the violator received for not complying with the law when assessing penalties. This inclusion alongside other considerations already stated would be consistent with how other forms of penalties are calculated and would more completely address the trade-offs for a business entity failing to comply with the State's laws, permits, and regulations. This consideration could be added to the list within 12-504 and other sections of the bill as appropriate.

With additional amendments, this legislation could increase the public's opportunity to participate in administrative proceedings.

In recent work on state general permits CBF's litigation team is finding that MDE's responses to comments and the administrative process with respect to citizen participation is sorely outdated and limits the ability of the public, and, in particular, most vulnerable communities to meaningfully participate and challenge MDE decisions. This change will facilitate greater access to the court for those most affected by decisions about the fate of pollution. This legislation could add the opportunity for citizen participation in administrative proceedings brought under Section 9-1025 and Section 12-503. Where there is the right for

the violator to request a hearing, it would be good for impacted community members to have the opportunity to intervene and participate.

We urge the Committee's FAVORABLE report on HB 402 WITH AMENDMENTS and would be happy to work with the Committee to accommodate any strengthening amendments. For more information, please contact Robin Clark, Maryland Staff Attorney, CBF, at rclark@cbf.org and 443.995.8753.

HB0402 - E&T - UNF - MMBBA - Gough.pdf

Uploaded by: DENNIS RASMUSSEN

Position: UNF



Testimony offered on behalf of:
MARYLAND MORTGAGE BANKERS & BROKERS ASSOCIATION, INC.

IN OPPOSITION TO:

HB0402 – Department of the Environment – Enforcement Authority

Education & Transportation Committee

Hearing – 2/25/2022 at 1:00 PM

The Maryland Mortgage Bankers and Brokers Association, Inc. (“MMBBA”) OPPOSE HOUSE BILL 0402 for the following reasons:

1. The lien created under HB0402 could be read to have priority ahead of a recorded deed of trust or mortgage. In five places, the bill has the following language (this example is from page 16):

(5) IF ANY PERSON WHO IS LIABLE TO PAY A PENALTY IMPOSED UNDER THIS SUBSECTION FAILS TO PAY THE PENALTY AFTER DEMAND, THE AMOUNT, TOGETHER WITH INTEREST AND ANY COSTS THAT MAY ACCRUE, SHALL BE:
(I) A LIEN IN FAVOR OF THE STATE ON ANY PROPERTY, REAL OR PERSONAL, OF THE PERSON; AND
(II) RECORDED IN THE OFFICE OF THE CLERK OF COURT FOR THE COUNTY IN WHICH THE PROPERTY IS LOCATED.

Note that this does not say when the lien arises. Does it arise when the agency imposes the penalty? When it writes a demand letter? When there is a hearing? When is a hearing not held? HB0402 provides that there is a lien, and it shall be recorded. At the very least, HB0402 should be amended to state that there is a lien WHEN it is recorded. Otherwise, what if a deed of trust or mortgage were executed and recorded after the lien arises but before the lien is recorded? Without the suggested change, HB0402 might create secret or silent liens on real and personal property.

2. House Bill 0402 would create a lien for penalties based upon administrative action or administrative order only – without the involvement of the courts. This is objectionable. Liens should only be placed or obtainable upon consent of a party e.g., deed of trust, mortgage, condo, HOA, contract lien act, or pursuant to court order. We are not familiar with administrative agencies being able to impose liens on properties other than for real property taxes and sewer and water charges, but these types of charges are universally recognized as exceptions to the normal rules and procedures regarding liens.

For these reasons, the MMBBA urges an **UNFAVORABLE REPORT on House Bill 0402.**

Timothy J. Gough, Co-Chair, MMBBA Legislative Committee
tgough@baycapitalmortgage.com - (410) 320-0852

MBIA Letter of Opposition HB 402.pdf

Uploaded by: Lori Graf

Position: UNF

February 25, 2022

The Honorable Kumar P. Barve
Environment & Transportation Committee
House Office Building, Room 251,
6 Bladen St., Annapolis, MD, 21401

RE: HB 402 Department of the Environment – Enforcement Authority

Dear Chairman Barve:

The Maryland Building Industry Association, representing 100,000 employees statewide, appreciates the opportunity to participate in the discussion surrounding **HB 402 Department of the Environment – Enforcement Authority**. MBIA **Opposes** the Act in its current version.

This measure would alter the enforcement authority of the Department of the Environment to conduct additional enforcement activities. MBIA respectfully opposes this measure. The measure would require that in the event of a failure to pay a proscribed penalty a lien may be assessed against any property owned by the violator. There is no appeal process outlined in the bill and it is not clear when a person will be declared in violation. MBIA also objects to the assessing of a lien against all owned property and not the areas in violation. This has the potential to assess penalties against properties that are in full compliance.

For these reasons, MBIA respectfully requests the Committee give this measure an unfavorable report. Thank you for your consideration.

For more information about this position, please contact Lori Graf at 410-800-7327 or lgraf@marylandbuilders.org.

cc: Members of the House Environment & Transportation Committee

HB 402_MDCC_MDE–Enforcement Authority-AG_UNFAV.pdf

Uploaded by: Maddy Voytek

Position: UNF



MARYLAND
Chamber of Commerce

LEGISLATIVE POSITION:

Unfavorable

House Bill 402

Department of the Environment – Enforcement Authority

House Environment & Transportation Committee

Friday, February 25, 2022

Dear Chairman Barve and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 5,500 members and federated partners working to develop and promote strong public policy that ensures sustained economic recovery and growth for Maryland businesses, employees, and families.

HB 402 seeks to enhance the enforcement authority of the Maryland Department of the Environment under various provisions of law relating to waterway construction and dam safety, tidal and non-tidal wetlands, drinking water, waterworks, wastewater works, and industrial waterworks.

Understanding that the purpose of the legislation is to provide MDE with civil as well as administrative authority, the Maryland Chamber's primary concern pertains to the fine structure. The language *"UP TO \$5,000 FOR EACH VIOLATION, BUT NOT EXCEEDING \$100,000 TOTAL"* has the potential to lead to exorbitant fines taking into account the later language *"EACH DAY A VIOLATION OCCURS IS A SEPARATE VIOLATION UNDER THIS SUBSECTION."* Additionally, there is concern over language establishing the ability to place a lien on any property, real or personal, in the State in the event someone is unable to pay an imposed penalty.

The Maryland Chamber is willing to work with MDE or the Attorney General to come to a more aggregable fine structure but as introduced, the Maryland Chamber of Commerce respectfully requests an **unfavorable report** on **HB 402**.

MDCHAMBER.ORG

60 West Street, Suite 100, Annapolis 21401 | 410-269-0642

hb402.pdf

Uploaded by: Sara Elalamy

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Environment and Transportation Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 402
Department of the Environment – Enforcement Authority
DATE: January 26, 2022
(2/25)
POSITION: Oppose as drafted

The Maryland Judiciary opposes House Bill 402 as drafted. This bill amends and adds various provisions of the Environment Article. The bill also broadens the scope of behavior subject to civil and criminal liability and increases certain potential civil and criminal penalties.

In particular, the Judiciary is opposed to the language on pages 16 and 24 which provide that a “court **shall** grant an injunction.” The Judiciary traditionally opposes legislation that includes mandatory provisions. The Judiciary believes it is important for judges to weigh the facts and circumstances for each individual case when making a determination. Judges are mindful of various mitigating factors in crafting a disposition that most appropriately fits the individual.

cc. Hon. Adrienne Jones
Judicial Council
Legislative Committee
Kelley O’Connor

HB 402 RPSC Oppose Unless Amended [2.23.22].pdf

Uploaded by: William O'Connell

Position: UNF



Real Property Section

To: Environment and Transportation Committee

From: Legislative Committee of the Real Property Section Counsel

Date: February 23, 2022 [Hearing Date February 25, 2022]

Subject: **HB 402 – Department of the Environment - Enforcement Authority**

Position: **Oppose Unless Amended**

The Real Property Section Counsel of the Maryland State Bar Association (MSBA) **opposes unless amended House Bill 402** – Department of the Environment - Enforcement Authority.

We oppose the legislation as presently drafted for the following reasons. First, it allows for the possibility of a lien on real property being created before recording a notice thereof in the land records. Second, it allows the possibility that an agency, without court approval or notice to *bona fide* purchasers for value, will seek to create a lien on real property. To address these concerns, we have prepared some proposed amendments that we hope will be adopted.

For these reasons, the Real Property Section Counsel of the MSBA **opposes HB 402 unless amended** and asks for an **unfavorable report unless amended**. Thank you for your consideration.

Senate Bill 221 and House Bill 402-- **Department of the Environment – Enforcement Authority**

Amendments – New language is highlighted and underlined; language from SB 221/HB 402 to be stricken is lined through.

page 3

5 (C) (1) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR IN
6 EQUITY AND AFTER AN OPPORTUNITY FOR A HEARING, WHICH MAY BE WAIVED IN
7 WRITING BY THE PERSON ACCUSED OF A VIOLATION, THE DEPARTMENT MAY
8 PETITION A COURT TO IMPOSE A PENALTY FOR VIOLATION OF ANY PROVISION OF
THIS SUBTITLE OR ANY
9 REGULATION, ORDER, OR PERMIT ADOPTED OR ISSUED UNDER THIS SUBTITLE.

Page 4

11 (5) IF ANY PERSON WHO IS LIABLE TO PAY A PENALTY IMPOSED
12 UNDER THIS SUBSECTION FAILS TO PAY THE PENALTY AFTER ~~DEMAND~~ ORDER
OF A COURT, THE
13 AMOUNT, TOGETHER WITH INTEREST AND ANY COSTS THAT MAY ACCRUE, SHALL BE:

14 (I) A LIEN IN FAVOR OF THE STATE ON ANY PROPERTY, REAL
15 OR PERSONAL, OF THE PERSON, ~~AND~~

~~16 (H) WHEN RECORDED IN THE OFFICE OF THE CLERK OF COURT FOR LAND~~
RECORDS OF

17 THE COUNTY IN WHICH THE PROPERTY IS LOCATED.

~~~~~  
NOTES:

The same changes shown to be made to page 3 should also be made on page 7 (line 13), 10 (line 24), 15 (line 1), page 22 (line 11), and page 24 (line 28).

The same changes shown to be made to page 4 should also be made on pages 8, 16, 23, and 25-26.



**HB 402 LOI.pdf**

Uploaded by: Tyler Abbott

Position: INFO



# Maryland

## Department of the Environment

Larry Hogan, Governor  
Boyd K. Rutherford, Lt. Governor  
Ben Grumbles, Secretary  
Horacio Tablada, Deputy Secretary

February 25, 2022

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

**Re: House Bill 402 – Department of the Environment – Enforcement Authority**

Dear Chair Barve and Members of the Committee:

The Maryland Department of the Environment (MDE or the Department) has reviewed HB 402- *Department of the Environment – Enforcement Authority*. The Department would like to provide information on the current bill.

The proposed changes to various sections of the Environment Article under HB 402 would provide MDE with additional tools to secure compliance with Maryland's environmental laws and regulations. Specifically, HB 402 amends the following sections of the Environment Article: the Waterway Construction and Dam Safety statute (Environment Article Title 5, Subtitle 5); the Nontidal Wetlands Protection Act (Environment Article Title 5, Subtitle 9); the Drinking Water statute (Environment Article Title 9, Subtitle 4); the Maryland Water Quality Laboratory Certification Act (Environment Article Title 9, Subtitle 10); the Maryland Waterworks and Waste Systems Operators Act (Environment Article Title 12); and the Maryland Tidal Wetlands Act (Environment Article Title 16).

Although HB 402 would provide additional enforcement tools for MDE, the Department has never wavered in our commitment to compliance, which continues to be a priority. The Department's focus is on protecting public health and keeping our communities clean and safe utilizing a balanced and common-sense approach. MDE collaborates with the regulated community to ensure their operations are in conformance with all statutory and permitting requirements. The Department will continue to take aggressive enforcement actions and seek stiff penalties, when warranted, in order to hold polluters accountable. MDE is committed to changing Maryland for the better by protecting and restoring our environment while providing businesses with clear expectations and a level playing field among the regulated entities.

Thank you for your consideration. We will continue to monitor HB 402 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 [tyler.abbott@maryland.gov](mailto:tyler.abbott@maryland.gov).

Sincerely,

Tyler Abbott

cc: Lee Currey, Director, Water and Science Administration