



**Maryland Joint
Legislative Committee**

The Voice of Merit Construction

February 2, 2022

Mike Henderson
President
Greater Baltimore Chapter
mhenderson@abcballimore.org

Chris Garvey
President & CEO
Chesapeake Shores Chapter
cgarvey@abc-chesapeake.org

Dan Bond CAE
President & CEO
Metro Washington Chapter
dbond@abcmetrowashington.org

Amos McCoy
President & CEO
Cumberland Valley Chapter
amos@abccvc.com

Gregory Brown
Chairman
Joint Legislative Committee
greg@waynesboroconstruction.com

Marcus Jackson
Director of Government Affairs
Metro Washington Chapter
mjackson@abcmetrowashington.org

Additional representation by:
Harris Jones & Malone, LLC

6901 Muirkirk Meadows Drive
Suite F
Beltsville, MD 20705
(T) (301) 595-9711
(F) (301) 595-9718

TO: EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS
FROM: ASSOCIATED BUILDERS AND CONTRACTORS
RE: S.B. 221 – DEPARTMENT OF THE ENVIRONMENT – ENFORCEMENT AUTHORITY
POSITION: OPPOSE

Associated Builders and Contractors (ABC) opposes S.B. 813 which is before you today for consideration. This bill would alter the enforcement authority of the Department of the Environment under various provisions of law, including provisions relating to waterway construction and dam safety, tidal and nontidal wetlands, drinking water, and waterworks, wastewater works, and industrial wastewater works. With this in mind, we at ABC have specific points of concern.

The 'lien' provision grants a lien in favor of the State against the real estate and personal property of a person that owes a penalty and fails to pay it. See, p. 4, lines 11 – 17; p. 8, lines 17-23; p. 16, lines 4-10; and pp. 25-26, lines 28-30 & 1-4. This lien remedy is unusual for civil or administrative penalties. The lien would cover personal or real property, even if unrelated to the violation. Likely, these provisions are too broad to survive Constitutional scrutiny, as an improper governmental confiscation. At a minimum, the provisions should be limited to real property involved in the violation.

The amendments of Title 12, Waterworks and Waste System Operators, Subtitles 1 and 5 could be read to broaden the obligations which currently focus on the licensing of system operators, to government authorities, corporations, partnerships, and associations. A definition of person was added which includes all those entities, "and any other entity." p. 18, lines 1-9. The amendment would significantly increase the amount of penalties for a failure to have water supply systems and wastewater systems operated by certified operators, from \$25 to \$10,000 a day per violation as a civil penalty. It also specifically states that a violation of "any provision" or failure "to perform any duty imposed" to be a misdemeanor (a criminal violation) subject to a \$10,000 fine for the first offense and a \$20,000 fine for each day of violation for a second offense, or in both cases imprisonment. The amendment does not include a knowledge or intent as an element of proof to convict typical for criminal enforcement provisions. And it grants MDE the authority to seek administrative penalties of \$5,000 for each day of violation not to exceed \$100,000, an authority it currently does not have. p. 18, lines 1-9.

The expanded enforcement authority also adds injunctive powers which will violates constitutional due process protections. See, proposed §§12-505(B) & (C). First, §12-505(B) authorizes the Attorney General at the request of MDE to seek an injunction against "any person", which would include the owner of a water supply or sewage

treatment system, no matter how small, who violates a "regulation, order, or permit" without a contested case hearing. Instead, all it requires the Department or the Board to hold a hearing and grants any finding of the Department or the Board the status of "prima facie evidence of each fact the Department or the Board determines." P. 23, lines 28 -30. Under the current law, such hearings must be presided over by an independent trier of fact, for most programs administered by MDE, an administrative law judge assigned by the Office of Administrative Hearings. Any facts found by an administrative law judge in the hearing are subject to appeal in court by either the MDE or the respondent charged with the violation. p. 23, lines 28-30.

Second, §12-505(C) states the "[o]n a showing that any person is violating or is about to violate any provision of this title or any regulation, order, or permit issued by the Department or the Board under this title, a court shall grant an injunction without requiring a showing of a lack of an adequate remedy at law." p. 24, lines 1- 5. It is our view that it would significantly erode the due process granted to those accused of violations. It would grant the AG working with the Department to avoid have to carry the standard burden on the prosecuting agency to enjoin companies or persons from operating. p. 23, lines 28-30.

The proposed revision to the enforcement authority in §9-1026.1 includes the same injunctive relief formula for Water Quality Laboratories as for Waterworks and Waste Systems in the proposed §§12-505(B) & (C). It would result in the same violation of constitutional due process rights for those accused of violations or issued orders to comply with Subtitle 10 of Title 9. p. 16, lines 14-26.

On behalf of the over 1,500 ABC business members in Maryland, we respectfully request an unfavorable report on S.B. 221.

Marcus Jackson, Director
Government Affairs