

SB 0221_BRaindrop_fav.pdf

Uploaded by: Bonnie Raindrop

Position: FAV



The Maryland Pesticide Education Network urges the committee's favorable report for SB 221. 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. SB 221 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**. SB 221 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. SB 221 would provide MDE the ability to recover administrative penalties for violations of the Title.

By passing SB221, 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 SB 221.

Bonnie Raindrop, Program Director
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2022-02-02 SB 221 (Support).pdf

Uploaded by: Brian Frosh

Position: FAV

BRIAN E. FROSH
Attorney General



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CAROLYN QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.

WRITER'S DIRECT DIAL NO.

410-576-6584

February 2, 2022

TO: The Honorable Paul G. Pinsky
Chair, Education, Health, and Environmental Affairs Committee

FROM: Brian E. Frosh
Attorney General

RE: SB00221 – Department of the Environment – Enforcement Authority – **Support**

Chair Pinsky, Vice Chair Kagan, and distinguished members of the Education, Health, and Environmental Affairs Committee, I appear before you today to urge your favorable report on Senate Bill 221. 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

Senate Bill 221 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

Senate Bill 221 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, Senate Bill 221 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

Senate Bill 221 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

Senate Bill 221 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, Senate Bill 221 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 Senate Bill 221.

cc: Committee Members

SB221_FAV_SCARR_MarylandPIRG_EnvMD.pdf

Uploaded by: Emily Scarr

Position: FAV



Maryland PIRG

**SB221: Department of the Environment – Enforcement Authority
Education, Health, and Environmental Affairs Committee
January 28th, 2021
Emily Scarr, Maryland PIRG Director
FAVORABLE**

Maryland PIRG and Environment Maryland are pleased to support SB221 to close gaps in enforcement authority for the Maryland Department of Environment regarding violations of drinking water, wastewater, or wetlands laws. **We thank Attorney General Frosh for making this critical legislation a priority in his final year as Attorney General.**

This bill helps ensure polluting industries can be penalized for harm to human health or the environment. There are too many examples of industries causing harm to Maryland's waterways and public health, and putting our drinking water at risk.

One such reason this may become particularly important in the near term is as we discover contamination from the toxic chemicals PFAS in our waterways throughout the state. Last week, [Prince George's County sued](#) chemical manufacturers 3M and DuPont over PFAS contamination in their waterways.

The Maryland Department of Environment has found PFAS contamination in 75% of the drinking water they have tested in the state. Neither the state or Marylanders taxpayers caused the contamination, but without proper laws in place, they may be left to shoulder the burden of testing and monitoring, delivering clean water to communities, cleaning up contaminated sites, and covering health care costs. How much more will it cost taxpayers to fix this mess is anyone's guess. Of course, for people with health problems associated with exposure to PFAS, and their families, the costs are unquantifiable.

States have had some success in suing chemical manufacturers for PFAS contamination to help with environmental cleanup. [Minnesota won an \\$850 million settlement from 3M in 2018](#), and has used the funding for drinking water and other water projects. According to the National Law Review, "Several states have since followed suit, including Michigan, whose Attorney General sued 17 companies that manufactured PFAS in January 2020." Alabama, Alaska, Delaware, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Ohio, and Vermont have all sued PFAS manufacturers or users over contamination.

In order to ensure we can hold polluting industries accountable for the harm they have caused we must have the right laws on the books both to keep tax payers from footing the bill on cleanup and remediation but more importantly to act as a deterrent for industry to risk harm to human health or the environment.

We respectfully urge a favorable report.

Maryland PIRG is a statewide, non-partisan, non-profit, citizen-funded public interest advocacy organization with grassroots members across the state. For fifty years we've stood up to powerful interests whenever they threaten our health and safety, our financial security, or our right to fully participate in our democratic society.

Environment Maryland is a citizen-based environmental advocacy organization. We work to protect clean air, clean water, and open space.

SB0221 CCAN AF_Testimony.pdf

Uploaded by: Jamie DeMarco

Position: FAV



**Testimony in Support of
SB0221
Senate Education, Health, and Environmental Affairs
February 2, 2022**

**Jamie DeMarco, Federal Policy Director
Chesapeake Climate Action Network Action Fund**

On behalf of the Chesapeake Climate Action Network Action Fund, I strongly urge a favorable report on SB 0221.

The Maryland legislature has worked hard to enact good laws to protect waterways in Maryland. These laws and all the work that legislatures have given to creating those laws will not mean anything if the laws are not being enforced. This legislation will simply allow the AG of Maryland to enforce the laws on the book.

As the climate warms, storms become more intense, and wetland habitats are more in danger, the ability to sue the violators of waterway pollution regulation will become more important.

Best,
Jamie

CONTACT

Jamie DeMarco, Federal Policy Director
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SB221_MDSierraClub_fav 2Feb2022.pdf

Uploaded by: Josh Tulkin

Position: FAV



P.O. Box 278
Riverdale, MD 20738

Committee: Education, Health, and Environmental Affairs

Testimony on: SB221 “Department of the Environment – Enforcement Authority”

Position: Support

Hearing Date: February 2, 2022

The Maryland Chapter of the Sierra Club strongly supports SB 221, 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 (Environment 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 [national] 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, SB 221 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
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Josh Tulkin
Chapter Director
josh.tulkin@mdsierra.org

SB 221_FWA_MML.pdf

Uploaded by: Angelica Bailey

Position: FWA



Maryland Municipal League
The Association of Maryland's Cities and Towns

TESTIMONY

February 2, 2022

Committee: Senate Education, Health, and Environmental Affairs

Bill: _____ SB 221 – 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:

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Scott A. Hancock
Angelica Bailey
Bill Jorch
Justin Fiore

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

SB0221-EHE_MACo_SWA.pdf

Uploaded by: Dominic Butchko

Position: FWA



Senate Bill 221

Department of the Environment – Enforcement Authority

MACo Position: **SUPPORT**
WITH AMENDMENTS

To: Education, Health, & Environmental
Affairs Committee

Date: February 2, 2022

From: Dominic J. Butchko

The Maryland Association of Counties (MACo) **SUPPORTS SB 221 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.**

SB 221 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*)

SB 221 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 SB 221 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 SB 221, 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 SB 221’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 SB 221 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.

SB 221 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 SB 221 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. SB 221’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 SB 221, 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. SB 221 does not adequately frame this avenue to enforcement and should be addressed with a balanced approach.

The policy choices posed by SB 221 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.

SB 221 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 SB 221 a **FAVORABLE WITH AMENDMENTS** report, preserving a reasonable framework for Departmental interactions with public sector providers.

SB 221_PARTNER SUPPORT WITH AMENDMENTS.pdf

Uploaded by: Robin Jessica Clark

Position: FWA



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
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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.

Letter of Opposition

Uploaded by: Lori Graf

Position: UNF

February 2, 2022

The Honorable Paul G. Pinsky
Senate Education, Health & Environmental Affairs Committee
Miller Senate Office Building,
2 West Wing 11 Bladen St.,
Annapolis, MD, 21401

RE: Opposition SB 221 Department of the Environment – Enforcement Authority

Dear Chairman Pinsky:

The Maryland Building Industry Association, representing 100,000 employees statewide, appreciates the opportunity to participate in the discussion surrounding **SB 221 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 Senate Education, Health & Environmental Affairs Committee

SB 221_MDCC_MDE–Enforcement Authority-AG_UNFAV.pdf

Uploaded by: Maddy Voytek

Position: UNF



LEGISLATIVE POSITION:

Unfavorable

Senate Bill 221

**Department of the Environment – Enforcement Authority
Senate, Education, Health, and Environmental Affairs Committee**

Wednesday, February 2, 2022

Dear Chairman Pinsky 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.

SB 221 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 **SB 221**.

sb221test - DOE Enforcement Authority Bill.pdf

Uploaded by: Marcus Jackson

Position: UNF



**Maryland Joint
Legislative Committee**

The Voice of Merit Construction

February 2, 2022

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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 violate 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

SB221_NFIB_unf (2022).pdf

Uploaded by: Mike O'Halloran

Position: UNF



NFIB-Maryland – 60 West St., Suite 101 – Annapolis, MD 21401 – www.NFIB.com/Maryland

TO: Senate Education, Health, and Environmental Affairs Committee

FROM: NFIB – Maryland

DATE: February 2, 2022

RE: **OPPOSE SENATE BILL 221** – Department of the Environment – Enforcement Authority

Founded in 1943, NFIB is the voice of small business, advocating on behalf of America's small and independent business owners, both in Washington, D.C., and in all 50 state capitals. With more than 250,000 members nationwide, and nearly 4,000 here in Maryland, we work to protect and promote the ability of our members to grow and operate their business.

On behalf of Maryland's small businesses, NFIB-Maryland opposes Senate Bill 291 – legislation expanding the authority of the Department of the Environment (MDE) to enforce various sections of environmental law and greatly increasing fines and penalties.

Combined, there are 11 instances in SB299 granting MDE new authority to file administrative penalties, criminal sanctions, or file a civil suit against suspected violators. Additionally, SB299 allows for a lien to be placed against real or personal property of a violator in an effort to collect debts.

Further, SB299 will count each day that passes after citation as a new violation subject to enhanced penalties.

The penalties and enforcement mechanisms found in SB299 are unreasonable and create exceptional hardship for small businesses who may inadvertently violate environmental law.

For these reasons **NFIB opposes SB221** and requests an unfavorable committee report.

sb221.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: Senate Education, Health, and Environmental Affairs Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 221
Department of the Environment – Enforcement Authority
DATE: January 19, 2022
(2/2)
POSITION: Oppose as drafted

The Maryland Judiciary opposes Senate Bill 221 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. Bill Ferguson
Judicial Council
Legislative Committee
Kelley O’Connor

SB 221 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 2, 2022

The Honorable Paul G. Pinsky, Chair
Education, Health, and Environmental Affairs Committee
Miller Senate Office Building, Suite 2W
Annapolis, Maryland 21401

Re: Senate Bill 221 – Department of the Environment – Enforcement Authority

Dear Chair Pinsky and Members of the Committee:

The Maryland Department of the Environment (MDE or the Department) has reviewed SB 221- *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 SB 221 would provide MDE with additional tools to secure compliance with Maryland's environmental laws and regulations. Specifically, SB 221 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 SB 221 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 SB 221 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.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Abbott".

Tyler Abbott

cc: Lee Currey, Director, Water and Science Administration