

County Boards of Health Appeal Process.pdf

Uploaded by: Justin Ready

Position: FAV

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

February 8, 2022

SB 330 – County Boards of Health and Baltimore City Health Department – Procedures and Appeals Process

Chairwoman Kelley, Vice Chair Feldman, and members of the Finance Committee,

I'm before you today to present Senate Bill 330. We are coming out of what in many ways has been the most difficult period our country has experienced since World War II. Throughout the COVID 19 pandemic, our small businesses, sole proprietors, non-profit organizations and churches have had to adjust constantly to changing health and safety protocols – in addition to following the current laws and regulations that impact the work they do. The primary entity responsible for enforcing these protocols, regulations and laws in most cases at the county level are our local health departments. While the employees of our health departments are state employees, they are funded by county governments and the oversight mechanism over them are the counties' boards of health – the locally elected county council or commissioners in most cases.

This hybrid setup lends itself to a lack of clarity from the perspective of these small businesses and operators when they are cited or notified of an issue by their local health department. This is not just a COVID-related issue. This has been unclear in the law and has caused conflict for years.

SB 330 seeks to bring clarity to county board of health orders so that taxpayers understand the chain of command and a clear appeals process allowing a person or business the option of presenting their situation to the county board of health when there is a dispute.

Unfortunately, we have seen repeated conflicts arise because orders from health departments are either unclear, random or sudden and give no options for discussion. I had a constituent who was given an order that shut their small operation down for an issue that isn't referenced in the law or regulations – but because the law was silent, the health department claimed it had no choice but to halt the practice.

We can probably all think about cases we've heard – fire department carnivals and church bake sales, outdoor agricultural stands, the list goes on and on.

Here are the issues that SB 330 would address:

1. Require county boards of health to establish clear and understandable requirements when and under what circumstances the health officer of their county or staff may perform an inspection, issue a citation or issue an order to cease operation. In some areas, there is state law that governs but in others there is no clear guidance in state law.
2. Require that citations or orders to cease operation reference the specific law, policy or regulation that has been violated and that a summary of the options for appealing the citation order is provided.
3. Require each county board of health to establish a process by which a person may appeal a decision of the health officer or staff and make a determination on that appeal in a reasonable amount of time.

The last item in the bill adds clarity to what has confused individuals, staff from the state and county health departments, and local governments all alike. The bill makes clear that if there is a conflict between a decision by the health department and the policy of the county's board of health within the county's jurisdiction, the decision of the county board of health – the elected officials of the county – will have the final say. Right now it is not clear in state law.

SB 330 brings needed clarity, order and greater transparency to the operations of our health departments and how they interface with county governments. It ensures that the oversight structure is clear in the law and clear to the public.

Thank you for your attention and I ask for your favorable support for this legislation. I would be happy to take any questions.

SB0330-FIN_MACo_OPP.pdf

Uploaded by: Dominic Butchko

Position: UNF



Senate Bill 330

County Boards of Health and Baltimore City Health Department – Procedures and Appeals Process

MACo Position: **OPPOSE**

To: Finance Committee

Date: February 8, 2022

From: Dominic J. Butchko

The Maryland Association of Counties (MACo) **OPPOSES** SB 330. This bill prescribes rigid requirements on local health departments, who are charged to protect public health via facility inspections.

This bill seeks to standardize requirements for inspections, citations, and orders to cease operations; establish the county board of health as the body of appeals for decisions by a health officer or their staff; and places the county board of health above a health officer should the two have conflicting decisions.

Each county's Board of Health has decision-making authority spelled out in State law. In many jurisdictions, the county governing body's members also serve as members of the Board of Health, but this structure is a matter of local discretion. The different constitutions of these local bodies underscore the need for locally established procedures. SB 330 imposes a series of uniform, statewide rules that may be intended to address a concern for one jurisdiction but may prove to be an improper fit for others.

The process for notifying businesses and individuals of citations and appeals procedures is subject to local scrutiny, and the Board of Health and/or the county governing body may tailor these procedures to respond to local concerns. **Maryland state law already entitles appropriate due process for any citation or closure decision – SB 330 is seeking to solve a problem that doesn't exist and in doing so, is creating a new and unnecessary burden.** SB 330 dictates that each county create a second-tier authority with the Board of Health that may prove redundant or inefficient for both the Department and the affected businesses or individuals.

Local leaders are best equipped to guide the processes and operations of their local health department and are appropriately held accountable for those decisions locally. Accordingly, MACo requests an **UNFAVORABLE** report on SB 330.

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Position: UNF



**2022 SESSION
POSITION PAPER**

BILL: SB 330 – County Boards of Health and Baltimore City Health Department – Procedures and Appeals Process
COMMITTEE: Senate Finance Committee
POSITION: Letter of Opposition
BILL ANALYSIS: SB 330 will require each county board of health and the Baltimore City Health Department to establish certain criteria and a certain appeals process regarding inspections, issuances of a citation, or issuances of an order to cease operation.

POSITION RATIONALE: The Maryland Association of County Health Officers (MACHO) **strongly opposes SB 330.**

This bill will:

- Substantially and unnecessarily increase government bureaucracy
- Undermine the purpose of appointing health professionals to lead public health efforts in each jurisdiction
- Result in direct conflicts between the Secretary of Health’s statutory authority and newly established authority of local Boards of Health

SB 330 will require local Boards of Health to establish “when, how, and under what circumstances” Health Officers may conduct inspections and issue citations and orders to cease operation. These procedures are clearly delineated in statute, COMAR, and Health Secretary’s Orders. Health Officers and local health department staff conduct inspections, issue citations, and render closure decisions in line with these statutory and regulatory requirements. Further, these decisions are based on decades of accumulated best practices as determined by Maryland Department of Health experts under the leadership of the Secretary of Health. The proposed bill will require local Boards of Health, most of which are comprised of people with no professional health training, to issue requirements outside of this existing legal framework. Such requirements will result in either time-consuming duplicative local efforts or conflicting policies that potentially paralyze critical and timely public health efforts, leaving the public at risk.

Most of the stipulations in SB 330 already exist. Local health department staff cite specific law or policy in any enforcement actions and provide business owners with instructions for the appeal processes available for any actions taken. Under the current legal framework, if a business owner wants to contest action taken by public health officials, there are avenues at both the local and state levels.

The provision in SB 330 favoring a decision by the local Board of Health over the professional judgment of the Health Officer, acting under the authority of the Secretary of Health, sets up a regulatory conflict with no defined resolution. This is not in the best interest of the health and safety of the residents of Maryland and will create a hodgepodge of regulations across county borders, generating uncertainty for Maryland’s business owners.

For these reasons, the Maryland Association of County Health Officers strongly **opposes SB 330**. For more information, please contact Ruth Maiorana, MACHO Executive Director at rmaiora1@jhu.edu or 410-937-1433. *This communication reflects the position of MACHO.*

SB0330-FIN-OPP.pdf

Uploaded by: Natasha Mehu

Position: UNF



BRANDON M. SCOTT
MAYOR

*Office of Government Relations
88 State Circle
Annapolis, Maryland 21401*

SB0330

February 8, 2022

TO: Members of the Finance Committee

FROM: Natasha Mehu, Director of Government Relations

RE: Senate Bill 0330 – County Boards of Health & Baltimore City Health Department- Procedures & Appeals process

POSITION: Oppose

Chair Senator Delores G. Kelley, Vice Chair Senator Brian J. Feldman, and Members of the Finance Committee, please be advised that the Baltimore City Administration (BCA) **opposes** Senate Bill 0330.

SB0330 implements new procedures and appeals processes for County Boards of Health and Baltimore City Health Department.

At present, Baltimore City Health Department has their own appeals process in place in the Baltimore City Health Code §2-301, Administrative Hearings. In all situations, any person aggrieved by a notice, order, decision, or other action of the Department may request a hearing on the matter. The request must be in writing; state the grounds on which the person is contesting the notice, decision, order, or other action; and unless a different time is specified, be filed with the Commissioner within 10 days of the notice, decision, order or other action.

The hearings are held by a hearing officer designated by the Commissioner and are given the authority to issue: final findings of fact, final conclusions of law, final orders or a final administrative decision of the Department. Once a final decision is given by the hearing officer the aggrieved party may seek judicial review of that decision by petition to the Circuit Court for Baltimore City in accordance with the Maryland Rules of Procedure. Lastly, a party to the judicial review may appeal the court's final judgement to the Court of Special Appeals in accordance with the Maryland Rules of Procedure.

Additionally, there is an appeal process in place for citations. The aggrieved person may appeal the citation through the Environmental Control Board (ECB). Upon judgement from the ECB

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Hearing Officer, the aggrieved has the right to appeal the decision to the ECB. The appeal must be done in writing within 30 days after receiving the Hearing Officer's decision. All fines and fees must be paid within 30 days from the Hearing Officer's decision for the appeal to be processed and heard. ECB will consider the record from the hearing— there will not be an additional hearing or new evidence for this appeal. Full board decisions on an appeal may be appealed to the Circuit Court of Baltimore City.

Because Baltimore City already affords hearing and appeal rights, we respectfully request an **unfavorable** report on Senate Bill 0330.