

Written Testimony in Support of SB0611

Office of the Attorney General - Environment and Natural Resources Monitoring Unit –
Establishment

Before the Education, Energy, and the Environment Committee: March 8, 2023

Introduction

Senate Bill 611 establishes the Environment and Natural Resources Monitoring Unit (Unit) within the Maryland Office of the Attorney General. The Unit will investigate and prosecute violations of state criminal environmental and natural resources laws. It will also investigate and bring civil action for violations of Maryland’s environmental and natural resources laws at the request of the Department of the Environment (MDE) or the Department of Natural Resources (DNR). The Unit’s Director will serve as the Attorney General’s Representative on task forces and commissions related to environment and natural resources policy.

While I strongly support this bill, I recommend that the bill be amended to require the Unit to consider and apply the principles of environmental justice when carrying out its duties and functions. I recommend this amendment be made for two reasons: (1) the exclusion of environmental justice from this bill is contrary to agency and administration goals in Maryland; and (2) the exclusion of environmental justice from this bill raises questions about whether the Unit can recognize and correct racial and social injustices when carrying out its duties and functions. The suggested amendment is attached to this testimony.

The exclusion of environmental justice from this bill is contrary to agency and administration goals in Maryland.

The U.S. Environmental Protection Agency defines environmental justice as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”¹ The environmental justice movement began in the 1960s and gained national recognition when President Clinton issued Executive Order 12,898 in 1994. This Executive Order required federal agencies to incorporate environmental justice into decision-making processes in order to evaluate the “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities” on low-income and minority communities.²

¹ *Environmental Justice*, U.S. Env’t Prot. Agency (last updated Jan. 10, 2023), <https://www.epa.gov/environmentaljustice#:~:text=Environmental%20justice%20is%20the%20fair,laws%2C%20regulations%2C%20and%20policies.>

² Exec. Order No. 12,898, 59 FR 7629 (Feb. 11, 1994).

Since 1994, many state and local jurisdictions have also committed to uphold the principles of environmental justice.³ At the state level, Maryland's then-Governor Parris Glendening issued an executive order in 2001 mandating the establishment of the Commission on Environmental Justice and Sustainable Communities (CEJSC).⁴ Governor Wes Moore has also made clear his commitment to environmental justice by pledging to “prioritize environmental justice for the low-income communities and communities of color facing the worst effects of climate change”⁵ during his campaign. In January 2023, Governor Moore began following through on his commitment by joining the United States Climate Alliance to include environmental justice in state climate change decisions.⁶ At least one local jurisdiction in Maryland has also created a governing body to implement environmental justice.⁷

Both MDE and DNR have plans in place to better implement environmental justice within their agencies. MDE strives to integrate environmental justice into its operations and decision-making by educating state regulators on environmental justice⁸ while providing public access to permit application information, web tools, and grant information.⁹ DNR aims to strengthen relationships with underrepresented groups, as well as increase community input in agency decisions and prioritize environmental justice through partnership decisions and agency-led events.¹⁰

The bill's failure to even mention environmental justice undermines MDE, DNR, and Governor Moore's commitment to protecting low-income and minority communities from environmental harm in Maryland. The Unit is not required to consider the short and long-term disparate impact that environmental harm has on low-income and minority communities. This

³ *Ethics in the News 2022: State and Federal Environmental Justice Efforts*, Nat'l Conf. State Legis. (Apr. 30, 2022), <https://www.ncsl.org/environment-and-natural-resources/state-and-federal-environmental-justice-efforts>. See also *Environmental Justice*, N.Y.C. Mayor's Off. & Env't Just. (last visited Mar. 6, 2023), <https://climate.cityofnewyork.us/topic/environmental-justice/>; Equity Framework, D.C. Dep't Energy & Env't (Oct. 13, 2021), https://doee.dc.gov/sites/default/files/dc/sites/ddoe/service_content/attachments/DOEE%20Equity%20Framework_Oct%202021.pdf.

⁴ Exec. Ord. 01.01.2001.01, *Executive Orders State of Maryland*, 1 (2001), <https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/004000/004778/unrestricted/20071675e.pdf>.

⁵ *Maryland's Climate, Our Economic Future*, Wes Moore for Maryland (last visited Mar. 6, 2023), <https://wesmoore.com/issues/climate/>.

⁶ *Maryland Joins U.S. Alliance, Governor Wes Moore Affirms Support to Combating Climate Change*, maryland.gov (Jan. 30, 2023), <https://governor.maryland.gov/press/pages/Maryland-Joins-U.S.-Climate-Alliance-Governor-Wes-Moore-Affirms-Support-to-Combating-Climate-Change.aspx>.

⁷ *Office of Equity and Environmental Justice*, Balt. Dep't Pub. Works (last visited Mar. 6, 2023), <https://publicworks.baltimorecity.gov/office-equity-environmental-justice>.

⁸ *Environmental Justice Implementation at the Maryland Department of the Environment (MDE)*, Md. Dep't Env't (last visited Mar. 6, 2023), <https://mde.maryland.gov/programs/crossmedia/environmentaljustice/Pages/index.aspx>.

⁹ *Environmental Justice Resources*, Md. Dep't Env't (last visited Mar. 6, 2023), <https://mde.maryland.gov/programs/crossmedia/EnvironmentalJustice/Pages/resources.aspx>.

¹⁰ *Advancing DEIJ Through Mission Related Work*, Md. Dep't Nat. Res. (last visited Mar. 6, 2023), <https://dnr.maryland.gov/education/Pages/DEIJ-Mission-Related-Work.aspx>.

means that the Unit is not obligated to consider environmental justice when prosecuting environmental crimes, nor is the Unit obligated to reinforce MDE and DNR's commitment to environmental justice when asked to help bring civil actions.

The Unit's duties will go beyond enforcement actions, offering legal advice to MDE, DNR, and the Office of the Attorney General on environmental legal and policy questions. The Unit will also represent the Office of the Attorney General at task force and commission meetings relating to environment and natural resources policy. The failure for the Unit to consider environmental justice when performing these duties will be contrary to Governor Moore's express dedication to promoting environmental justice within Maryland, perpetuating a held belief that governments do not care about low-income and minority communities' exposure to environmental harm nor want to properly engage these communities about mitigating this harm.¹¹

The exclusion of environmental justice from this bill raises questions about whether the Unit can recognize and correct racial and social injustices when carrying out its duties and functions.

Many low-income and minority communities disparately endure various environmental harm. Cities across the United States have suffered from water crises because of aging water treatment system infrastructure.¹² Baltimore City is not unique in this regard, as failing infrastructure resulted in West Baltimore residents in September 2022 to go without water for several days because of an E. coli contamination.¹³ Despite being provided drinking water by the city and the water no longer being contaminated, many West Baltimore residents remain distrustful of their water supply and some still boil their water.¹⁴

¹¹ Jeremy Cox, *Progress on Environmental Justice Draws Criticism in Maryland*, Bay Journal (Oct. 12, 2021), https://www.bayjournal.com/news/people/progress-on-environmental-justice-draws-criticism-in-maryland/article_92a86904-2148-11ec-913b-a30436a05f91.html. See also Julia Hananel, *A Look at Environmental Justice Issues in Maryland*, Climate Xchange (Jan. 14, 2022), <https://climate-xchange.org/2022/01/14/a-look-at-environmental-justice-issues-in-maryland/>; and *Environmental and Climate Justice*, NAACP (last visited Mar. 6, 2023), <https://naacp.org/know-issues/environmental-climate-justice>.

¹² Geoff Bennett, *Jackson Water Crisis Exposes Consequences of Aging Infrastructure*, PBS (Sept. 17, 2022), <https://www.pbs.org/newshour/show/jackson-water-crisis-exposes-consequences-of-aging-infrastructure>. See also *Flooding and Aging Infrastructure Makes It Harder to Keep Water Clean*, WV Public Broadcasting (June 12, 2019), <https://wvpublic.org/flooding-and-aging-infrastructure-makes-it-harder-to-keep-water-clean/>.

¹³ Jenna Portnoy, *Aging Infrastructure to Blame for E. coli Bacteria in Baltimore Water*, Washington Post (Sept. 30, 2022), <https://www.washingtonpost.com/dc-md-va/2022/09/30/baltimore-water-ecoli-infrastructure/>.

¹⁴ Howard Wicker, *Baltimore Community Distrustful After E. coli Water Outbreak*, Greyhound (Sept. 23, 2022), <https://thegreyhound.org/site/baltimore-community-distrustful-after-e-coli-water-outbreak/>. See also Darreonna Davis, *West Baltimore Residents, Students Have Mixed Feelings About Water Quality After E. Coli Contamination*, Inside Climate News (Jan. 4, 2023), <https://insideclimatenews.org/news/04012023/west-baltimore-residents-students-have-mixed-feelings-about-water-quality-after-e-coli-contamination/>.

Studies have also found that low-income and minority communities in Maryland live near Toxic Release Inventory (TRI) facilities¹⁵ which emit harmful chemicals linked to increased risk of cancer, asthma, and other health issues.¹⁶ Baltimore City has twenty-five TRI facilities which disposed a combined 368.6 thousand pounds on site into air, water, and land resources in 2020.¹⁷

Other instances of disparate impact on minority and low-income communities exist throughout Maryland.¹⁸ For these communities who health has been affected by environmental harm, equal enforcement of criminal and civil environmental law is critical. Yet the express exclusion of environmental justice from the bill signals to these communities, as well as to the environmental organizations who work and help these communities, that the Unit may perpetuate a state trend of ignoring environmental harm.

Conclusion

For these reasons, I urge the Committee to issue a favorable report with amendments for this bill. It is critical to impose upon the Unit the responsibility to incorporate environmental justice into its enforcement and advisory responsibilities.

This testimony is submitted on behalf of the Public Health Law Clinic at the University of Maryland Francis King Carey School of Law and not by the School of Law, the University of Maryland, Baltimore, or the University of Maryland System.

¹⁵ Sacoby Wilson, et al., *Being Overburdened and Medically Underserved: Assessment of this Double Disparity for Populations in the State of Maryland*, ENVTL. HEALTH 13:26, 9 (2014).

¹⁶ *Id.* at 2.

¹⁷ TRI Explorer, *2020 TRI Factsheet: County – Baltimore City, MD*, U.S. Env't Prot. Agency (last visited Mar. 6, 2023),

https://enviro.epa.gov/triexplorer/tri_factsheet.factsheet?pParent=TRIQ1&pDataset=TRIQ1&pstate=MD&pcounty=Baltimore%20city&pFips=24510&pyear=2020.

¹⁸ Timothy B. Wheeler, *Mining, Waste Disposal in Rural Maryland Enclave Draw Legal Challenges*, Bay Journal (Jul. 27, 2022), https://www.bayjournal.com/news/pollution/mining-waste-disposal-in-rural-maryland-enclave-draw-legal-challenges/article_a4a32a2a-0dd0-11ed-9b42-433e12c4a360.html. See also Elizabeth Shwe, *Environmental Justice Advocates Sound Alarm Over Eastern Shore Pipeline*, Maryland Matters (Oct. 30, 2022), <https://www.marylandmatters.org/2020/10/30/environmental-justice-advocates-sound-alarm-over-eastern-shore-pipeline/>; and Editor, *Health Impact of CAFOs on Residents*, Maryland Campaign for Environmental Human Rights (Jul. 15, 2021), <https://mdehr.org/health-impact-of-cafos-on-residents/>.

SB611

BY: Senators Bailey, Elfreth, Rosapepe, and West

(To be offered in the Education, Energy, and the Environment Committee)

AMENDMENTS TO SENATE BILL 611

AMENDMENT NO. 1

On page 2, in line 3, strike “C” and substitute “D.”

On page 2, in line 3, insert:

“(C) “ENVIRONMENTAL JUSTICE” MEANS EQUAL PROTECTION FROM ENVIRONMENTAL AND PUBLIC HEALTH HAZARDS FOR ALL PEOPLES REGARDLESS OF RACE, INCOME, CULTURE, AND SOCIAL STATUS.”

AMENDMENT NO. 2

On page 3, in line 24, insert:

“(E) WHEN CARRYING OUT ITS DUTIES AND FUNCTIONS (as defined in §§ 6-702(A) - (D)), THE UNIT SHALL CONSIDER AND APPLY PRINCIPLES OF ENVIRONMENTAL JUSTICE.”

On page 3, in line 24, after amendment, insert:

“THE COMMISSION OF ENVIRONMENTAL JUSTICE AND SUSTAINABLE COMMUNITIES” between “THE GOVERNOR,” and “AND, IN ACCORDANCE.”