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Comments before House Environment
& Transportation Committee

FAVORABLE

House Bill 1088

**Emissions Standards, Ambient Air Quality
Standards, and Solid Waste Management
- Local Authority**

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Good afternoon. My name is Mike Ewall and I'm the founder and director of a national organization, Energy Justice Network. Energy Justice works at the local level with grassroots community groups in Maryland and the rest of the country to support efforts to promote zero waste, and to stop polluting and unnecessary energy and waste industry facilities.

Energy Justice Network strongly supports House Bill 1088, the Reaffirming Local Environmental Authority Act.

This bill simply clarifies what federal and state law already authorize, that local governments are allowed to have their own air and waste laws so long as they are no less strict than the federal and state minimums. Local governments know best what the needs are, which can vary throughout the state in different types of communities.

HB 1088 is needed to clarify the intent of the General Assembly, which was established many years ago with language empowering local action in these areas. Unfortunately, some local governments have been tripped up by unclear wording in the state law, which lawyers have used to bring costly lawsuits and undermine local governments' efforts.

The Clean Air Act (CAA), at 42 U.S.C. § 7416, allows states ***and their political subdivisions*** to have stricter air pollution laws than the federal floor:

§ 7416. Retention of State authority

Except as otherwise provided in sections 119(c), (e), and (f) (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977), 209, 211(c)(4), and 233 (preempting certain State regulation of moving sources) **nothing in this Act shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution**; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 111 or 112, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section.

Similarly, our federal solid waste law, the Resource Conservation and Recovery Act (RCRA) does the same, at 42 U.S.C. § 6929, in a section titled "retention of State authority," which states:

“[N]o State or political subdivision may impose any requirements less stringent than those authorized under this subtitle respecting the same matter as governed by such regulations... **Nothing in this title shall be construed to prohibit any State or political subdivision thereof from imposing any requirements, including those for site selection, which are more stringent than those imposed by such regulations....”**

Some federal courts have held that it's really a state-by-state decision whether local government has this power. Maryland's General Assembly has provided for local governments to have their own laws that are no less strict than the state or federal minimums. Maryland Environment Code §§ 2-104, 9-502, 9-503, and 9-716 already empower local rules and regulation on air and waste matters.

Some court decisions have called into question the General Assembly's intent regarding the grant of authority to local government. Some local governments have even held themselves back from exercising their freedom to contract with waste facilities as they see fit, out of misguided fear that state waste planning requirements interfere with their right to contract with lawfully-operating, licensed waste facilities.

HB 1088 clarifies the following:

- 1) That local governments can have their own clean air laws. This is already quite clear, but the law uses the word “section” where it should say “subsection,” which has enabled creative lawyers to argue that the part saying that local governments can *also* ask the state to set stronger air standards somehow limits the language that clearly also authorizes local governments to act.
- 2) That local laws do not conflict with state law so long as they are no less strict than state law, and it's technically possible to comply with both state and local law.
- 3) That the requirement for the Maryland Department of the Environment to approve local solid waste plans does not take away the freedom for a county or municipality to contract with lawful waste management companies, or to exert their rights to have clean air laws.
- 4) That the federal authorization for local government to have waste regulations no less strict than the federal standards is affirmed in state law, mirroring the language in the state air law that authorizes the same.

Finally, it ensures that the Maryland Department of the Environment provide this information on their website so that local governments are clear about their rights.

Local governments are charged with protecting the health, safety, and welfare of their residents, which can be impacted by localized air pollution or waste management facilities.

Passing this law, by itself, would not impact any specific entities or increase any standards. It would take an act of a county or municipality to choose to adopt what they're already authorized to adopt, but this law would free them of ambiguity and threats of unfounded litigation.

We encourage the passage of House Bill 1088 so that our communities can enact appropriate local rules and regulations without unnecessary fears of costly litigation.