MARYLAND Association of COUNTIES

Senate Bill 653

Standing - Environmental and Natural Resources Protection Proceedings
(Clean Water Justice Act of 2024)

MACo Position: **OPPOSE**

To: Education, Energy, and the Environment Committee

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From: Dominic J. Butchko

The Maryland Association of Counties (MACo) **OPPOSES** SB 653. This bill would, among other actions, enshrine in state law a dramatic new right for residents to sue certain parties for not only water violations, but also for other non-water-related environmental violations.

"Standing" is the legal right to bring and maintain a lawsuit. The purpose of standing is to limit the ability to bring suit to those parties who are directly affected by a decision. Under Maryland state law, the standing of residents to bring suits against counties has been limited. Unlike private for-profit industry, and as providers of public services, local governments have traditionally been viewed in a different light. While the advocates of SB 653 claim that this legislation is an answer to changes at the federal level, this bill extends beyond what federal standing was initially offered. Counties oppose the premise of this legislation as it opens the door to an onslaught of litigation, that while likely brought with the best intentions, will ultimately come at the cost of taxpayer dollars and public services.

Some significant concerns include:

- **Broad Expansion of Standing –** As drafted, this legislation dramatically expands standing for most environmental challenges and provides for recovery of attorney's fees for alleged failures of the county government to enforce (among others) stormwater management laws, wetland laws, landfill/surface mine laws, forest conservation laws, and Critical Area law. Counties could expect legal challenges that were previously not economically feasible to become so and result in a significant increase in resident suits to challenge county land use decisions, fueled by attorneys seeking statutory recovery of attorney's fees.

- **Inclusion of Aesthetic Interests in Standing –** Under this inclusion, anyone could bring a case against a local government if they merely don't like the look or design of most projects involving water. This will significantly increase costs and frivolous litigation.

- **Authorizes Civil Action Against Individual County Employees for Carrying Out Work Duties –** Counties are already struggling to recruit and retain workforce for critical infrastructure. If the General Assembly were to subject wastewater workers to individual lawsuits, the State would be opening the door to disastrous consequences.

Additionally, MACo shares the concerns addressed in the Maryland Municipal Stormwater Association (MAMSA) and the Maryland Municipal Wastewater Association (MAMSA) testimony. MAMSA & MAMWA are associations which represent local government stormwater and wastewater

system operators, and whose membership largely overlaps with MACo and the Maryland Municipal League (MML). These concerns include:

- **The Bill Is Too Broad –** As filed, the bill would allow a person or association meeting the standing requirements in §1-902 (p. 3, l. 10 – p. 4, l. 2) to file a lawsuit in circuit court under a multitude of state statutes (more than 60 subtitles of the Code). This includes the sections of the Code governing the water and sewer planning process (Environment Article, Title 9, Subtitle 5), the operation of the Maryland Water Infrastructure Finance Administration (MWIFA) (Environment Article, Title 9, Subtitle 16), and the Maryland Environmental Policy Act (Natural Resources Article Title 1, Subtitle 3).

  To provide a specific example, localities could be sued under this new Subtitle for alleged violations associated with a water and sewer plan. Currently, enforcement of Title 9, Subtitle 5 is reserved to MDE. Similarly, it appears MDE could be sued by any person who alleges an injury-in-fact associated with a financial decision made by its MWIFA. ***In short, the bill appears to open the flood gates for new causes of action under the State law that do not currently exist.***

- **Residents Can Already Sue Under Federal Law –** Even if the bill is amended to limit it to MDE permits issued under Title 9, Subtitle 3 (Water Pollution Control, which includes MS4 permits) and Title 5, Subtitle 9 (Nontidal Wetlands) of the Environment Article, MAMWA (and MACo) still oppose this bill because residents already have the right to sue discharge permittees under the Clean Water Act Resident Suit provision.

  MDE issues publicly owned treatment works (POTW) discharge permits under delegated authority from the U.S. Environmental Protection Agency and the Clean Water Act (33 U.S.C. §1251, et seq.). Clean Water Act §503 allows any resident to file a civil lawsuit against any person who is allegedly violating an effluent limit or standard in a discharge permit. SB 653 is unnecessary. Residents are already allowed to go to federal court to allege permit violations.

  Allowing new lawsuits against POTWs under state law would drive up local costs. Localities would have to defend any suits brought (with costs for attorneys, expert testimony, etc.) and could potentially be ordered to pay attorney's fees and litigation costs for the third-party bringing the suit.

- **SB 653 Grants Residents More Rights than Under Federal Law -** As with the federal Resident Suit provision, the bill prohibits a private action from being brought if the Secretary of the Department of the Environment or the Secretary of the Department of Natural Resources has commenced and is diligently prosecuting an action to require compliance (page 4, lines 20-23). However, unlike federal law, the bill appears to allow a separate action to be brought if the private plaintiff asserts that the ongoing government enforcement action is allowing for undue delay or unreasonable schedules (page 4, lines 23-24). This may mean that a plaintiff who has slept on their right to intervene (page 4, lines 25-27) may nonetheless commence a separate action despite an ongoing government enforcement action.

- **MDE Enforces Environmental Laws and Residents Can Readily Intervene in Those Cases –** The Environment Article gives MDE significant enforcement authority over discharge permits, including the ability to impose civil and criminal penalties. ENV. §9-334 through 9-344. In addition, ENV. §9-344.1 (Right to intervene), which passed just last year, gives residents who meet threshold standing requirements the "unconditional right" to intervene in a case MDE brings in State court. When combined with the State's liberal environmental standing standards, there is little chance an interested resident could not make their voice heard if there is alleged permit noncompliance.

If enacted, SB 653 will lead to more frivolous litigation for local governments, diverting public taxpayer dollars and stripping resources that could have otherwise been invested in public services, including those delivered through these federal permits. For this reason, MACo urges the Committee to give SB 653 an **UNFAVORABLE** report**.**