



February 26, 2024

The Honorable Brian J. Feldman, Chair  
Education, Energy, and the Environment Committee  
Miller Senate Office Building, 2 West  
Annapolis, MD 21401

**Oppose: SB 653 – Standing – Environmental and Natural Resource Protection Proceedings**

Dear, Chair Feldman and Committee Members:

On behalf of the NAIOP Maryland Chapters representing seven hundred companies involved in all aspects of commercial, industrial, and mixed-use real estate I am writing in opposition to SB 653.

This bill grants a new cause of action to allow any individual or association to independently sue any person, business, a county, municipality, the City of Baltimore, or multicounty government entities. Because the bill adopts the federal standing standard, a claim of a past or potential future negative impact to aesthetic, recreational, conservational, health or economic interests of the individual will be enough to qualify for judicial review. The plaintiff may seek injunctive relief and civil penalties, be awarded the costs of litigation, and participate in alternative mitigation requirements imposed by the court.

The rationale for NAIOP's opposition includes the following:

- ENV 1-601 (attached) currently allows individuals who meet the federal standing requirements to seek judicial review of final decisions on the issuance of state air quality and water quality permits. ENV 9-433.1 (attached) currently allows individuals who meet the federal standing requirements to intervene in an enforcement action initiated by MDE. SB 653 would allow individuals who meet the federal standing requirements to independently initiate their own enforcement actions.
- Today, enforcement authority over state and local permits is vested with state and local agencies who operate in the public interest, use their own discretion in enforcement decisions, and are subject to oversight by the General Assembly and local elected bodies. Because SB 653 authorizes an independent cause of action, it would allow private interests to bring enforcement action in court based on their own assessment of how permitted activities harm their interests and what remedies or penalties are appropriate. Regulated entities would be subject to litigation from private parties even if the responsible government enforcement agency chooses not to take court action.
- The scope of the new right to sue raises serious concerns because determined opponents will be able to use the broad language of the bill to initiate tactical litigation to delay or alter permitted activities after they have been approved. Because the bill adopts the very permissive federal definition of standing, a plaintiff could get into court based on subjective claims of aesthetic impacts or personal concerns about their ability to recreate on the Chesapeake Bay. The person does not have to live near the alleged violation in order to trigger judicial review and the plaintiffs do not have to prevail on all issues in order to be awarded court costs.

**For these reasons NAIOP respectfully requests your unfavorable report on SB 653.**

Sincerely,

A handwritten signature in blue ink that reads "Tom Ballentine".

Tom Ballentine, Vice President for Policy  
NAIOP – Maryland Chapters, *The Association for Commercial Real Estate*

cc: Education, Energy, and the Environment Committee Members  
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## Article - Environment

### §1-601. Scope of Subtitle

(a) Permits issued by the Department under the following sections shall be issued in accordance with this subtitle:

(1) Air quality control permits to construct subject to § 2-404 of this article;

(2) Permits to install, materially alter, or materially extend landfill systems, incinerators for public use, or rubble landfills subject to § 9-209 of this article;

(3) Permits to discharge pollutants to waters of the State issued pursuant to § 9-323 of this article;

(4) Permits to install, materially alter, or materially extend a structure used for storage or distribution of any type of sewage sludge issued, renewed, or amended pursuant to § 9-234.1 or § 9-238 of this article;

(5) Permits to own, operate, establish, or maintain a controlled hazardous substance facility issued pursuant to § 7-232 of this article;

(6) Permits to own, operate, or maintain a hazardous material facility issued pursuant to § 7-103 of this article;

(7) Permits to own, operate, establish, or maintain a low-level nuclear waste facility issued pursuant to § 7-233 of this article; and

(8) Potable reuse permits issued in accordance with § 9-303.2 of this article.

(b) For permits listed under subsection (a) of this section, a contested case hearing may not occur.

(c) A final determination by the Department on the issuance, denial, renewal, or revision of any permit listed under subsection (a) of this section is subject to judicial review at the request of any person that:

(1) Meets the threshold standing requirements under federal law;

and

(2) (i) Is the applicant; or

(ii) Participated in a public participation process through the submission of written or oral comments, unless an opportunity for public participation was not provided.

## Article - Environment

### §9-344.1. Right to intervene in civil actions involving water pollution control – Same rights as interested person or aggrieved party.

(a) Subject to subsection (b) of this section, a person who meets the threshold standing requirements under the federal Clean Water Act has an unconditional right and the authority to intervene in a civil action that the State initiates in State court to require compliance with:

- (1) This subtitle;
- (2) Regulations adopted by the Department in accordance with this subtitle; or
- (3) Any discharge permit, effluent limitation, or order issued by the Department in accordance with this subtitle.

(b) A person shall exercise the right to intervene under subsection (a) of this section in accordance with the applicable practices, procedures, and laws in the State.

(c) A person who meets the requirements to intervene under subsection (a) of this section has the same rights as an interested person or aggrieved party under the federal Clean Water Act, including the right to apply for judicial appeal.