

SB653 testimony favorable.pdf

Uploaded by: Alice Volpitta

Position: FAV



February 26, 2024

Standing - Environmental and Natural Resources Protection Proceedings (Clean Water Justice Act of 2024) (SB 653)

Position: FAVORABLE

Dear Chair Feldman, Vice Chair Kagan, and members of the Senate Education, Energy, and the Environment Committee:

Blue Water Baltimore is a local nonprofit organization with a mission to protect and restore the quality of Baltimore's rivers, streams, and Harbor to foster a healthy environment, a strong economy, and thriving communities. **On behalf of Blue Water Baltimore, I write to submit this favorable testimony in support of SB653.**

Blue Water Baltimore, home of the Baltimore Harbor Waterkeeper, is part of the international Waterkeeper Alliance that is composed of over 350 watchdog organizations with a mission to protect and restore waterways all over the world. Our licensed Waterkeeper jurisdiction includes the entirety of the Patapsco and Back River watersheds, which means that Blue Water Baltimore is uniquely positioned among environmental NGOs in the region to focus on the health and prosperity of these waterways, and that of the people who live, work, and recreate around them.

One of our core functions as a Waterkeeper organization is to amplify the voices of the people living within our watersheds who are suffering the effects of pollution at the hands of noncompliant facilities, entire under-regulated industrial sectors, and other entities who aren't following the law. **A key form of advocacy that we engage in is to exercise our rights under the federal Clean Water Act to strategically litigate against polluters on behalf of our membership, which results in measurably cleaner waterways and stronger communities throughout our watersheds.** One of the provisions in the Clean Water Act that makes it such an important and revolutionary piece of legislation is the *citizen suit enforcement provision*, which puts the power of the law into the hands of the people who are directly affected by waterway pollution. This provision is grounded in the belief that our local streams and rivers don't belong to any one of us; they belong to all of us, collectively, and no one has the right to abuse and pollute our shared waterways.

In the wake of the U.S Supreme Court decision in *Sackett v. EPA*, many of Maryland's waterways that were previously protected under the Clean Water Act were stripped of their federal protections based on flawed logic around what legally constitutes a protected waterway. Ephemeral streams, vernal pools, and wetlands that are vital to resilient, thriving ecosystems are no longer protected at a federal level. This means that **Maryland residents, too, were stripped of their ability to enforce the Clean Water Act and take action on behalf of themselves and their communities when these types of waterways are threatened.** Fortunately, Maryland still protects these waterways, but existing state law provides no right for communities to enforce the law like under the federal Clean Water Act.

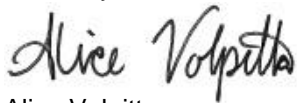
Simply put, the Clean Water Justice Act allows communities harmed by illegal water pollution to enforce state law. It restores Marylanders' right to take action against polluters without having to wait on an overburdened and under-resourced state regulatory agency to step in ahead of them. The Clean Water Justice Act does not change any environmental standards or add any new requirements. It simply provides a public right to enforce our water quality laws. It ensures that no Marylander is left without access to justice or the ability to protect their right to clean water.

Finally, it is worth noting that there may be significant financial benefits to the State under the Clean Water Justice Act. Whenever an enforcement action takes place, Blue Water Baltimore prefers to see the use of Supplemental Environmental Projects (SEPs) or Environmentally Beneficial Projects (EBPs) in place of traditional penalties. This practice keeps resources in the communities that were directly harmed

by pollution, and results in measurable improvements in both water quality and quality-of-life for nearby residents. However, monetary penalties typically accompany these projects in Settlement Agreements, Consent Orders, and Consent Decrees – and in many cases, they take the place of SEPs and EBPs entirely. An important financial consideration to this bill is that the penalties associated with state enforcement actions are kept in the state of Maryland, and are put to beneficial use through the Maryland Clean Water Fund. Alternatively, penalties associated with federal enforcement actions are directed to the U.S. Treasury, so those resources are pulled away from the state. **When groups like Blue Water Baltimore have the ability to enforce state pollution control laws in state court, more resources are ultimately kept in the state of Maryland.**

For all of the reasons outlined above, Blue Water Baltimore urges this committee to issue a favorable report on SB653.

Sincerely,

A handwritten signature in black ink that reads "Alice Volpitta". The signature is written in a cursive, flowing style.

Alice Volpitta
Baltimore Harbor Waterkeeper
avolpitta@bluewaterbaltimore.org

PRKN Testimony SB653 .docx.pdf

Uploaded by: Betsy Nicholas

Position: FAV



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Testimony in Support of SB0653
Standing - Environmental and Natural Resources Protection Proceedings
(Clean Water Justice Act of 2024)
Senate Energy, Education, and Environment Committee 2/27/2024

February 26, 2024

Chair Feldman and Committee Members,

The federal Clean Water Act was passed in 1972 to protect the chemical, physical and biological integrity of our waters. This law has been responsible for the improvement of waterways across the country.

The CWA was revolutionary not because it was one of the first environmental laws, it wasn't, but in that it created authority for community members to enforce the law against illegal polluters to protect themselves and their communities from pollution. This so-called 'citizen suit provision' was essential to the success of the Clean Water Act, as it recognized that the government is not always willing or able to enforce the law.

In May 2023, the supreme court of the United States decided the case of Sackett vs. EPA, a case involving a permit to dredge and fill wetlands. The court took this opportunity to roll back the definition of waters of the United States – the jurisdictional groundwater of the CWA.

As a result, more than half of the wetlands and waterways in Maryland are no longer protected under federal law. This also means that if you discharge/dump pollution into a water that is not a water of the United States, or "WOTUS", then you do not need a permit and it is no longer illegal to discharge such pollutants.

We are fortunate to live in Maryland, which has a strong definition of waters of the state, and it remains illegal under Maryland state law to discharge pollution or fill these waterways. But without the extension of federal level to these state waters, we lost the right to enforce that law in court.

The Clean Water Justice Act will fix this harm and allow communities harmed by illegal water pollution to enforce state law to stop illegal water pollution, just as they have always been able to do under federal law. This bill is modeled off of the "citizen suit provision" of the Clean Water Act, something that we



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a 501(c)3 tax-exempt nonprofit organization #54-1982624 EarthShare # 87828 * CFC # 87828
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didn't have under Maryland law; and allows all of us, community groups, ordinary Marylanders who are harmed by pollution to enforce the law and protect themselves from illegal pollution.

The Clean Water Justice Act uses the same federal standing provided under the Clean Water Act, and helps Marylanders to protect themselves from the harm caused by the Supreme Court Sackett Decision. It also provides much-needed capacity to both MDE and the MD AG's office to watch-dog pollution and enforce the laws.

The Clean Water Justice Act will:

- Provide a new right for impacted community members to enforce the law in state court the same way that they were previously able to do in federal court under the Clean Water Act.
- Give Marylanders the same degree of access to state courts as they have in federal court.
- Repair the threat to Maryland's critical water resources caused by the U.S. Supreme Court decision.

It's important to note that the bill does not create a right of judicial review of final agency actions, and does not expand standing beyond that provided by federal courts, essentially restoring the enforcement of clean water laws to what existed before the Supreme Court's ruling.

Thank you for your consideration, and I look to the committee to give SB653 a favorable report.

Betsy Nicholas
Vice President of Programs
Potomac Riverkeeper Network
Betsy@prknetwork.org

SB365-Fav-B.Raindrop-MPEN,SOPC.pdf

Uploaded by: Bonnie Raindrop

Position: FAV



Testimony in Support of SB653
Standing - Environmental and Natural Resources Protection Proceedings
(Clean Water Justice Act of 2024)

February 27, 2024

Education, Energy & Environment Committee

In Support: SB 653

Honorable Chair Korman and Members of the Committee,

The Maryland Pesticide Education Network (MPEN), a non-profit organization focused on addressing the impacts of pesticides on the health of all life since 1994, and the Smart on Pesticides Coalition (SOPC), MPEN launched and facilitates since 2012, is comprised of 114 organizations and businesses, both state and national, within representing communities, businesses, health care providers, farmers, environmentalists, Waterkeepers, interfaith congregants as well as environmental justice, public health, and wildlife advocates. MPEN and the Smart on Pesticides Coalition strongly urge a favorable report on HB1101, the Clean Water Justice Act.

This act would enshrine the ability of communities harmed by pollution, including pesticide pollution, to enforce state laws on the books, as they were able to prior to the Supreme Court's recent ruling on the Clean Water Act.

Pesticide spraying on farmland and parks produces runoff into nearby waterways, which is known to cause significant harm to communities downstream. Up until 2023, these communities were able to seek justice in federal court. Now, however, many of these streams and wetlands are left entirely up to the state to manage.

While Maryland does fortunately have laws on the books that supplement the federal Clean Water Act, local communities currently have no way to bring violations forward and join the state in pursuing actions as they were previously able to. SB 653 would rectify this, allowing community organizations to bring violations forward to state courts and work with the state to seek justice.

When the Baltimore Harbor Waterkeeper, a member of our SOPC, discovered significant levels of bacteria within the Patapsco River, community organizations like Blue Water Baltimore came together and worked alongside the MDE to address several violations of the Clean Water Act. While recent Supreme Court rulings have made further actions like this impossible, the Clean Water Justice Act would ensure community members and organizations would be able to continue to work alongside the state to keep Marylanders safe.

For this reason, we **strongly urge a favorable report** on the Clean Water Justice Act.

Sincerely,

Ruth Berlin, Executive Director
Maryland Pesticide Education Network

Bonnie Raindrop, Coalition Director
Smart on Pesticides Coalition

Brent Walls UPRK Testimony SB653 .docx (1).pdf

Uploaded by: Brent Walls

Position: FAV



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Testimony in Support of SB0653
Standing - Environmental and Natural Resources Protection Proceedings
(Clean Water Justice Act of 2024)
Senate Energy, Education, and Environment Committee 2/27/2024

FAVORABLE

February 26, 2024

Chair Feldman and Committee Members,

I would like to provide an example of a pollution investigation I worked on in October of 2018. The community downstream of a basalt mining company in the Upper Potomac had been concerned for many years about the green film of pollution in Miney Branch, a tributary of the Monacy River.



This photo shows the thick green stormwater from an 800 acre basalt mining operation before it is discharged into Miney Branch.



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This photo shows a close up of the stormwater pond.



This photo shows the permitted discharge to Miney Branch. The Rock path is supposed to allow for solids to settle out before entering the receiving stream.



This photo shows the discharge from the stormwater pond alongside Miney Branch. The day of this inspection was preceded by several inches of rain. This section of the Miney branch only flows during a rain event and is considered an ephemeral stream.

In 2023, the supreme court of the United States decided the case of Sackett vs. EPA, and took this opportunity to roll back the definition of waters of the United States – the jurisdictional groundwater of the CWA. As a result, more than half of the wetlands and waterways in Maryland are no longer protected under federal law. This also means that if you discharge/dump pollution into a water that is not a water of the United States, or “WOTUS”, then you do not need a permit and it is no longer illegal to discharge such pollutants.

Miney branch is an example of a stream that may not be protected as a federal WOTUS.



This photo is of the permitted discharge outlet from the stormwater pond. You can see the milky white pollution entering the stream.



This is the pollution downstream at a sportsmans club where the patrons enjoy fishing, except when it rains and the stormwater pond discharges into Miney Branch.

The result of this investigation was a Notice of Intent to file a Clean Water Act Lawsuit using the citizens provision. This part of the CWA allows organizations like ours and the public to protect communities from the pollution impacting their river; however, if the receiving waterbody is not considered a WOTUS, then a timely legal battle would commence or be thrown out all together. This pollution case occurred 5 years before the Sackett vs. EPA decision and so our claim was recognized and the industry decided to work with us and put in a \$250,000 sand filtration system that reduced the turbidity pollution by 85%.

These pollution cases occur every year in some part of the Upper Potomac and if this case were today, the industry could easily have decided to fight us on whether we had a reliable claim of pollution impacting a WOTUS to use the CWA.

Maryland has a strong definition of waters of the state, and it remains illegal under Maryland state law to discharge pollution or fill these waterways. But without the extension of federal level to these state waters, we lost the right to enforce that law in court.

The Clean Water Justice Act will fix this harm and allow the communities that I see many times a year harmed by illegal water pollution to enforce state law and stop illegal water pollution, just as they have always been able to do under federal law. This bill is modeled off of the “citizen suit provision” of the Clean Water Act, something that we didn’t have under Maryland law; and allows all of us, community groups, ordinary Marylanders who are harmed by pollution to enforce the law and protect themselves from illegal pollution.

Thank you for your consideration, and I look to the committee to give SB653 a favorable report.

Brent Walls
Upper Potomac Riverkeeper
Potomac Riverkeeper Network
Brent@potomacriverkeeper.org

Written Testimony SB653 .pdf

Uploaded by: Brian Russell

Position: FAV

Brian Russell, Member
Shore Thing Shellfish LLC
PO Box 74
Tall Timbers, MD 20690

February 25, 2024

To: Members of the Senate Environment and Transportation Committee
Re: SB653 Standing - Environmental and Natural Resources Protection Proceedings

Position: Support SB653

Dear Chairman Feldman, Vice Chair Kagan, and members of the committee,

My name is Brian Russell, one of the three owners and operators of Shore Thing Shellfish LLC, a small oyster farm in Piney Point Maryland. We support SB653 Standing - Environmental and Natural Resources Protection Proceedings.

The Clean Water Justice Act allows communities harmed by illegal water pollution to enforce state law. Access to the courts to enforce laws that protect communities from pollution was at the heart of the federal Clean Water Act (CWA). Unfortunately, the U.S. Supreme Court recently removed most streams and wetlands from Clean Water Act protection. Fortunately, Maryland still protects these waterways, but it has no right for communities to enforce the law like under the CWA.

As an oyster farm, we rely on clean water in St. George Creek where we have two of our oyster leases. Wetlands and streams are the livers and kidneys of our landscape – filtering out pollution, keeping drinking water clean, protecting us from flooding and storm surges, and providing billions of dollars in benefits. These aquatic ecosystems are also among the very most valuable biodiverse habitats. Now, the majority of these waterways are only protected by Maryland law. Given our urgent climate and biodiversity crises, we should be doing everything we can to protect these waterways.

The Clean Water Justice Act will:

- Provide a new right for impacted community members to enforce the law in state court the same way that they were previously able to do in federal court under the Clean Water Act.
- Give Marylanders the same degree of access to state courts as they have in federal court.
- Repair the threat to Maryland's critical water resources caused by the U.S. Supreme Court

decision.

It's important to note that the bill does not create a right of judicial review of final agency actions, and does not expand standing beyond that provided by federal courts, essentially restoring the enforcement of clean water laws to what existed before the Supreme Court's ruling.

Thank you for your consideration, and I look to the committee to give SB653 a favorable report.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Russell", with a stylized flourish extending to the right.

Brian Russell

SB653.pdf

Uploaded by: Carole Trippe

Position: FAV

Testimony in Support of SB0653
Standing - Environmental and Natural Resources Protection Proceedings
(Clean Water Justice Act of 2024)
Senate Energy, Education, and Environment Committee 2/27/2024
Submitted on 2/26 by 6pm

To Chair Feldman and Committee Members,

My name is Carole Trippe. I live in Chestertown, MD near the Chester River within the Chesapeake watershed, and I urge a favorable report on SB653. The Clean Water Justice Act allows communities harmed by illegal water pollution to enforce state law. Access to the courts to enforce laws that protect communities from pollution was at the heart of the federal Clean Water Act (CWA). Unfortunately, the U.S. Supreme Court recently removed most streams and wetlands from Clean Water Act protection. Fortunately, Maryland still protects these waterways, but it has no right for communities to enforce the law like under the CWA.

Wetlands and streams are the lungs and kidneys of our landscape – filtering out pollution, keeping drinking water clean, protecting us from flooding and storm surges, and providing billions of dollars in benefits. These aquatic ecosystems are also among the very most valuable biodiverse habitats. Now, the majority of these waterways are only protected by Maryland law. Given our urgent climate and biodiversity crises, we should be doing everything we can to protect these waterways.

The Clean Water Justice Act will:

- Provide a new right for impacted community members to enforce the law in state court the same way that they were previously able to do in federal court under the Clean Water Act.
- Give Marylanders the same degree of access to state courts as they have in federal court.
- Repair the threat to Maryland’s critical water resources caused by the U.S. Supreme Court decision.

It’s important to note that the bill does not create a right of judicial review of final agency actions, and does not expand standing beyond that provided by federal courts, essentially restoring the enforcement of clean water laws to what existed before the Supreme Court's ruling.

I support this bill because it is critical for communities who live near wetlands and streams to be able to bring attention to violations that harm those waterways and to enforce the law. Our wetlands and streams filter out pollution, protect us from flooding and storm surges, and provide biodiverse habitats.

Thank you for your consideration, and I look to the committee to give SB653 a favorable report.

Sincerely,
Carole Trippe
Chestertown, MD

SB653_LWVMD_FAV.pdf

Uploaded by: Casey Hunter

Position: FAV



Testimony to the Senate Energy, Education, and the Environment Committee

SB 653 - Standing - Environmental and Natural Resources Protection Proceedings (Clean Water Justice Act of 2024)

POSITION: Support

By: Linda T. Kohn, President

Date: February 27, 2024

Since the emergence of the environment movement in the 1970's, the League of Women Voters has advocated for policies that protect our planet and promote public health. The League believes in protecting the Clean Water Act and safeguarding against water pollution.

The League of Women Voters of Maryland **supports SB 653**, which would give communities impacted by water pollution standing to bring suit in state court against illegal polluters. Water quality is essential for public health, and illegal polluters must be held accountable.

The U.S. Supreme Court recently stripped key waterways - mainly streams and wetlands - from protection under the federal Clean Water Act. While Maryland still protects such waterways under state law, citizens and communities do not have the right to enforce these laws by bringing suit against violators.

SB 653 would establish a crucial right for Marylanders to enforce the law against harmful, illegal polluters. Community groups are critical actors in protecting our waterways and holding polluters accountable. The Clean Water Justice Act would protect Maryland's waterways, and protect Maryland's communities. Communities being impacted by illegal water pollution must have a voice, and must have the ability to hold polluters accountable.

The League of Women Voters of Maryland **strongly urges a favorable report on SB 653.**

SB0653_Clean_Water_Justice_Act_MLC_FAV.pdf

Uploaded by: Cecilia Plante

Position: FAV



TESTIMONY FOR SB0653

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

Bill Sponsor: Senator Augustine

Committee: Education, Energy, and the Environment

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Cecilia Plante, co-chair

Position: FAVORABLE

I am submitting this testimony in favor of SB0653 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists and our Coalition supports well over 30,000 members.

The Clean Water Justice Act restores rights lost when the U.S. Supreme Court's reduced the scope of federal Clean Water Act (CWA) jurisdiction in *Sackett v EPA*. It will bring the full federal Clean Water Act's public enforcement capabilities to Maryland and will allow us to better protect our wetlands and streams.

The primary function of the bill is the creation of a cause of action allowing the public to sue in Maryland Court to stop illegal pollution or compel an agency to act on a nondiscretionary duty (similar to the "citizen suit" provision that exists under Federal law).

- The bill pairs the new cause of action with expanded standing to be consistent with federal constitutional standing.
- The bill includes the Natural Resources Article (Critical Areas and Forest Conservation Act), and 3 Titles of the Environment Article that pertain to water quality.

Whenever the Supreme Court seeks to reduce rights that Marylanders have, our members feel that it is incumbent upon the legislature to reinstate those rights. We support this bill and recommend a **FAVORABLE** report in committee.

SUPPORT SB0653.pdf

Uploaded by: Dona Sorce

Position: FAV



February 27, 2024

Dear Chair Senator Feldman, Vice Chair Senator Kagan, and Members of the Committee

Quaker Voice of Maryland is submitting this testimony in FAVOR of SBO653 – Clean Water Justice Act of 2024

We have identified this bill as one of our priorities for the 2024 general assembly because Quakers across Maryland have shared their concern about access to clean and safe water. One of the testimonies of Quakerism is stewardship of the natural environment and equity for all who rely on and enjoy natural resources. The Clean Water Justice Act of 2024 will authorize the State to enforce water quality protections as outlined in the federal Clean Water Act of 1972. Currently the State does not have the legal authority to do this.

Specifically, we believe this bill will:

- Provide members of impacted communities to enforce the law in state court upon discovery of violations.
- Allow impacted communities to work alongside the State to enforce clean water regulations.
- Authorize the imposition of penalties when violations are demonstrated and award relief for impacted communities.

We thank Senator Augustine for sponsoring this bill and encourage a FAVORABLE report for this essential legislation.

Sincerely,

Dona Sorce

Working Group Member, on behalf of Quaker Voice of Maryland

Personal email: dyesorce@gmail.com

Organization email: quakervoicecmd@gmail.com

CLA Favorable SB 653.pdf

Uploaded by: Evan Isaacson

Position: FAV



Support for Senate Bill 653

Dear Chairman Feldman and Members of the Committee:

The Chesapeake Legal Alliance strongly supports SB 653. The Maryland General Assembly has long established itself as a leader among states in creating protections for water quality that go beyond the federal minimum. *This leadership is needed now more than ever* as the U.S. Supreme Court has just struck a generational blow to the viability of the federal Clean Water Act, one of our bedrock environmental laws. States around the country are now scrambling to understand what to do next.

More than fifty years ago, the Congressional leaders that created the Clean Water Act knew that one of the critical ingredients necessary to establish an effective water quality law would be a new right for all Americans to enforce violations of the law. Thus, the public enforcement right written into the law became one of the quintessential features defining the Clean Water Act and distinguishing it from its ineffectual statutory predecessors. Generations of federal water pollution control laws had proven to be ineffective in restoring the deplorable condition of our nation's waters in large part because the enforcement features of those older statutes were weak. Congress knew that state and federal regulators would be the primary enforcers of the new law, but also knew that the public would, for the first time, need to be able to serve as a crucial backstop prodding the regulators along and using their enforcement right where regulators could not or would not act.

This Congressional intent has indeed borne fruit. Today, the vast majority of all enforcement actions are undertaken by state and federal agencies. Over the last 25 years, there has been an average of nearly 200 enforcement actions for violations of Maryland's water pollution and wetlands laws, though that number has plummeted in recent years, and has still not recovered. By comparison, the number of Clean Water Act enforcement actions proposed by the public, as reported to federal databases, averaged less than a handful per year in Maryland.

However, while the public enforcement right is used only rarely, it serves an outsized role in importance in the compliance process and the overall implementation of the Clean Water Act. For one thing, it should be noted that the Clean Water Act gives regulators, as the primary enforcement authority, the right to take over any proposed enforcement action from the public. So, just because few public enforcement actions make their way to federal court, the initiation of such actions via the mandatory notice letter still have the important effect of coaxing regulators to resolve the identified violations.

Secondly, the more engaged the public becomes in the enforcement process the more active regulatory agencies become; this participation is something Congress emphasized it wanted right in the very first section of the Clean Water Act. Finally, even though state and federal agencies were intended to be the primary enforcers, Congress knew that the public would be an essential backstop, stepping up to enforce the Act where regulatory agencies could not act. This is why some of the highest profile actions come from the public; indeed the current Bay restoration effort itself was the result of public enforcement

action authorized under the Act.

Unfortunately, this crucial public right to act as “private attorneys general” is in peril today. To be clear, the Supreme Court in the case of *Sackett v. EPA* did not directly affect the provision of the Clean Water Act that conferred public enforcement rights. Instead, what the Supreme Court did was substantially shrink the scope of federal jurisdiction, leaving by most estimates a majority of our nation’s streams and wetlands unprotected by the Clean Water Act and its public right to enforce violations.

In essence, the Court handed to Maryland and our sister states the job of protecting these waterways with whatever state laws are on the books. Thus, as we speak, state legislatures across the country are taking a fresh look at their water pollution and wetland laws. Here in Maryland, we are blessed with a long history of legislative acts to protect our own waters. Compared with some states, Maryland protects many more types of waterways from many more sources of pollution. But where Maryland law lags far behind federal law is in the ability of the public to participate in the implementation and enforcement of our water pollution control and wetlands laws. All that this bill would do is put Maryland’s public enforcement rights on par with the analogous federal provisions and create the same rights that Pennsylvanians have.

The effect of this change will be twofold. First, a portion of the handful or so of public enforcement actions that previously were brought in federal court would instead be brought in state court; not a net increase, but merely a change in venue. This restorative aspect of the bill would ensure that our state courts are a backstop where federal public rights no longer exist. Second, for a fraction of permitted facilities that are governed under state water pollution control laws only, and not subject to the federal Clean Water Act, there would be a new right to enforce violations that did not previously exist. This would close a loophole that has long existed, albeit for only a fraction of permitted facilities.

Finally, it is important to point out what this bill does *not* do. The bill does not change any environmental standards, establish any new requirements, or tilt the playfield in either direction. The bill also does not alter the legal doctrine of standing in any way outside of the narrow scope of these public enforcement rights included in the bill. And where standing is affected it merely adopts federal law and arguably, gives effect to a prior enactment from this body: Decades ago, the General Assembly declared that “the courts of the State of Maryland are an appropriate forum for seeking the protection of the environment and that *an unreasonably strict procedural definition of ‘standing to sue’ in environmental matters is not in the public interest.*”

Maryland Courts, like judicial systems throughout the United States, are acutely aware of the Access to Justice issues plaguing Americans. This bill would help to ensure that environmental injustices are not exacerbated by needless obstacles standing in the way of communities seeking to vindicate their rights to a healthy environment. As Chief Justice John Marshall wrote in one of the most famous cases in American history “it is a settled and invariable principle, that every right, when withheld, must have a remedy, and every injury, its proper redress.” As Americans lost a critical environmental right last year, we must act now to ensure that this right is restored for all Marylanders and that no one is left with a right without recourse.

For these and many other reasons we support Senate Bill 653. For more information, you may reach Evan Isaacson at evan@chesapeakelegal.org.

Testimony in Support of SB0653.pdf

Uploaded by: Ginger Cushing

Position: FAV

Testimony in Support of SB0653
Standing - Environmental and Natural Resources Protection Proceedings
(Clean Water Justice Act of 2024)
Senate Energy, Education, and Environment Committee 2/27/2024

To Chair Feldman and Committee Members,

My name is Virginia (“Ginger”) Cushing Valliant. I live in Centreville, MD, near the Corsica River, and I urge a favorable report on SB653. The Clean Water Justice Act allows communities harmed by illegal water pollution to enforce state law. Access to the courts to enforce laws that protect communities from pollution was at the heart of the federal Clean Water Act (CWA). Unfortunately, the U.S. Supreme Court recently removed most streams and wetlands from Clean Water Act protection. Fortunately, Maryland still protects these waterways, but it has no right for communities to enforce the law like under the CWA.

Wetlands and streams are the lungs and kidneys of our landscape – filtering out pollution, keeping drinking water clean, protecting us from flooding and storm surges, and providing billions of dollars in benefits. These aquatic ecosystems are also among the very most valuable biodiverse habitats. Now, the majority of these waterways are only protected by Maryland law. Given our urgent climate and biodiversity crises, we should be doing everything we can to protect these waterways.

The Clean Water Justice Act will:

- Provide a new right for impacted community members to enforce the law in state court the same way that they were previously able to do in federal court under the Clean Water Act.
- Give Marylanders the same degree of access to state courts as they have in federal court.
- Repair the threat to Maryland’s critical water resources caused by the U.S. Supreme Court decision.

It’s important to note that the bill does not create a right of judicial review of final agency actions, and does not expand standing beyond that provided by federal courts, essentially restoring the enforcement of clean water laws to what existed before the Supreme Court's ruling.

Our family has lived within the Corsica River Watershed for four generations. We have witnessed the decline of its health firsthand. We are committed to restoration and applaud your efforts to help us by passing this critical legislation.

Thank you for your consideration, and I look to the committee to give SB653 a favorable report.

Sincerely,

Ginger Cushing Valliant
220 Thomas Rd.
Centreville, MD 21617

SB 653 Clean Water Justice Act (Favorable - The Na

Uploaded by: Humna Sharif

Position: FAV

Tuesday, February 27, 2024

TO: Brian Feldman, Chair, Education, Energy, and the Environment Committee, and Committee Members

FROM: Humna Sharif, The Nature Conservancy, Climate Adaptation Manager; Cait Kerr, The Nature Conservancy, State Policy Manager

POSITION: Support SB 653 Standing - Environmental and Natural Resources Protection Proceedings (Clean Water Justice Act of 2024)

The Nature Conservancy (TNC) supports SB 653 offered by Senator Augustine. TNC is a global conservation organization working to conserve the lands and waters on which all life depends. In Maryland, our work focuses on delivering science-based, on-the-ground solutions that secure clean water and healthy living environments for our communities, reducing greenhouse gas emissions and increasing resilience in the face of a changing climate. We are dedicated to a future where people and nature thrive together.

If water is the lifeblood of the planet, rivers, lakes and wetlands are the hard-working systems that keep it pumping. These systems—which also include springs, deltas and intricate underground networks—feed communities, shape cultures and sustain the diversity of life on Earth. Freshwater ecosystems provide value for protecting animal and plant species and their health is inextricably tied to the health of adjacent communities who rely on them for drinking water, and recreational and aesthetic value.

In Maryland, we have an opportunity to create strong and sustained protections for these freshwater systems through passing SB 653. This legislation is urgently needed in our state to protect vulnerable communities from water pollution impacts and to enforce the Clean Water Act's core tenets. The federal Clean Water Act is among the strongest pieces of legislation in the country. Since its passage more than 40 years ago, water health in many impaired freshwater rivers, streams, and wetlands has been restored, making them drinkable and swimmable again. This incredible legacy of environmental protection is now under threat. The recent Supreme Court decision in the Sackett v. EPA case removed more than half of streams and wetlands in the country from federal Clean Water Act protections. While these systems are still protected under Maryland law, current enforcement mechanisms are insufficient to maintain their long-term health.

The Clean Water Justice Act will provide a new right for impacted community members to enforce water protection laws in state court the same way that they were previously able to do in federal court under the Clean Water Act. This legislation gives Marylanders the same degree of access to state courts as they have in federal courts, and it repairs the threat to Maryland's critical water resources.

Our state is facing three intertwined crises of biodiversity loss, climate change, and disproportionate environmental pollution burdens being borne by underserved and over-burdened communities. In the wake of Sackett, Maryland must continue to build on our state's strong record of environmental and climate protections for its residents and prevent illegal pollution from entering our waterways. To truly succeed in protecting and restoring the natural resources of the state's natural resources, creating and sustaining vibrant communities, and delivering equitable and just outcomes for communities, we need to equip Maryland's residents with the ability to hold polluters accountable.

We commend Senator Augustine for introducing this legislation. SB 653 is a step in the right direction and continues to build upon Maryland's legacy of taking bold and proactive action for creating equitable climate solutions for its residents and natural resources.

For these reasons, we urge a favorable report on SB 653.

Blue Water testimony 2.26.2024.pdf

Uploaded by: Irene Struever

Position: FAV

Testimony in Support of SB0653
Standing - Environmental and Natural Resources Protection Proceedings
(Clean Water Justice Act of 2024)
Senate Energy, Education, and Environment Committee 2/27/2024
Submitted on 2/26 by 6pm

To Chair Feldman and Committee Members,

My name is Irene Struever. I live in Nottingham, MD, near Loch Raver Reservoir and Bird river/stream or within the Baltimore watershed, and I urge a favorable report on SB653. The Clean Water Justice Act allows communities harmed by illegal water pollution to enforce state law. Access to the courts to enforce laws that protect communities from pollution was at the heart of the federal Clean Water Act (CWA). Unfortunately, the U.S. Supreme Court recently removed a majority of streams and wetlands from Clean Water Act protection. Fortunately, Maryland still protects these waterways, but it has no right for communities to enforce the law like under the CWA.

Wetlands and streams are the lungs and kidneys of our landscape – filtering out pollution, keeping drinking water clean, protecting us from flooding and storm surges, and providing billions of dollars in benefits. These aquatic ecosystems are also among the very most valuable biodiverse habitats. Now, the majority of these waterways are only protected by Maryland law. Given our urgent climate and biodiversity crises, we should be doing everything we can to protect these waterways.

The Clean Water Justice Act will:

- Provide a new right for impacted community members to enforce the law in state court the same way that they were previously able to do in federal court under the Clean Water Act.
- Give Marylanders the same degree of access to state courts as they have in federal court.
- Repair the threat to Maryland’s critical water resources caused by the U.S. Supreme Court decision.

It’s important to note that the bill does not create a right of judicial review of final agency actions, and does not expand standing beyond that provided by federal courts, essentially restoring the enforcement of clean water laws to what existed before the Supreme Court's ruling.

I support this bill because... [insert why you support and/or your personal story]

Thank you for your consideration, and I look to the committee to give SB653 a favorable report.

Sincerely,
Irene Struever

Testimony in favor of SB653.pdf

Uploaded by: Jerry Kickenson

Position: FAV

Testimony in favor of SB653

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

To: Hon. Brian Feldman, Chair, Hon. Cheryl Kagan, Vice-chair and members of the Senate Education, Energy and the Environment Committee

From: Jerry Kickenson

Date: February 26, 2024

I am writing in **favor of Senate Bill 653**, Standing – Environmental and Natural Resources Protection Proceedings (Clean Water Justice Act of 2024).

The Clean Water Justice Act will allow communities harmed by illegal water pollution to enforce state law, the same way that they have been able to under the federal Clean Water Act (CWA).

Unfortunately, the U.S. Supreme Court removed countless streams and wetlands, including in Maryland, from CWA protection, thereby eliminating communities' right to enforce the CWA to protect these waterways. Maryland still protects these waterways, plus groundwater, but the state has no right for communities to enforce state law like under the CWA.

This bill provides a new right for impacted community members to enforce the law in state court the same way they were previously able to do in federal court. Many important water pollution enforcement actions have been brought by community groups. The State often gets involved only after community legal action. This partnership with the state has brought crucial capacity to the state to enforce the law and ensure safe water for all.

I respectfully urge you to reach a **favorable** report for SB653.

Respectfully yours,

Jerry Kickenson

1701 Ladd Street

Silver Spring, MD 20902

SB653 - CASA Written Testimony.pdf

Uploaded by: Jose Coronado Flores

Position: FAV



Testimony in SUPPORT of SB653

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

Senate - Education, Energy, and Environment

Jose Coronado-Flores , On Behalf of CASA

February 27th, 2024

Dear Honorable Chair Feldman and Members of the Committee,

CASA is pleased to offer **favorable testimony in support of SB653**, because it is important legislation that will address the regressive impact of the recent Sackett Vs. EPA ruling on a community's ability to combat illegal water pollution in local waterways.

In particular, CASA is invested in seeing this bill pass, because our members reside in communities where flooding and inadequate stormwater management put people at risk of dangerous exposure to toxins in the water during severe weather. We cannot risk unrecognized and unaddressed illegal pollution during this era of extreme and sudden flooding. For example, East Riverdale, MD is a community that is not only overburdened and underserved as defined by its EJ score but also is in the Anacostia River's floodplain. Making sure that community members can witness and bring polluters of their local waterways to justice by connecting with water protecting organizations to bring lawsuits is a critical preemptive solution to pollution in vulnerable waterways.

Lastly, our members live in areas that are seen as "paths of least resistance," meaning that polluters feel that they can pollute our waterways with no one to notice, care, or keep them in check. These same sentiments left the Anacostia River and its streams extremely polluted prior to the federal government's Clean Water Act, which acted as a direct vehicle to addressing egregious pollution in the river and working towards restoring its quality. As our membership transitions from being new Americans to generational Americans, they will feel greater connection with the land on which they reside. They will be the new generation of water keepers and protectors.

Wetlands and streams are the lungs and kidneys of our landscape – filtering out pollution, keeping drinking water clean, protecting us from flooding and storm surges, and providing billions of dollars in benefits. Given our urgent climate and biodiversity crises, we should be doing everything we can to protect these waterways. For these reasons, CASA urges a favorable report.

Jose Coronado-Flores

Research and Policy Analyst

jcoronado@wearecasa.org, 240-393-7840

In Favor SB653.pdf

Uploaded by: Karen Holcomb

Position: FAV

Testimony in Support of SB0653
Standing - Environmental and Natural Resources Protection Proceedings
(Clean Water Justice Act of 2024)
Senate Energy, Education, and Environment Committee 2/27/2024
Submitted on 2/26 by 6pm

To Chair Feldman and Committee Members,

My name is Karen Holcomb. My husband and I live at Fairlee Cove Drive, Chestertown, Maryland. **We have a waterfront parcel on Fairlee Creek that is in a designated critical area zone. The Chesapeake Bay with all its estuaries is a precious jewel that needs dedicated stewards to maintain and improve the health of our Bay today and for the generations to come.**

For all the reasons listed, I urge a favorable report on SB653. The Clean Water Justice Act allows communities harmed by illegal water pollution to enforce state law. Access to the courts to enforce laws that protect communities from pollution was at the heart of the federal Clean Water Act (CWA). Unfortunately, the U.S. Supreme Court recently removed a majority of streams and wetlands from Clean Water Act protection. Fortunately, Maryland still protects these waterways, but it has no right for communities to enforce the law like under the CWA.

Wetlands and streams are the lungs and kidneys of our landscape – filtering out pollution, keeping drinking water clean, protecting us from flooding and storm surges, and providing billions of dollars in benefits. These aquatic ecosystems are also among the very most valuable biodiverse habitats. Now, the majority of these waterways are only protected by Maryland law. Given our urgent climate and biodiversity crises, we should be doing everything we can to protect these waterways.

The Clean Water Justice Act will:

- Provide a new right for impacted community members to enforce the law in state court the same way that they were previously able to do in federal court under the Clean Water Act.
- Give Marylanders the same degree of access to state courts as they have in federal court.
- Repair the threat to Maryland's critical water resources caused by the U.S. Supreme Court decision.

It's important to note that the bill does not create a right of judicial review of final agency actions, and does not expand standing beyond that provided by federal courts, essentially restoring the enforcement of clean water laws to what existed before the Supreme Court's ruling.

We support this bill because we care about preserving the Bay for today and tomorrow. After 18 years, we continue to enjoy sailing on the Bay. As recent property owners in a critical area, we see ourselves as the current caretakers of our Fairlee Cove home, land and all the surrounding waters. We want to be responsible stewards in partnership with all involved in the Clean Water Justice Act.

Thank you for your consideration, and I look to the committee to give SB653 a favorable report.

Sincerely,

Karen Holcomb & Peter Brown

SB0653 Clean Water Justice Act_ Environ Transp_CJW

Uploaded by: Laurie McGilvray

Position: FAV



Committee: Education, Energy, and the Environment
Testimony on: SB-0653 - Standing - Environmental and Natural Resources Protection Proceedings (Clean Water Justice Act of 2024)
Organization: Maryland Legislative Coalition Climate Justice Wing
Submitting: Rhonda Kranz
Position: Favorable
Hearing Date: February 27, 2024

Dear Chair and Committee Members:

Thank you for accepting our written testimony in support of SB0653. The Maryland Legislative Coalition Climate Justice Wing is a statewide coalition of over 30 grassroots and environmental advocacy organizations focused on climate justice and we urge you to vote favorably on SB0653.

This bill will provide individuals and organizations standing in environmental and natural resources protection proceedings, including proceedings arising under laws relating to water quality and water resources protection; authorizing persons that meet standing requirements to bring civil actions under certain circumstances; authorizing a court to grant relief, award costs, and impose civil penalties in environmental and natural resources protection proceedings. The bill will allow citizens and communities harmed by illegal water pollution to have an essential role in enforcing state law.

Maryland citizens have the right to clean water and healthy communities. The federal Clean Water Act offered communities protection by securing access to the courts to enforce pollution laws. However, the recent U.S. Supreme Court decision, *Sackett vs. EPA*, removed most streams and wetlands from the Clean Water Act and left our communities with no legal rights to protect themselves. The Clean Water Justice Act will restore this essential right to Maryland citizens.

Although Maryland has laws and regulations that protect its waterways, communities have the eyes and ears to identify local water issues that are often missed by regulatory agencies. This had been proven by the work of Maryland's Water Pollution Watchdog program, which has been successful in identifying local pollution unnoticed by regulatory agencies. Regulators do not have the staff or ability to keep track of emerging signals of pollution such as color, odor, bubbles, muddiness, and floating materials.

These observations are reported to regulatory agencies and when action is taken, it shows how citizens and agencies can work together. When regulations have not been enforced, Maryland communities have used the citizen suit provision in the Clean Water Act and taken agencies to court. At this time, there is no recourse for citizens to enforce the state laws that protect their local waterways from as sewage, trash, industrial waste, toxic chemicals and other pollutants. The safety of our water has an impact on the health of our citizens and in their ability to enjoy the State's amazing natural resources. Marylanders deserve the right to play a role in enforcing laws that protect their waterways.

For the reasons given above, we urge a FAVORABLE vote for SB0653.

350MoCo
Adat Shalom Climate Action
Cedar Lane Unitarian Universalist Church Environmental Justice Ministry
Chesapeake Earth Holders
Chesapeake Physicians for Social Responsibility
Climate Parents of Prince George's
Climate Reality Project
ClimateXChange – Rebuild Maryland Coalition
Coming Clean Network, Union of Concerned Scientists
DoTheMostGood Montgomery County
Echotopia
Elders Climate Action
Fix Maryland Rail
Glen Echo Heights Mobilization
Greenbelt Climate Action Network
HoCoClimateAction
IndivisibleHoCoMD
Maryland Legislative Coalition
Mobilize Frederick
Montgomery County Faith Alliance for Climate Solutions
Montgomery Countryside Alliance
Mountain Maryland Movement
Nuclear Information & Resource Service
Progressive Maryland
Safe & Healthy Playing Fields
Takoma Park Mobilization Environment Committee
The Climate Mobilization MoCo Chapter
Unitarian Universalist Legislative Ministry of Maryland
WISE

sb653- standing for clean water- EEE 2-27-2024.pdf

Uploaded by: Lee Hudson

Position: FAV



Delaware-Maryland Synod
Evangelical Lutheran Church in America
God's work. Our hands.

Testimony prepared for the
Education, Energy, and the Environment Committee
on
Senate Bill 653
February 27, 2024
Position: **Favorable**

Mr. Chairman and members of the Committee, thank you for this opportunity to urge a policy that may support caring for natural goodness. I am Lee Hudson, assistant to the bishop for public policy in the Delaware-Maryland Synod, Evangelical Lutheran Church in America. We are a faith community with three judicatories in every State region.

Our community's environmental statement and positions ("Caring for Creation", ELCA 1993) was adopted when a principal public concern was corruption of natural commons from pollution and depletion. For example, *Decisions affecting an immediate locale often affect the entire planet*. Pollution of waters is cited. ("Caring for Creation", pg. 4)

Because the concern is human, from within a natural order that supports the life we share with "all things now living", justice, in solidarity with others and the goodness of creation itself, is a commitment for our advocacy and action. Here's what we said then: *It is in hope...that we hear the call to justice; it is in hope that we take action. When we act interdependently and in solidarity with creation, we do justice. We serve and keep the earth, trusting its bounty can be sufficient for all, and sustainable.* (pg. 6)

"The commons", a domain that the Anthropocene exploits and reconfigures, does not belong to human hegemony, no matter how insistently asserted and engineered. Our tradition shapes its public understanding of "commons" with the counsel of spiritual texts: *The earth is the Lord's, and all that is within it, the world, and all dwelling in it.* (Psalm 24:1-2)

Justice, we hold, requires sufficiency and sustainability. A principal concern for justice then, will be commitment to solidarity with "all things now living". A corruptor of the commons, as much as toxins and depletion, is privileged interest—typically diminished to formulae of commercial finance—hostile to sufficiency and sustainability.

The current state of policy affairs often excludes those forced against their own good and will, to assume costs, financial and physical, of others' interests. That policy—socialize risk, privatize benefit—adheres to no reasonable definition of justice.

Senate Bill 653 would grant standing for civil action and remedy to those affected by corruption of natural waters in the State; those living near, working on, dependent on them. It anchors that standing within Maryland's existing Environment and Natural Resources Articles. Overdue, we estimate, for the good, the betterment of all. We implore your favorable report.

Lee Hudson

Clean Water Justice Act Testimony.docx.pdf

Uploaded by: Malcolm Augustine

Position: FAV

MALCOLM AUGUSTINE
Legislative District 47
Prince George's County

PRESIDENT PRO TEMPORE

Executive Nominations Committee

Education, Energy and the
Environment Committee



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

James Senate Office Building
11 Bladen Street, Room 214
Annapolis, Maryland 21401
410-841-3745 · 301-858-3745
800-492-7122 Ext. 3745
Fax 410-841-3387 · 301-858-3387
Malcolm.Augustine@senate.state.md.us

February 27, 2024

Dear Colleagues,

I am pleased to **present Senate Bill 0653 - Standing – Environmental and Natural Resources Protection Proceedings (Clean Water Justice Act of 2024)**, which amends subtitle 9. of the Clean Water Justice act and asserts the right of Marylanders to defend our waterways against illegal pollution by codifying citizen suits into state law. This legislation is crucial following the United States Supreme Court decision in *Sackett*, as it seeks to ensure that citizens can fight against illegal pollution and help contribute to the protection of Maryland's prominent waterways and other natural resources for generations to come.

The Supreme Court decision in *Sackett v. EPA* had two notable consequences. First, it significantly narrowed the definition of waters of the United States, and second, it revoked the right of individual citizens to bring lawsuits against polluters with respect to certain wetlands not considered 'indistinguishable' to a navigable waterway. Under state law, Maryland maintains a broad definition of the waters of the state, so it is still illegal to pollute these waterways. However, unless the Clean Water Justice Act gets passed, Marylanders will no longer be able to defend our waterways in court.

Maryland possesses one of the largest water systems in the entire United States, with 2,699 square miles of water area, constituting approximately 21.8% of the state. This percentage of water to land is the fourth largest among all states. While our state has taken steps to define "waters of the state" for protection, Marylanders cannot currently exercise their rightful claim over these waters.

This bill is intended to ensure that Marylanders maintain the same rights to protect our waterways that we have held for over half a century under the 1972 Federal Clean Water Justice Act. By granting ordinary citizens the ability to combat bad actors who seek to profit from pollution, the bill aims to foster both an active and capable citizenry and a sustainable future.

Although the government is well-positioned to protect much of our water resources, there are inevitable gaps in its ability to effectively maneuver and utilize resources to protect the vast swathes of water in the state. This bill addresses this inevitability by providing citizens with the right to protect the waterways they collectively own.

The *Sackett* decision has narrowed citizens' right to defend our property and our state from

ill-intended actors looking to profit from pollution at the expense of Marylanders. This bill codifies our citizens' right to defend themselves and our state from these encroachments without relying solely on the government to intervene.

During our collaborative efforts with MDE and DNR, we've developed sponsor amendments aimed at refining the bill's focus exclusively to water pollution permitting programs and wetlands programs, specifically those highlighted in the Sackett case. These amendments meticulously narrow the scope to incorporate only a handful of subtitles addressing water pollution and wetlands overseen by MDE. Furthermore, we've ensured clarity in MDE's role by explicitly outlining its responsibilities in reviewing and approving settlements reached between the public and the violator. To enhance the precision of the original bill, we've incorporated clarifying and corrective amendments, reinforcing our commitment to addressing the pertinent issues at hand.

The constitution of Maryland established that all government rights originate from the people. Therefore, it only makes sense that the people have the right to protect our waterways alongside the government.

Thank you for your attention to this critical matter. I urge the committee to give a favorable report for **Senate Bill 0653 Standing – Environmental and Natural Resources Protection Proceedings (Clean Water Justice Act of 2024)**.

Sincerely,

A handwritten signature in cursive script that reads "Malcolm Augustine". The signature is written in black ink and is positioned below the word "Sincerely,".

Senator Malcolm Augustine

ShoreRivers Testimony_SB653_Favorable.pdf

Uploaded by: Matt Pluta

Position: FAV



Testimony in SUPPORT of SB653

February 26, 2024

Dear Chairman Feldman and Members of the Committee,

Thank you for this opportunity to submit testimony in **SUPPORT** of **SB653** on behalf of ShoreRivers. ShoreRivers is a river protection group on Maryland's Eastern Shore with more than 2,500 members. Our mission is to protect and restore our Eastern Shore waterways through science-based advocacy, restoration, and education.

Maryland currently lacks a mechanism that allows community members impacted by water pollution to hold polluters accountable in state court for their actions. This is important, as citizen suit provisions can assist regulatory agencies in addressing pollution and, when an administration fails to act, it gives communities assurance that they have the means to protect themselves from water pollution.

At the federal level, a citizen suit provision is a foundational component of the Clean Water Act that affords communities the opportunity to defend their right to swimmable, fishable, and drinkable waters. This provision has proven to be effective. Over a 10-year period, Waterkeeper groups representing communities impacted by water pollution have brought nearly 25% of Clean Water Act lawsuits in the nation.

We support **SB653** because on the Eastern Shore we are seeing the use of state regulated permits increase. Of particular concern are state groundwater discharge permits, which authorize the disposal of wastewater to groundwater. Groundwater discharge permits include, among other things, spreading wastewater on farm fields using spray irrigation systems as a means of disposing of, and beneficially reusing, nutrients in that wastewater. These are state permits and not federal permits because the state assumes that all of the nutrients applied to a farm field in this manner are taken up by plants, and zero pollution enters groundwater or surface waters.

We believe this is a false understanding of the impact of these facilities, which is evidenced through state inspection records. There are roughly 235 groundwater discharge permits in the state—more than a third of those are on the Eastern Shore. **Between 2018 and 2022, the state conducted more than 330 inspections of groundwater discharge permits, and over two thirds of those inspections resulted in the need for “additional investigation” or “corrective actions,” or showed results of “noncompliance,” or “unknown.”** When facilities violate their permit, the chance of pollution impacting local waterways and groundwater increases, which can have a negative effect on people drinking water and downstream recreational waterways.

SB653 is fair across all communities, and provides anyone in Maryland a right to protect themselves against water pollution. The Clean Water Justice Act does not target one industry over another, and it does not place an additional strain of resources on any entity. Specifically, this does not target or disproportionately impact farmers or poultry growers on the Eastern Shore. Poultry growers are already covered under a federal permit for the operation of their poultry houses

ShoreRivers

Isabel Hardesty, Executive Director
Annie Richards, Chester Riverkeeper | Matt Pluta, Choptank Riverkeeper
Ben Ford, Miles Wye Riverkeeper | Zack Kelleher, Sassafras Riverkeeper

Giving community members the appropriate tools to defend their local waterways is an important part of making sure that Marylanders can maintain healthy and vibrant natural resources that provide benefits beyond just the physical use of a waterway. We ask the Committee to please vote favorably and give Marylanders the right to stop pollution if ever they need to.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Pluta". The signature is fluid and cursive, with the first name "Matt" being more prominent than the last name "Pluta".

Matt Pluta
Choptank Riverkeeper
ShoreRivers



SB 653 - CBF - FAV.pdf

Uploaded by: Matt Stegman

Position: FAV



CHESAPEAKE BAY FOUNDATION

Environmental Protection and Restoration
Environmental Education

Senate Bill 653

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

Date: February 27, 2024	Position: Favorable
To: Senate Education, Energy and the Environment Committee	From: Matt Stegman MD Staff Attorney

Chesapeake Bay Foundation (CBF) **SUPPORTS** SB 653, the Clean Water Justice Act of 2024. The bill ensures that communities throughout Maryland have access to state courts to demand enforcement of laws that protect our waterways from pollution. Communities previously enjoyed access to federal courts to pursue enforcement actions under the Clean Water Act (CWA). However, the United States Supreme Court's decision earlier this year in *Sackett v. Environmental Protection Agency*¹ casts into serious doubt whether many ephemeral streams and wetlands previously covered by the CWA are still protected. Fortunately, Maryland already has existing laws that protect these waterways, however a provision for regular citizens to enforce those laws akin to what was provided by the CWA does not exist in current state law.

As important as it is to not what SB 653 will do to protect communities impacted by pollution, it is also important to note what the bill will not do. SB 653 does not create a right of judicial review of final agency actions, and it does not expand standing beyond that provided by federal courts, essentially restoring the enforcement of clean water laws to what existed before the *Sackett* ruling.

The Chesapeake Bay Foundation is no stranger to using the courts to enforce clean water protections. CBF's Litigation Department defends the laws and regulations that protect our waterways and serves as a watchdog to hold governments and polluters accountable to their clean water commitments through carefully chosen legal action. With a record of precedent-setting cases, we work to bring about lasting change within our legal system that ensures the equitable and long-term health of the Bay, its rivers and streams, and its communities.

One example of what this looks like in practice is a recent case where CBF, along with partner organizations ShoreRivers and Dorchester Citizens for Planned Growth (DCPG), brought suit to demand that the Maryland Department of the Environment (MDE) enforce the terms of a wastewater discharge permit for an animal rendering facility in Linkwood, MD. The facility's more than 40 violations over the previous decade had resulted in excess amounts of nitrogen, phosphorus, fecal coliform bacteria, and ammonia entering the Transquaking River and the Chesapeake Bay. Environmental organizations for years had been urging MDE to

¹ 598 U.S. ____ (2023).

Maryland Office • Philip Merrill Environmental Center • 6 Herndon Avenue • Annapolis • Maryland • 21403

enforce permit limits at the facility, which has been operating with a wastewater discharge permit that expired in 2006.

Formal lawsuits were filed by MDE, CBF, DCPG, and ShoreRivers in February of 2022 after drone footage and other photos captured by ShoreRivers in late 2021 documented sludge flows and inadequately treated wastewater entering a stream leading to the Transquaking River. The new evidence led MDE to briefly shut the plant down in late 2021. The case was settled in September of 2022 when MDE filed a judicial Consent Decree signed by the department, the plant operator, CBF, DCPG, and ShoreRivers that requires Valley Proteins to upgrade equipment, pay significant fines, and investigate groundwater at the site.

CBF urges the Committee's FAVORABLE report on SB 653.

For more information, please contact Matt Stegman, Maryland Staff Attorney, at mstegman@cbf.org.

SB653 Testimony.2024.pdf

Uploaded by: Peter Jayne

Position: FAV

Testimony in Support of SB653
Standing - Environmental and Natural Resources Protection Proceedings
(Clean Water Justice Act of 2024)
Senate Energy, Education, and Environment Committee 2/27/2024
Submitted on 2/26/2024

To Chair Feldman and Committee Members,

My name is Pete Jayne. I live outside of Centreville and I urge a favorable report on SB653. The Clean Water Justice Act allows communities that are impacted by illegal water pollution to enforce state law. Access to the courts to enforce laws that protect communities from pollution was at the heart of the federal Clean Water Act (CWA). Unfortunately, the U.S. Supreme Court recently removed many of our streams and wetlands from CWA protection. Fortunately, Maryland law still protects these waterways, but it includes no right for communities to enforce the law like under the CWA.

Wetlands and streams are hugely important aspects of our landscape – they filter out contaminants, keep drinking water clean, protect us from flooding, and provide billions of dollars in benefits. These aquatic ecosystems are also important for maintaining our remarkable biodiversity. For example, here on the Eastern Shore, wetlands known as Delmarva Bays are essential to the existence of many species of plants and animals. This includes common species such as wood ducks but also many rare and endangered plants and animals. By definition, the water levels in Delmarva Bays are dictated by ground water and thus they are not connected to any stream or river. This feature means they are no longer included in the CWA and are now only protected by Maryland law. Given our urgent climate and biodiversity crises, we should be doing everything we can to protect these unique and important Maryland wetlands.

The Clean Water Justice Act will:

- Provide a new right for impacted community members to enforce the law in state court the same way that they were previously able to do in federal court under the Clean Water Act.
- Give Marylanders the same degree of access to state courts as they have in federal court.
- Repair the threat to Maryland’s critical water resources caused by the U.S. Supreme Court decision.

It’s important to note that the bill does not create a right of judicial review of final agency actions and does not expand standing beyond that provided by federal courts, essentially restoring the enforcement of clean water laws to what existed before the Supreme Court’s ruling.

I support this bill because the plant and animal diversity and abundance here on the Eastern Shore is important to me – it’s why I choose to live here. Wetlands are a key habitat component supporting this diversity and yet they have declined precipitously in our state. The provisions of SB653 will help communities such as mine nurture the remaining wetlands of our remarkable state.

Thank you for your consideration, and I look to the committee to give SB653 a favorable report.

Sincerely,
Peter S. Jayne
Centreville, Maryland

Testimony in support of SB0653.pdf

Uploaded by: Richard KAP Kaplowitz

Position: FAV

SB0653_RichardKaplowitz_FAV

2/27/2024

Richard Keith Kaplowitz
Frederick, MD 21703

TESTIMONY ON SB#/0653 – FAVORABLE

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

TO: Chair Feldman, Vice Chair Kagan, and members of the Education, Energy, and the Environment Committee

FROM: Richard Keith Kaplowitz

My name is Richard K. Kaplowitz. I am a resident of District 3. I am submitting this testimony in support of SB#0653, Standing - Environmental and Natural Resources Protection Proceedings (Clean Water Justice Act of 2024)

This bill anticipates a possible United States Supreme Court decision that would handicap the ability of persons and institutions to pursue lawsuits in protection of clean water protection and availability. It will establish standing for persons and associations to initiate civil actions to protect natural resources. It will bestow on the courts the power to grant certain relief, award costs, and impose civil penalties and civil actions to protect our waters. The availability of legal paths to remediate bad conduct can often serve as an inhibition to untoward conduct.

The United States Environmental Protection Agency addresses Source Water Protection with specific actions on *How Can You Protect Source Waters*.¹ This bill will add a legal framework facilitating any of the recommended steps backing them with concrete actions and steps individuals, associations and the courts can do to uphold environmental laws on water.

According to Earth.org “Water scarcity is a growing crisis affecting many parts of the world. According to the United Nations, over 40% of the global population currently experiences water shortages, and this figure is expected to grow in the coming years. To make matters worse, less than 3% of the world’s water supply is freshwater suitable and accessible for human use. Sustainable access to water will be one of the defining issues of our time and it is a problem we need to tackle now.”²

This bill agrees with organizations whose mission is environmental protection and sets paths to make that protection a reality.

I respectfully urge this committee to return a favorable report and pass SB0653.

¹ <https://www.epa.gov/sourcewaterprotection/how-can-you-help-protect-source-water>

² <https://earth.org/understanding-the-importance-of-water-conservation/>

SB 653_Maryland Catholics for Our Common Home_FAV.

Uploaded by: Robert Simon

Position: FAV



Maryland Catholics for Our Common Home

Responding to the cry of the Earth
and the cry of the poor.

Hearing before the Senate Education, Energy, and the Environment Committee
Maryland General Assembly
February 27, 2024

**Statement of Support (FAVORABLE)
of Maryland Catholics for Our Common Home on
SB 653, Clean Water Justice Act of 2024**

Maryland Catholics for Our Common Home (MCCH) is a lay-led organization of Catholics from parishes in the three Catholic dioceses in Maryland: the Archdiocese of Baltimore, the Archdiocese of Washington, and the Diocese of Wilmington. It engages in education about, and advocacy based upon, the teachings of the Catholic Church relating to care for creation and respect for all life. MCCH is a grassroots voice for the understanding of Catholic social teaching held by a wide array of Maryland Catholics—over 400 Maryland Catholics have already signed our statement of support for key environmental bills in this session of the General Assembly—but it should be distinguished as an organization from the Maryland Catholic Conference, which represents the public policy interests of the bishops who lead these three dioceses.

MCCH would like to express its strong support for passage of Senate Bill 653, the Clean Water Justice Act of 2024. As Catholics, we view care for God’s creation and care for vulnerable groups in society as an integral part of our faith, as taught by recent Popes, including the forceful statements of Pope Francis in his encyclical, *Laudato Si’: On Care for Our Common Home*¹ (2015), and in his more recent apostolic exhortation, *Laudate Deum*² (2023).

In *Laudato Si’*, Pope Francis devotes an entire section to “*The Issue of Water*” (*Laudato Si’*, Chapter 1, Section II, nos. 27-31). He speaks directly to the impact of “water poverty” relating to the availability of fresh drinking water (*Laudato Si’*, no. 28); the problem of water quality available to the poor in light of mining, farming, and industrial actions that are not adequately regulated or controlled (*Laudato Si’*, no. 29). Pope Francis also draws attention in *Laudato Si’* to the how the scarcity of water will lead to increases in the cost of food and products which depend on its use (*Laudato Si’*, no. 31)—all of which will disproportionately impact the poor and most vulnerable.

We believe the mentality behind the lawsuit (*Sackett v. EPA*) that gutted the Clean Water Act of its ability to regulate water (especially wetlands) represents a lack of concern—other than economic benefits to be obtained—for the common good and the demands of social justice. The current situation created by this lawsuit will likely lead to a greater loss of wetlands, a greater loss of animal habitats, along with more pollution which, again, is more likely to impact the poor and more vulnerable among us. This must be fixed.

Senate Bill 653, the Clean Water Justice Act of 2024, provides a new right for impacted community members—again, more likely the overburdened and underserved—to enforce the law in state court the same way that they were previously able to do in federal court. This will help maintain the common good based on fairness and morally and scientifically justified standards. The bill is also in keeping with Pope Francis’s admonition in *Laudato Si’* that the ecological crisis we face necessitates the need to assure “that each government carries out its proper and inalienable responsibility to preserve its country’s environment and natural resources...” (*Laudato Si’*, no. 38)

We believe that the Clean Water Justice Act of 2024 will move the State of Maryland forward in positive ways. From our Catholic faith perspective, this bill contributes to the restoration of our common home, promotes the common good, and helps meet the demands for social justice.

For all the above reasons we strongly urge your support of Senate Bill 653, the Clean Water Justice Act of 2024. Thank you for your consideration of our views and our respectful request for a **favorable** report on Senate Bill 653.

¹ The English text of the encyclical, to which the paragraph numbers in the parentheses, can be found at: https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html.

² The English text of the apostolic exhortation, to which the paragraph numbers in the parentheses refer, can be found at: https://www.vatican.va/content/francesco/en/apost_exhortations/documents/20231004-laudate-deum.html.

CleanWaterJusticeActSB0653-Bob Zillig Testimony.pdf

Uploaded by: Robert Zillig

Position: FAV

Testimony in Support of SB0653 – Clean Water Justice Act of 2024
Standing - Environmental and Natural Resources Protection Proceedings
Senate Energy, Education, and Environment Committee 2/27/2024

To Chair Feldman and Committee Members,

My name is Bob Zillig and I live in Queen Annes County in Grasonville, MD on the shores of the Chester River and I urge you to support SB0653.

I am concerned about the recent enforcement restrictions placed by the US Supreme Court on the federal Clean Water Act (CWA) and the impact it will have on our local community's ability to legally enforce water quality regulations within our State's legal system. The CWA's original regulatory scope was intentionally broad, applying to "waters of the United States". The new Supreme Court interpretation is much narrower, stating that CWA protected bodies of water must be connected at their surface to navigable waters. This strips CWA protections from many streams and wetlands, even though hydrologically they could be connected through subsurface flows. While Maryland state law still recognizes these hydrologic connections related to water pollution, it does not currently afford the public the right to bring a legal action for enforcement, ***which the CWA historically did***. Approving the proposed Clean Water Justice Act will address this gap.

I know from first-hand experience the importance of empowering local communities to have a voice in protecting water quality. I, and my Eastern shore neighbors, worked to identify the concerns within our community about a developer's proposed new commercial Marina operation and its associated river dredge which would negatively impacted our Chester River water quality. Fortunately, our communities concerns, along with the legal challenges we raised, were early and loud enough for State agencies to stop this project during the permitting process.

However, sometimes projects get approved and permitted before communities are aware or adequately organized to voice their water quality concerns. Having the rights that the MD Clean Water Justice Act provides, would insure our communities can, if necessary, raise legal challenges to enforce existing water quality regulations. There have been many recent examples where public legal challenges have been crucial to *enforcing existing water quality regulations*. Having public engagement to protect and enforce environmental water quality protections *is a good thing*. The public actions are not meant to be frivolous, as they are costly to pursue. Rather they serve as a measure of deterrence, encouraging a culture of compliance and engaging the public to assist State agencies in identifying and enforcing existing water quality regulations.

In conclusion, my concerns can be summed up by the old adage – "***Don't throw the baby out with the bathwater***". The right for communities to legally enforce existing water quality regulations ("the baby") needs to be protected and sustained in light of the recent more narrow interpretation of CWA. Passing the Clean Water Justice Act would insure this. Our state's ability to enforce pollution regulations related to hydrologically connected water systems (above and below ground) is strengthened and empowered by allowing communities to seek legal enforcement. Let's protect our Maryland tributaries and the Bay by continuing to empower communities to legally enforce water quality regulations, because you never know what somebody might be throwing out in their "bathwater".

Sincerely,

Bob Zillig

FAV_SB653 Clean Water Justice Act.pdf

Uploaded by: Robin Broder

Position: FAV



SB653 – Clean Water Justice Act

Hearing Date: February 27, 2024

Position: FAVORABLE

Dear Chair Feldman and the Members of the Education, Energy & Environment Committee:

Waterkeepers Chesapeake and the below signed organizations strongly urge a FAVORABLE report on SB653 – the Clean Water Justice Act. The Clean Water Justice Act allows communities harmed by illegal water pollution to enforce state law. Access to the courts to enforce laws that protect communities from pollution was at the heart of the federal Clean Water Act (CWA). Unfortunately, the U.S. Supreme Court recently removed more than half of streams and wetlands from federal Clean Water Act protection. Fortunately, Maryland still protects these waterways, but our law provides no right for communities to enforce the law like under the CWA.

Wetlands and streams are the lungs and kidneys of our landscape – filtering out pollution, keeping drinking water clean, protecting us from flooding and storm surges, and providing billions of dollars in benefits. These aquatic ecosystems are also among the very most valuable biodiverse habitats. Now, the majority of these waterways are only protected by Maryland law. Given our urgent climate and biodiversity crises, we should be doing everything we can to protect these waterways and restore what was lost after the Supreme Court decision. The Maryland General Assembly has long established itself as a leader among states in creating protections for water quality that go beyond the federal minimum. This leadership is needed now more than ever. The public enforcement right written into the Clean Water Act serves as a crucial backstop to regulators who do not act to enforce violations of water pollution laws. Even though state and federal agencies were intended to be the primary enforcers, Congress knew

that the public would be an essential backstop, stepping up to enforce the Act where regulatory agencies refused.

The Clean Water Justice Act does not change any environmental standards or add any new requirements. It simply provides a public right to enforce our water quality laws. It ensures that no Marylander is left without access to justice or the ability to protect their right to ensure their waters are made unsafe by illegal levels of pollution.

The Clean Water Justice Act will:

- Provide a new right for impacted community members to enforce the law in state court the same way that they were previously able to do in federal court under the Clean Water Act.
- Give Marylanders the same degree of access to state courts as they have in federal court.
- Repair the threat to Maryland's critical water resources caused by the U.S. Supreme Court decision.

It's important to note that the bill does not create a right of judicial review of final agency actions, and does not expand standing beyond that provided by federal courts, essentially restoring the enforcement of clean water laws to what existed before the Supreme Court's ruling.

Many noteworthy environmental enforcement actions in Maryland have been brought by community groups, with the state often then subsequently filing an enforcement action, allowing the community groups to work alongside the state to enforce the law and negotiate settlements. This partnership is something that has brought crucial capacity to the state to enforce the law and utilizes the community members as the eyes and ears on the water.

Thank you for your consideration, and we look to the committee to give SB653 a favorable report.

Contact: Robin Broder, Waterkeepers Chesapeake, robin@waterkeeperschesapeake.org

Organizations signed on:

Potomac Riverkeeper Network
Chesapeake Legal Alliance
ShoreRivers
Chester Riverkeeper
Choptank Riverkeeper
Miles-Wye Riverkeeper
Sassafras Riverkeeper
Arundel Rivers Federation
South, West & Rhode Riverkeeper
Chesapeake Bay Foundation
Clean Water Action
Maryland PIRG

Potomac Conservancy
Maryland League of Conservation Voters
Sierra Club Maryland Chapter
Blue Water Baltimore - Baltimore Harbor Waterkeeper
Assateague Coastal Trust - Assateague Coastkeeper
Anacostia Riverkeeper
Potomac Riverkeeper
Upper Potomac Riverkeeper
Patuxent Riverkeeper
Severn Riverkeeper Association
Gunpowder Riverkeeper
Lower Susquehanna Riverkeeper Association
Climate XChange
Interfaith Partners for the Chesapeake
Severn River Federation
Trash Free Maryland
League of Women Voters of Maryland
Maryland Conservation Council
Coalition to Prevent Stream Destruction
Cedar Lane Environmental Justice Ministry
IndivisibleHoCoMD Environmental Action Team
St. Mary's River Watershed Society
Maryland Legislative Coalition Climate Justice Wing
CASA
National Aquarium
Quaker Voices
Audubon Mid-Atlantic
Baltimore Jewish Council
Environment Maryland
Maryland Pesticide Education Network
Alice Ferguson Foundation
Beaverdam Creek Watershed Watch Group
Rock Creek Conservancy
Public Employees for Environmental Responsibility
Center for Progressive Reform
The 6th Branch
Nature Forward
Earth Force
Unitarian Universalist Legislative Ministry of Maryland
Maryland Catholics for Our Common Home
Center for Water Security and Cooperation
Vernal Pool Partners
Queen Anne's Conservation Association
The Nature Conservancy

SB0653_IndivisibleHoCo_FAV_Virginia Smith.pdf

Uploaded by: Virginia Smith

Position: FAV



SB653

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

Testimony before Senate Education, Energy, and the Environment Committee

Hearing February 27, 2024

Position: Favorable

Dear Chair Feldman and Vice-Chair Kagan, and members of the committee, my name is Virginia Smith, and I represent the 700+ members of Indivisible Howard County. Indivisible Howard County is an active member of the Maryland Legislative Coalition (with 30,000+ members). We are providing written testimony today **in support of SB653**, which would provide certain persons and associations standing in environmental and natural resources protection proceedings.

The federal Clean Water Act (CWA) allowed communities to sue when they are harmed by illegal water pollution. However, when the US Supreme Court released its decision in Sackett vs. EPA, it severely cut the number of streams and wetlands that would be protected under the CWA, which means that a citizen or community's ability to sue was also severely restricted. While Maryland still protects these waterways, a Maryland citizen or community cannot take action like they could under the CWA.

This is why SB653 is urgently needed. The Clean Water Justice Act of 2024 would provide a new right for impacted community members to enforce the law in state court, the same way they could previously in federal court.

Communities situated around these waters, can have negative health impacts if they are polluted, but this is just one reason why the need to be able to take action is needed on the State level. But on a greater scale, as we all know, the Chesapeake Bay is an important water system for Maryland and the United States, both economically and environmentally. But the bay itself is fed by many of the streams and wetlands that were stripped from Sackett vs. EPA. If these waterways are harmed, this inevitably leads to the Bay being harmed, which could lead to greater harm to larger populations. With the passage of the Clean Water Justice Act, communities will be able to take action before larger problems can develop within the Bay.

Thank you for your consideration of this important legislation.

We respectfully urge a favorable report.

Virginia Smith
Columbia, MD 21044

SB 653 MDE SWA.pdf

Uploaded by: Les Knapp

Position: FWA



The Maryland Department of the Environment
Secretary Serena McIlwain

Senate Bill 653

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

Position: Support with Amendments
Committee: Education, Energy, and the Environment
Date: February 27, 2024
From: Jeremy D. Baker

The Maryland Department of the Environment (MDE) **SUPPORTS SB 653 WITH AMENDMENTS**. The bill would enact several changes in State environmental law enforcement and the authority to intervene in State enforcement actions.

Bill Summary

As introduced, the bill goes far beyond restoring the parameters of citizen suits under the federal Clean Water Act (CWA) prior to the U.S. Supreme Court’s decision in *Sackett v. Env’t Prot. Agency*, 598 U.S. 651 (2023). MDE has been working with the sponsors and several non-governmental organizations that engage in environmental citizen suits to amend the bill, with the goal of restoring a pre-*Sackett* legal landscape in Maryland. The sponsors’ amendments accomplish that goal, and eliminate the provisions in the bill as drafted that raise issues related to sovereign immunity and lawsuits over past violations, among other concerns.

In *Sackett*, the Supreme Court held that wetlands and bodies of water that have no surface connection to navigable, CWA-protected bodies of water are not Waters of the United States (WOTUS) and thus do not qualify for CWA protections. The justices asserted that the CWA should not extend to “channels through which water flows intermittently or ephemerally, or channels that periodically provide drainage for rainfall.” Rather, it should only cover wetlands and waterways with a “continuous surface connection” to interstate bodies of water.

Position Rationale

As amended, the bill would expand the standing of all persons and organizations to enforce, or intervene in any State action to enforce, Title 5, Subtitle 9 (nontidal wetlands), and Title 9, Subtitle 3 (water pollution control) of the Environment Article. With the amendments narrowing the bill to these areas of State law that *Sackett* placed outside of the scope of CWA protections, the bill confines its scope to restoring the CWA’s Citizen Plaintiff provisions in accordance with the pre-*Sackett* “significant nexus” test.

Contact: Les Knapp, Government Relations Director
Cell: 410-453-2611 (cell), Email: les.knapp@maryland.gov

MDE recognizes the important role that non-governmental organizations and interested citizens can play in enforcing laws and regulations related to addressing water pollution and providing clean water for Maryland residents, and believes that the bill as amended restores the correct balance that was lost in the *Sackett* decision.

Accordingly, MDE asks for a **FAVORABLE WITH AMENDMENTS** report for Senate Bill 653.

2024-02-27 SB 653 (SWA).pdf

Uploaded by: Tiffany Clark

Position: FWA

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February 27, 2024

TO: The Honorable Brian J. Feldman
Chair, Education, Energy, and Environment Committee

FROM: Tiffany Johnson Clark
Chief, Legislative Affairs, Office of the Attorney General

RE: Senate Bill 653 – Standing - Environmental and Natural Resources
Protection Proceedings (Clean Water Justice Act of 2024) – **Support with
amendments**

The Office of Attorney General respectfully urges this Committee to report favorably on Senate Bill 653 – Standing - Environmental and Natural Resources Protection Proceedings (Clean Water Justice Act of 2024) with amendments. As drafted, Senate Bill 653 (1) establishes standing for persons and associations in claims arising under specified environmental and natural resources laws and (2) authorizes a person that has standing pursuant to the bill to bring a civil action against any person or governmental entity that is alleged to have violated or to be in violation of any standard under specified environmental laws.

The federal Clean Water Act establishes the structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. Under the Clean Water Act, individuals can bring a lawsuit against anyone who is discharging pollutants into navigable waters under certain circumstances. Individuals also have the right to seek relief from polluters for damages caused by the pollution and to be fully compensated for any costs associated with cleaning up the pollutant. A recent U.S. Supreme Court case, *Sackett v. EPA*,

greatly cut back communities' access to courts by removing many streams and wetlands from Clean Water Act applicability. Senate Bill 653 would restore the ability of communities that are impacted by water pollution to enforce State law.

However, as drafted, Senate Bill 653 goes far beyond *Sackett* by amending numerous areas of State law that have nothing to do with water pollution or have no Clean Water Act analog and exceeds the CWA's provisions for citizen suits. While Senate Bill 653 is needed to protect impacted communities' rights to enforce laws in State court, Senate Bill 653 should be amended to (1) clarify its provisions and confine its scope to the Clean Water Act's citizen plaintiff provisions and to (2) clarify that Citizen plaintiffs cannot intervene in criminal actions.

For the foregoing reasons, the Office of the Attorney General urges a favorable with amendments report on Senate Bill 653.

cc: Education, Energy, and the Environment committee members

MML-SB 653 -OPP.pdf

Uploaded by: Angelica Bailey Thupari

Position: UNF



Maryland Municipal League
The Association of Maryland's Cities and Towns

TESTIMONY

February 27, 2024

Committee: Senate Education, Energy, and the Environment

Bill: SB 653 – Standing - Environmental and Natural Resources Protection Proceedings (Clean Water Justice Act of 2024)

Position: Oppose

Reason for Position:

The Maryland Municipal League respectfully opposes Senate Bill 653. This bill expands circumstances and parties who qualify for legal standing and would allow those persons to sue any person or governmental entity for alleged violations of a “standard” under the Environment or Natural Resources Articles.

While we appreciate the intent behind a statewide value of environmental protection, this expansion is an unnecessary overreach and could be expensive for local governments. Existing laws on the federal, state, and local levels already provide legal avenues for environmental protection. Under the Environmental Standing Act, the Attorney General, a local government, or any person may pursue legal action for mandamus or relief against the State or an agency for its failure to perform a duty decreed in statute or regulation. The Maryland Department of the Environment (MDE) is authorized to bring both criminal and civil suits for statutory and regulatory violations. Local governments are also authorized to bring civil suits for statutory and regulatory violations. Existing local, state, and federal statute law is more than adequate to address land use and environmental conflicts.

Furthermore, the League is concerned that the actions of municipal governing bodies, planning commissions, boards of zoning appeals, and historic district commissions will be more apt to be questioned in a judicial setting. This measure establishes a new cause of action, resulting in more individuals or entities seeking judicial review of land use and environmental actions of a legislative body and/or an increase in the length of time and resources needed to address individual cases. Local governments will undoubtedly be exposed to increased costly and time-consuming litigation.

For these reasons, the Maryland Municipal League opposes SB 653 and respectfully requests an unfavorable committee report.

FOR MORE INFORMATION CONTACT:

Theresa Kuhns	Chief Executive Officer
Angelica Bailey Thupari, Esq.	Director, Advocacy & Public Affairs
Bill Jorch	Director, Public Policy & Research
Justin Fiore	Deputy Director, Advocacy & Public Affairs

ACECMD - Testimony - SB653 - Standing - Environmen

Uploaded by: Chad Faison

Position: UNF



Hon. Brian J. Feldman, Chairman
Education, Energy, & the Environment
Committee
2 West Miller Senate Office Building
Annapolis, Maryland 21401

Hon. Cheryl C. Kagan, Vice Chair
Education, Energy, and the Environment
Committee
2 West Miller Senate Office Building
Annapolis, Maryland 21401

Organization: The American Council of Engineering Companies/MD (ACEC/MD)

Bill: SB653 - Standing - Environmental and Natural Resources Protection Proceedings (Clean Water Justice Act of 2024)

Position: Oppose

Chairperson Feldman and Vice-Chair Kagan,

The American Council of Engineering Companies/MD (ACEC/MD) is the representative organization for approximately 90 consulting engineering firms of various sizes across the state. These firms play a crucial role in serving both the public and private sectors by actively participating in the design and development of essential infrastructure such as public water and wastewater systems, bridges, highways, building structures, and environmental projects.

Our organization's member firms collectively employ approximately 7,000 individuals statewide, and approximately forty percent of ACEC/MD's membership is comprised of certified small, minority-owned, or women-owned businesses, reflecting our commitment to diversity and inclusion within the engineering industry. We respectfully **oppose** this bill.

We believe the proposed legislation may undermine the authority and decision-making processes of existing regulatory agencies responsible for overseeing environmental protection. Also, granting standing to a wide range of individuals and associations may open the door to frivolous lawsuits that could burden the legal system and divert resources away from addressing legitimate environmental concerns. It is essential to strike a balance between access to justice and preventing the misuse of legal mechanisms.

For any comments, inquiries, or further information, please do not hesitate to contact me at cfaison@acecmd.org.

Respectfully,

Chad Faison
Executive Director
ACEC/MD

SB0653-EEE_MACo_OPP.pdf

Uploaded by: Dominic Butchko

Position: UNF



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

Date: February 27, 2024

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.

SB 653 - Clean Water Justice Act - OPPOSE.pdf

Uploaded by: Grayson Middleton

Position: UNF



Educate. Advocate. Innovate.

Date: February 26, 2024
To: Members of the Senate Committee on Education, Energy, and the Environment
From: Grayson Middleton, Government Affairs Manager
Re: SB 653 – Clean Water Justice Act of 2024 – **OPPOSE**

Delmarva Chicken Association (DCA) the 1,600-member trade association representing the meat-chicken growers, processing companies, and allied business members on the Eastern Shore of Maryland, the Eastern Shore of Virginia, and Delaware opposes SB 653 and urges an unfavorable committee report.

SB 653 will expand legal standing for individuals seeking to sue companies, farmers, individuals, and state agencies for environmental harm or the threat of environmental harm.

At face value SB 653 seems like a good way to expand access to the courts for individuals seeking redress for environmental injuries. To be clear, farmers (who are often called the first environmentalists) want a clean environment as well. Farmers make their living and raise their families on the land and water, and so the health of the environment is perhaps even more in their interest than it is for the public. As an association, we always encourage full compliance with every applicable state and local regulation, as well as implementing additional good neighbor practices. We do not support or defend bad actors.

However, proponents of this legislation have indicated that they do not believe the current regulatory and legal framework is enough to protect the environment and Maryland citizens. This is categorically false.

Farmers are beholden to innumerable laws, regulations, and permits to operate their small business. This is especially true for chicken growers. To build a chicken farm, the farmer must first follow the local planning and zoning guidelines which have been established by the county through a very public comprehensive planning process.

The farmer will then be required to obtain a general discharge permit for concentrated animal feeding operations (CAFO). This permit and the Comprehensive Nutrient Management Plan that is required is written in a way that there is no discharge from a chicken farm. Not only has the general permit had a public comment period, but there is a public notice process that could allow for a public meeting for each individual grower that applies for the CAFO permit. These permits already take months to obtain. Usually those who participate in the public process provide very little substantive input to the permit that is being issued, but it does create undue stress for the farmer, a small business owner.

A grower who is building or “adding on” to the farm, must also obtain a sediment and stormwater permit – another process that allows for public comments. These permits are an additional measure to ensure that no nutrients leave the farm.



Educate. Advocate. Innovate.

Proponents have also argued that this legislation would only affect those who pollute and are out of compliance. This is not true.

The chicken community has already been threatened by a lawsuit in Maryland just 10 years ago with the Waterkeeper Alliance, Inc. vs. Alan Hudson, an initiative led by the Assateague Coastal Trust. This mistaken identity of a pile of litter resulted in three years of litigation, millions of dollars in legal fees and mental stress on a young farm family.

In 2019, a number of environmental groups, including Chesapeake Legal Alliance, Center for Progressive Reform, Environmental Action Center, Environmental Integrity Project and more received \$3.5 million over 42 months from the Town Creek Foundation for the purposes “to launch a 5-year legal enforcement campaign to hold government and industry accountable for compliance with the Clean Water Act and the Chesapeake Bay TMDL.”¹

If SB 653 were to pass, then the chicken community would anticipate even more frivolous lawsuits, perhaps even from those that have very little standing or physical connection to the area where the chicken farms are located. These lawsuits could jeopardize the livelihood of a grower and his/her family. Finally, there would likely be additional lawsuits directed toward state and counties that would slow down the process of a small farmer starting a business.

Even if a judge were to dismiss a frivolous case, the farmer would still be required to hire an attorney and pay exorbitant legal fees. Chicken farmers do not have foundations granting them funds specifically for litigation. Chicken farmers and the agriculture community rely on science-based, data driven laws and regulations to guide them.

For these reasons we urge an **unfavorable** vote on SB 653.

Should you have any additional questions, please feel free to contact me at middleton@dcachicken.com or 410-490-3329.

Sincerely,

Grayson Middleton

Government Affairs Manager

¹ <https://towncreekfdn.org/recent-grants/2019-grants/>

SB 653_MDCC_Clean Water Justice Act of 2024_UNFAV.

Uploaded by: Hannah Allen

Position: UNF



LEGISLATIVE POSITION:

Unfavorable

Senate Bill 653

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

Senate Education, Energy and the Environment Committee

Tuesday, February 27, 2024

Dear Chairman Feldman and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 6,800 members and federated partners working to develop and promote strong public policy that ensures sustained economic growth and prosperity for Maryland businesses, employees, and families.

SB 653 stands to dramatically expand legal standing for environmental and natural resources related suits, including a private right of action. This increase in legal standing with the inclusion of a large number of titles and permits could impact building operations, land use and development, manufacturing, product development, and more. SB 653 lacks any kind of standard upon which to measure, and without a standard to measure against, individuals are free to allege “a negative impact, or the *threat* of a negative impact to their health or to the use and enjoyment of a natural resource or environment” against almost anything. Further, Maryland’s environmental laws, like all state and federal environmental statutes and regulations, currently protect our State’s environment and natural resources.

Expanding the legal standing for environmental suits in Maryland will lead to increased litigation and costs for businesses. Additionally, this expansion in legal standing will deter investment and economic development in Maryland, as businesses will be hesitant to operate in an environment with heightened litigation risks. The private right of action further opens Maryland’s business, especially small businesses, to additional liability that would add yet another degree of uncertainty in already turbulent times.

Maryland businesses take seriously their role and impact in ensuring a sustainable future. Evident in the many greenhouse gas reduction and sustainability plans now common among private industry. However, SB 653 is not the correct avenue as it provides individuals with a right to bring suit for almost any reason they see fit, resulting in concern over frivolous lawsuits and unintended consequences for businesses and the economy. The liability concern is immense.

For these reasons, the Chamber respectfully requests an **unfavorable report** on **SB 653**.

MML-SB 685 - OPP.pdf

Uploaded by: Justin Fiore

Position: UNF



Maryland Municipal League
The Association of Maryland's Cities and Towns

TESTIMONY

February 27, 2024

Committee: Senate Education, Energy and the Environment

Bill: SB 685 – Program Open Space – Use of Property – Renewable Energy and Storage

Position: Unfavorable

Reason for Position:

The Maryland Municipal League opposes Senate Bill 685 as introduced, which would allow state and local Program Open Space land to be used for renewable energy projects.

The League is concerned that allowing local lands that have been acquired to preserve green spaces and parks or playgrounds to be used energy generation or storage is counter to the program's intent. Furthermore, with the PSC having full siting authority for 2mw projects and greater, there is a concern that this could be used to overrule local plans for specific parcels of land.

For these reasons the League respectfully requests that this committee provide Senate Bill 685 with an unfavorable report.

FOR MORE INFORMATION CONTACT:

Theresa Kuhns
Angelica Bailey Thupari, Esq.
Bill Jorch
Justin Fiore

Chief Executive Officer
Director, Advocacy & Public Affairs
Director, Public Policy & Research
Deputy Director, Advocacy & Public Affairs

24 MGPA_SB653_Environmental Standing.pdf

Uploaded by: Lindsay Thompson

Position: UNF



Maryland Grain Producers Association
118 Dundee Ave, Chester, MD 21619
Lindsay.mdag@gmail.com (p) 443-262-8491
www.marylandgrain.com

Date: February 27, 2024

Senate Bill 653 - Standing - Environmental and Natural Resources Protection Proceedings (Clean Water Justice Act of 2024)

Committee: Education, Energy and Environment

MGPA Position: OPPOSE

The Maryland Grain Producers Association (MGPA) serves as the voice of grain farmers growing corn, wheat, barley and sorghum across the state. MGPA opposes Senate Bill 653 which substantially increases standing in environmental citizen suit. MGPA is particularly concerned with the definition of injury to include “a negative impact, or the threat of a negative impact, to a person’s health or the use and enjoyment of a natural resource or environment, including a negative impact to aesthetic, recreational, conservational and economic interests that many be shared among community members.”

MGPA views this definition as overly broad and up for interpretation. This bill would allow suit based on the “threat of a negative impact” which is concerning as it could be used as a tactic to delay agricultural construction and/or practices. Additionally, there are many agricultural practices and structures that may be considered non-aesthetic or interpreted to threaten someone’s recreation enjoyment.

MGPA is concerned that this legislation would open farmers and agricultural landowners up to significant citizen suits that even if deemed frivolous; would take considerable time and financial resources which could impact the future of family farms.

2024-02-26 MAMSA Ltr on SB 653.pdf

Uploaded by: Lisa Ochsenhirt

Position: UNF



February 26, 2024

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

Re: OPPOSE--SB 653 (Standing-Environmental and Natural Resources Protection Proceedings (Clean Water Justice Act of 2024))

Dear Chairman Feldman:

On behalf of the Maryland Municipal Stormwater Association (MAMSA), I am writing to oppose SB 653, which would, among other things, create a new right for citizens to sue for alleged permit violations by municipally owned stormwater systems (also known as municipal separate storm sewer systems or “MS4s”).

MAMSA is an association of the State’s local governments and leading stormwater consultant firms who work for clean water and safe infrastructure based on sound science and good public policy. MAMSA members own and operate regulated MS4s. MAMSA members work hard every day to fully comply with discharge permits issued by the Maryland Department of the Environment (MDE).

MAMSA opposes any bill that puts local governments at greater risk for state lawsuits and their associated costs.

MAMSA opposes SB 653 for the following specific reasons:

- **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 State law that do not currently exist.*

- **Citizens 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, MAMSA still opposes this bill because citizens already have the right to sue discharge permittees under the Clean Water Act Citizen Suit provision.

MDE issues 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 citizen 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. Citizens 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 Gives Citizens More Rights than Under Federal Law** – As with the federal Citizen 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 Citizens 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 citizens 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 citizen could not make their voice heard if there is alleged permit noncompliance.

MAMSA urges the Committee to vote “NO” on SB 653. Please feel free to contact me with any questions at Lisa@AquaLaw.com or 804-716-9021.

Sincerely,



Lisa M. Ochsenhirt, MAMSA Deputy General Counsel

cc: Education, Energy, and the Environment Committee, SB 653 Sponsor

2024-02-26 MAMWA Ltr on SB 653.pdf

Uploaded by: Lisa Ochsenhirt

Position: UNF



Maryland Association of Municipal Wastewater Agencies, Inc.

Washington Suburban Sanitary Commission

14501 Sweitzer Lane, 7th Floor

Laurel, MD 20707

Tel: 301-206-7008

February 26, 2024

MEMBER AGENCIES

Allegany County
Anne Arundel County
City of Baltimore
Baltimore County
Town of Berlin
Cecil County
Charles County
City of Cumberland
D.C. Water
Frederick County
City of Hagerstown
Harford County
City of Havre de Grace
Howard County
Ocean City
Pocomoke City
Queen Anne's County
City of Salisbury
Somerset County Sanitary District
St. Mary's Metro. Comm.
Washington County
WSSC Water

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

Re: OPPOSE -- SB 653 (Standing-Environmental and Natural Resource Protection Proceedings)

Dear Chairman Feldman:

On behalf of the Maryland Association of Municipal Wastewater Agencies (MAMWA), I am writing to **oppose** SB 653, which would, among other things, create a new right for citizens to sue for alleged permit violations by publicly owned wastewater treatment plants (also known as publicly-owned treatment works, or "POTWs").

MAMWA is a statewide association of local governments and wastewater treatment agencies that serve approximately 95% of the State's sewer population. MAMWA members own and operate POTWs and work hard every day to fully comply with discharge permits issued by the Maryland Department of the Environment (MDE).

MAMWA **opposes** any bill that puts local governments at greater risk for state lawsuits and their associated costs.

MAMWA **opposes** SB 653 for the following specific reasons:

- **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 State law that do not currently exist.***

CONSULTANT MEMBERS

Black & Veatch
GHD Inc.
Greeley and Hansen Engineers
Hazen & Sawyer
HDR Engineering, Inc.
Jacobs
Ramboll Americas
Whitman, Requardt & Assoc.
Xylem, Inc.

GENERAL COUNSEL

AquaLaw PLC

- **Citizens 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 POTW permits) and Title 5, Subtitle 9 (Nontidal Wetlands) of the Environment Article, MAMWA still opposes this bill because citizens already have the right to sue under the Clean Water Act Citizen Suit provision.

MDE issues 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 citizen 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. Citizens 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 Gives Citizens More Rights than Under Federal Law** – As with the federal Citizen 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 Citizens 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 citizens 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 citizen could not make their voice heard if there is alleged permit noncompliance.

MAMWA urges the Committee to vote “NO” on SB 653. Please feel free to contact me with any questions at Lisa@AquaLaw.com or 804-716-9021.

Sincerely,



Lisa M. Ochsenhirt, MAMWA Deputy General Counsel

cc: Education, Energy, and the Environment Committee, SB 653 Sponsor

MBIA Letter of Opposition SB 653.pdf

Uploaded by: Lori Graf

Position: UNF

February 26, 2024

The Honorable Brian Feldman
Chairman, Senate Education, Energy, and the Environment Committee
2 West Miller Senate Office Building
Annapolis, Maryland 21401

RE: MBIA Letter of Opposition SB 653 Standing – Environmental and Natural Resources Protection Proceedings (Clean Water Justice Act of 2024)

Dear Chairman Feldman,

The Maryland Building Industry Association, representing 100,000 employees statewide, appreciates the opportunity to participate in the discussion surrounding **SB 653 Standing – Environmental and Natural Resources Protection Proceedings (Clean Water Justice Act of 2024)**. MBIA **opposes** the Act in its current version.

SB 653 introduces a new standing provision, granting individuals and associations the right to independently sue various entities based on perceived negative impacts to their interests. Prevailing plaintiffs may seek injunctive relief, civil penalties, and litigation costs. They can also intervene in environmental enforcement actions. MBIA is concerned that these provisions could disrupt routine government functions, as opponents could use the broad language of the bill to initiate litigation against legitimate activities under permits. The bill's definition of "Injury in Fact" allows for claims without demonstrating harm to the environment. Instead, they only must show past injury or fear of future injury to the plaintiffs' aesthetic, recreational, conservational, health or economic interests, undermining the balance of environmental appeals.

It is important to note the ever-changing landscape of wetlands laws, with the federal government frequently reversing standards. Additionally, water pollution encompasses sediment and stormwater runoff, leading to significant ambiguity regarding allowable runoff levels during storms. In fact, Maryland law doesn't mandate actual runoff occurrence. Instead, it is a violation if sediments end in a place where runoff is likely to be discharged. This change would allow opponents of development to cite potential aesthetic or recreational harm, potentially stalling projects in court as they pursue injunctions and attorney fees.

For these reasons, MBIA respectfully urges the Committee to give this measure **an unfavorable** report. Thank you for your consideration.

For more information about this position, please contact Lori Graf at 410-800-7327 or lgraf@marylandbuilders.org.

cc: Members of the Senate Education, Energy, and the Environment Committee

NFIB_SB653_unfav (2024).pdf

Uploaded by: Mike O'Halloran

Position: UNF



NFIB-Maryland – 60 West St., Suite 101 – Annapolis, MD 21401 – www.NFIB.com/Maryland

TO: Senate Education, Energy, and the Environment Committee

FROM: NFIB – Maryland

DATE: February 27, 2024

RE: **OPPOSE SENATE BILL 653** – Standing – Environmental and Natural Resources Protection Proceedings

Founded in 1943, NFIB is the voice of small business, advocating on behalf of America’s small and independent business owners, both in Washington, D.C., and in all 50 state capitals. With more than 250,000 members nationwide, and nearly 4,000 here in Maryland, we work to protect and promote the ability of our members to grow and operate their business.

On behalf of Maryland’s small businesses, NFIB-Maryland opposes Senate Bill 653 – legislation creating new liability concerns for small businesses under the threat of expanded legal actions.

NFIB is concerned by the potential for this bill to have unanticipated consequences for small businesses by creating duplicative liabilities that spring to life. SB653 states plainly a person or association may not bring an action under this legislation if “the Secretary has commenced and is diligently prosecuting a civil or criminal action.” This begs the question why then, is this bill necessary?

However, should a determination be made that an agency secretary is not “diligently prosecuting” a case then a small business could essentially be faced with defending itself on multiple fronts.

This bill makes substantial changes to the law without adequate opportunities to truly evaluate the impacts. For these reasons, **NFIB OPPOSES SB653** and requests an unfavorable committee report.

SB0653 - Standing - Environment and Natural Resou

Uploaded by: Tom Ballentine

Position: UNF



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
Manis – Manis, Canning Assoc.

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.

Opposition - SB653 Standing - Environmental and Na

Uploaded by: Tyler Hough

Position: UNF



Maryland Farm Bureau

3358 Davidsonville Road | Davidsonville, MD 21035
410-922-3426 | www.mdfarmbureau.com

February 26, 2024

To: Senate Education, Energy, and the Environment Committee

From: Maryland Farm Bureau, Inc.

RE: **Opposition of SB653 - Standing - Environmental and Natural Resources Protection Proceedings**

On behalf of the member families of the Maryland Farm Bureau, I submit unfavorable testimony on SB653 Standing - Environmental and Natural Resources Protection Proceedings. The bill makes changes to State law to provide standing and certain remedies, to person and associations, with respect to claims arising under specified laws under the Environment and Natural Resources Articles. This bill would make changes to the current law including, standing, authorization of civil action, authorized relief, civil penalties, cost of litigation, and the authorization to intervene. Also, the bill's provisions supersede any inconsistent provision of any State, county, or municipal law, ordinance, or regulation and any judicial interpretation to the extent of the inconsistency.

Maryland Farmers are truly the first environmentalists, and care deeply about not only soil health, but also water health and the health of the Chesapeake Bay. Maryland farmers are currently some of the most regulated in the country, and consistently work to make sure they are in compliance with the law. While the bill aims to enforce environmental standards, the broad language authorizing courts to impose conditions on defendants might lead to overly punitive measures. The option for courts to order supplemental environmental projects raises questions about transparency and accountability in the allocation of funds. The bill's provision to supersede inconsistent local laws might create conflicts and legal uncertainties. A more collaborative approach, considering local perspectives and regulations, could lead to more effective and well-rounded environmental protection.

MDFB Policy: We urge changes to "standing law" so that no farmer who is in compliance with applicable law could be sued by a third party.

Maryland Farm Bureau Respectfully Opposes SB653

A handwritten signature in black ink, appearing to read 'Tyler Hough', with a horizontal line above it.

Tyler Hough
Director of Government Relations

Please contact Tyler Hough, (443) 878-4045 with any questions

SB 653_realtors_unf.pdf

Uploaded by: William Castelli

Position: UNF



Senate Bill 653 – Standing – Environmental and Natural Resources Protection
Proceedings (Clean Water Justice Act of 2024)

Position: Unfavorable

The Maryland REALTORS® oppose SB 653 which expands legal standing under specific clean water laws. Many of these statutes affect residential construction such as sediment control, appropriation of water, wetlands and critical areas. Maryland faces a significant housing crisis that is measured not only in the 150,000 unit shortage but also in the average residential price assessment increase of 25.6% this past year.

Although Maryland standing rules are more limited than federal standing rules, Maryland standing rules are truer to the purpose of legal standing by granting standing to parties whose personal or property interest is directly impacted in a way different from the general public. Standing rules were created to ensure courts deal with particularized harms to individuals rather than more generalized harms to the public which is the realm of Legislatures.

As to the bill, the REALTORS® are concerned over the definition of an “injury of fact” which includes a negative impact to: aesthetic and recreational interests as well as a negative impact to a person’s use and enjoyment of a natural resource. Expanding standing based on aesthetic interests creates a very broad category of challenges that would be difficult for any agency or party to anticipate and provides a useful tool to kill projects through judicial delay. In the case of the critical areas law, any person within view of a home renovation would be able to contest the issuance of permits based on whether the person’s renovation was aesthetically pleasing.

When broadening standing rules are added to the already difficult process of obtaining permits for projects, the potential negative impacts to housing are concerning. Housing projects are always objected to even if the project conforms to local zoning and use restrictions. “Death by delay” is a real threat to many projects and increases the significant and growing costs of building and renovating housing.

For these reasons, the REALTORS® recommend an unfavorable report.

**For more information contact lisa.may@mdrealtor.org or
christa.mcgee@mdrealtor.org**

UPDATED_Position Statment_SB 0653 Standing Environ

Uploaded by: Jordan BaucumColbert

Position: INFO



POSITION STATEMENT

Informational

Bill: SB 0653 Standing - Environmental and Natural Resources Protection Proceedings (Clean Water Justice Act of 2024)

Position: Informational

Date: February 27, 2024

Contact: Debra Borden, General Counsel

Jordan Baucum Colbert, Government Affairs Liaison

Dear Chair Brian J. Feldman and Vice Chair Cheryl C. Kagan,

The Maryland-National Capital Park and Planning Commission (M-NCPPC or “the Commission”) has not voted to take a position on this bill. However, Commission staff has prepared an informational statement. The Commission respectfully requests that the Education, Energy and Environment committee consider this information and include it in the record.

What this Bill Does. As written the bill gives standing to any person or association who asserts an injury that "fall(s) within the zone of interests sought to be protected" by Title 5, Subtitle 16. Standing may include granting certain relief, awarding certain costs of litigation, and imposing certain civil penalties in certain civil actions under certain circumstances.

Background. Recently the Maryland Supreme Court essentially found that persons living near property subject to the Forest Conservation Act were intended beneficiaries of the Act's provisions meaning our approval of Tree Conservation Plans (in Prince George's County) or Forest Conservation Plans (in Montgomery County) may be covered by this Bill. The Commission is responsible for implementing at least one of the Titles identified in the Bill (Title 5, Subtitle 16 Forest Conservation Act). The "injury" that must be suffered by the plaintiff is incredibly easy to meet. They only need to show there was a mere "threat of a negative impact [not actual negative impact]" to their health, their use and enjoyment of the environment, even simply their aesthetic interests, etc. Furthermore, if that party substantially prevails, they get paid attorney's fees.

Potential Impact on the Commission. This bill has both a potential legal and financial impact on the Commission. The Commission is a multi-county agency and a political subdivision as per the law. The bill extends standing to any “Association” of two or more members, none of whom are required to reside or work near the project, not required to have participated in the case, and are not required to have any connection to the project or even be located in the State. The Commission could potentially experience a large increase in the number of appeals and litigation related to forest conservation and Chesapeake Bay Critical Area decisions such that we may require additional resources to defend these cases. The allowance of attorney's fees in this bill is equally concerning in that this is highly unusual for an appeal of an administrative action, and it may serve as an incentive for frivolous suits related to Forest Conservation plans. The bill also does not appear to require a final decision by the administrative agency and may even be interpreted to apply when an agency is making recommendations related to the listed statutory regimes.