House Bill 1101

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

MACo Position: **OPPOSE**

To: Education, Energy, and the Environment Committee

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From: Dominic J. Butchko

The Maryland Association of Counties (MACo) **OPPOSES** HB 1101. This bill would enshrine in state law a dramatic new right for residents to sue certain parties for certain water 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 HB 1101 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.

While the amended version of HB 1101 is somewhat narrower, counties share the same concerns of other stakeholders such as NAIOP, MBIA, MAMWA, & MAMSA. The bill creates a new independent cause of action allowing an individual or association that meets the federal definition of standing to sue the holder of non-tidal wetlands, ground water discharge or surface water discharge permit in state court.

Under current state law, individuals meeting federal standing requirements can seek judicial review of permits issued or renewed by the Maryland Department of the Environment (MDE), provided they participated in the public comment phase during permit evaluation. These appeals are heard on the administrative record, necessitating that challengers raise the issue in time for the agency and landowner to attempt to resolve the issue.

In contrast, the bill empowers the same entities to directly litigate against permit holders post-permit issuance, without necessitating prior participation in the permit process. Legal proceedings would be conducted *de novo*, permitting the introduction of new issues not raised during permit review. Notably, MDE's involvement in litigation against permit holders is not mandated, and the bill prohibits legal action or civil penalties against MDE, even if permit issuance is contested.

Furthermore, the bill permits individuals and associations to independently litigate against counties who may fill "intermittent" or "ephemeral" streams, which could be ditches or impressions with only occasional waterflow. This would effectively empower individuals, who may not even be local but claim to occasionally visit the area, to pursue legal action against counties.

Finally, the Federal Clean Water Act allows attorney's fees and the costs of expert witnesses to be awarded to "any prevailing or substantially prevailing party." This bill still allows only a "prevailing plaintiff or a substantially prevailing plaintiff" to be awarded attorney's fees and the costs of expert witnesses. This creates a monetary incentive for appellants to initiate or prolong court action. Counties forced to defend themselves and prevail have no rights under the bill to be awarded attorney's fees even if the court determines that the claim lacked any merit.

If enacted, HB 1101 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. For this reason, MACo urges the Committee to give HB 1101 an **UNFAVORABLE** report.