



February 28, 2024

The Honorable Marc Korman, Chair
House Environment and Transportation Committee
House Office Building, Room 251
6 Bladen St., Annapolis, MD 21401

Oppose: HB 1101 – Standing - Environment and Natural Resources Actions

Dear, Chair Korman 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 HB 1101.

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:

- The change to Waters of the U.S. did not change the definition of Waters of the State or diminish their level of protection.
- 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. Under NR 1-503 (attached) state or local officials can be sued to carry out their enforcement duties. HB 1101 would allow individuals who meet the federal standing requirements to independently initiate their own enforcement actions against permit holders.
- 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 HB 1101 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 to trigger judicial review and the plaintiffs do not have to prevail on all issues to be awarded court costs.

For these reasons NAIOP respectfully requests your unfavorable report on HB 1101

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tom Ballentine'.

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

cc: House Environment and Transportation Committee Members
Nick 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.

Article - Natural Resources

§1-503.

(a) The following persons have standing to bring and maintain an action provided for in this section in the courts of equity of this State:

(1) The State of Maryland, or any agency or officer of the State, acting through the Attorney General;

(2) Any political subdivision of the State of Maryland, or any agency or officer of it acting on its behalf; and

(3) Any other person, regardless of whether he possesses a special interest different from that possessed generally by the residents of Maryland, or whether substantial personal or property damage to him is threatened. However, an individual citizen either shall reside in the county or Baltimore City where the action is brought, or shall demonstrate that the alleged condition, activity, or failure complained of affects the environment where he resides.

(b) Any person given standing by subsection (a) of this section may bring and maintain an action for mandamus or equitable relief, including declaratory relief against any officer or agency of the State or political subdivision for failure on the part of the officer or agency of the State or political subdivision to perform a nondiscretionary ministerial duty imposed upon them under an environmental statute, ordinance, rule, regulation, or order, or for their failure to enforce an applicable environmental quality standard for the protection of the air, water, or other natural resources of the State, as expressed in a statute, ordinance, rule, regulation, or order of the State, or any political subdivision upon the request of the defendant, the court in its discretion may join as a party defendant any person against whom the plaintiff is requesting that governmental action be taken following notice to that person and if the court determines that the joinder would serve the interests of justice.