



January 23, 2025

Maryland House of Delegates, Economic Matters Committee
6 Bladen Street
230-231 Taylor Office Building
Annapolis, Maryland, 21401

IN RE: OPPOSITION to HB 128 “RENEW Act”

Dear Chairman Wilson, Vice Chairman Crosby, and Members of the Committee:

Thank you for this opportunity to provide comments related to the above-referenced legislation. The American Petroleum Institute (API)¹ **opposes HB 128**. While API appreciates the goal of funding environmental programs, this legislation is not the way to effectuate this objective. API believes it is bad public policy and may be unconstitutional. API is extremely concerned that the bill retroactively imposes costs and liability on prior activities that were legal, violates equal protection and due process rights by holding companies responsible for the actions of society at large, and is preempted by federal law. In fact, API and the U.S. Chamber of Commerce recently filed a complaint in federal court in Vermont challenging the legality of similar legislation passed in Vermont last year.² API strongly encourages Maryland lawmakers to exercise prudence and refrain from passing HB 128 during pending litigation on an issue rife with uncertainty and legal questions. In a time of budgetary challenges, API respectfully suggests that the state does not commit resources into a bill that is effectively already being litigated in another state.

Additionally, for the reasons articulated below, API respectfully requests that the bill be defeated.

Retroactive Law Making

Generally speaking, legislation should apply prospectively to ensure notice to the regulated community and protect due process rights and interests. The bill imposes strict liability on actions that occurred almost a quarter century ago. While retroactive *ex post facto* laws may be justifiable under certain circumstances, there is reason to believe that a court would view this legislation as unconstitutional given the potentially harsh and oppressive nature of the bill.³ Stated another way, there is a persuasive argument that the bill’s extreme retroactivity (reaching back to 1994) and yet to be determined amount of potential liability could make the law “harsh and oppressive” considering that the targeted companies’ actions were lawful during the relevant period and the emissions were actually produced by others farther down the supply chain.

Law May Be Contrary to Excessive Fines and Takings Clauses

The U.S. Constitution includes both an “Excessive Fines” Clause, which prohibits disproportionate fines like those proposed in the bill, and a “Takings” Clause, which prevents the government from forcing some people alone to bear

¹ The American Petroleum Institute represents all segments of America’s natural gas and oil industry, which supports more than 11 million U.S. jobs. Our nearly 600 members produce, process, and distribute the majority of the nation’s energy. API members participate in API Energy Excellence, through which they commit to a systematic approach to safeguard our employees, environment and the communities in which they operate. Formed in 1919 as a standards-setting organization, API has developed more than 700 standards to enhance operational and environmental safety, efficiency, and sustainability.

² A copy of this complaint is available upon request. Please email gaiamom@api.org.

³ *McKesson Corp. v. Div. of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 41 n.23 (1990) (internal quotation marks omitted); see, e.g., *E. Enters. v. Apfel*, 524 U.S. 498, 549-550 (Kennedy, J., concurring in the judgment) (opining that a law that “create[ed] liability for events which occurred 35 years ago” violated due process); *James Square Assocs. LP v. Mullen*, 21 N.Y.3d 233, 249 (N.Y. 2013) (holding that a tax law with a 16-month retroactivity period was unconstitutional because the sole state purpose offered—“raising money for the state budget”—was “insufficient to warrant [such] retroactivity”).



public burdens which, in all fairness and justice, should be borne by the public as a whole. The legislation at issue may effectively result in a taking, as it will impose a considerable financial burden for conduct that legally occurred decades earlier in a way that singles out the refining industry for others' use of fossil fuels. Singling out energy production for potentially exorbitant and disproportionate penalties while ignoring the economy-sustaining use of that energy is misguided.

Arbitrary Penalties and Estimated Fines Create Due Process and Fairness Issues

The bill incorrectly suggests that emissions by companies over an extended number of years can be determined with great accuracy. That is simply not true. At best the state can only estimate emissions; and these estimates are imprecise and not accurate enough to base a prorated share of what could be billions upon billions of dollars in penalties.

State Played a Role in Products Being Demanded and Delivered

It is patently unfair to retroactively punish companies with punitive fees for producing fuels that are legal and were used to heat and cool our homes and get us to work for the last thirty years. In many cases it is the federal, state and local governments that are demanding and purchasing these fuels. Ironically, the legislature is imposing a fee on the very goods the state has encouraged production and use of, as the state has approved the siting and operation of: 20 petroleum terminals;⁴ two liquefied natural gas facilities with a total storage capacity of more than 194 million gallons; 19 natural gas-, 15 oil- and 6 coal-fired power plants; over 16,000 miles of natural gas pipeline;⁵ over 1,800 retail gasoline stations;⁶ and state and local governments paving and repairing over 75,000 lane miles of public roads⁷ using tens of thousands of tons of asphalt made from processed crude oil.⁸ To put things into perspective, Marylanders consumed some 2.819 billion gallons of petroleum products, 6.3 trillion cubic feet of natural gas, and 288 million tons of coal over the years between 1994 and 2022.⁹

This Bill Runs Contrary to Prior Positions Taken By Other Legislatures

HB 128 contradicts and runs afoul to previous laws and policies supported by the General Assembly. Maryland's legislature is being asked to support the RENEW Act despite previously declaring by statute "that the production and development of oil and gas resources is important to the economic well-being of the State and the nation,"¹⁰ while requiring the state mitigate "the impact of any severe shortage of fuel resources, including middle distillate oil, motor gasoline, residual fuel oil, and propane gas, on various classes of consumers."¹¹ In fact, gas and oil production, storage, and delivery has been designated critical infrastructure.¹² Furthermore, Maryland's Energy Administration has found that "[a]n uninterrupted supply of these fuels is crucial to Maryland's economy and public safety."¹³

No Nexus Between Fine and Actual Responsibility

The bill imposes liability without regard to the extent of a particular business's actual responsibility. Given the potential magnitude of the fines at play, API believes that the state must offer more than an asserted causal connection between a company's greenhouse gas emissions and negative impacts or injuries to the environment or public health and

⁴ See www.energy.gov/sites/prod/files/2015/05/f22/MD-Energy%20Sector%20Risk%20Profile.pdf.

⁵ [Maryland Energy Sector Risk Profile.pdf](#)

⁶ *Maryland Liquid Fuels Plan* at 8.

⁷ See U.S. Department of Transportation Federal Highway Administration. Highway Statistic Series: State Statistical Abstracts 2022, [Workbook: State Statistical Abstracts](#); A lane mile is one lane of road for one mile. So a two-lane road has two lane miles per mile, and a four lane highway has four lane miles per mile. Using lane miles is a better way to measure the amount of pavement that is on a road, [08pcr.pdf \(ny.gov\)](#).

⁸ [What's in Your Asphalt? | FHWA \(dot.gov\)](#).

⁹ [U.S. Energy Information Administration - EIA - Independent Statistics and Analysis](#).

¹⁰ Md. Code Ann., Env't § 14-101 (West).

¹¹ Md. Code Ann., State Government § 9-2005 (West).

¹² Md. Code Ann., Pub. Util. § 1-101 (West) and <https://cdp.dhs.gov/shared/se/courses/default/AWR-358%20dL%20040921/groups/196.html>.

¹³ See *Maryland Liquid Fuels Plan*, Maryland Energy Administration, 21 (October 2022).



welfare. Liability should not attach simply because a company extracted or refined fossil fuels that were placed into commerce and used by a third party.

Improper Use of Strict Liability Standard

The goal of the bill is to effectively impose strict liability for purported present and future damages caused by alleged past emissions from extracted or refined fuels no matter where in the world those emissions were released, or who released them. It is patently unfair to charge a group of large companies that did not combust fossil fuels but simply extracted or refined them in order to meet the needs and demands of the people. Furthermore, the bill is arguably discriminatory because it singles out certain companies. With respect to impact attribution from source emissions, it seems obvious that those who drafted this legislation are aware of the difficulties of establishing a conclusive link between anthropogenic climate change and alleged injuries to Maryland. The legislation also neglects to even consider that companies responded with a supply of products to meet the demand for them in the marketplace. Through their use of the strict liability standard, proponents of this legislation concluded that only one segment of the economy should pay the state for excessive costs.

Disproportionate Penalties

The bill potentially places an unfair burden on domestic companies. The bill envisions the liability will be proportionately divided by so-called “responsible parties.” As written, “responsible party” excludes “any person that lacks sufficient connection with the state to satisfy the nexus requirement of the United States Constitution.” There will be situations where certain companies, including foreign companies, may suggest they have an insufficient connection with Maryland, which would mean that domestic companies may shoulder even greater financial responsibility.

Preemption

The payments required by the bill may be preempted by federal law. Greenhouse gas emissions are global in nature and subject to numerous federal statutory regimes, including the Clean Air Act. They are also a matter of federal and international law, not state law. The U.S. Court of Appeals for the Second Circuit recently noted this fact in *City of New York v. Chevron Corp.*,¹⁴ where the court rejected state-law nuisance claims based on global emissions because “a federal rule of decision is necessary to protect uniquely federal interests.” As this bill seeks compensation for alleged harms to the environment based on global emissions, it is preempted by federal law.

Conclusion

For all the reasons articulated above, API strongly opposes this legislation and respectfully recommends the bill be voted unfavorably out of committee. Thank you for your time, effort and consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael S. Giaimo', written in a cursive style.

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¹⁴ See 993 F.3d 81, 90 (2d Cir. 2021).