

**FINAL\_API\_md\_hb128\_jan2025 UNF.pdf**

Uploaded by: Bernie Marczyk

Position: UNF



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)<sup>1</sup> **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.<sup>2</sup> 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.<sup>3</sup> 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

---

<sup>1</sup> 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.

<sup>2</sup> A copy of this complaint is available upon request. Please email [giamom@api.org](mailto:giamom@api.org).

<sup>3</sup> *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;<sup>4</sup> 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;<sup>5</sup> over 1,800 retail gasoline stations;<sup>6</sup> and state and local governments paving and repairing over 75,000 lane miles of public roads<sup>7</sup> using tens of thousands of tons of asphalt made from processed crude oil.<sup>8</sup> 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.<sup>9</sup>

#### **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,"<sup>10</sup> 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."<sup>11</sup> In fact, gas and oil production, storage, and delivery has been designated critical infrastructure.<sup>12</sup> Furthermore, Maryland's Energy Administration has found that "[a]n uninterrupted supply of these fuels is crucial to Maryland's economy and public safety."<sup>13</sup>

#### **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

<sup>4</sup> See [www.energy.gov/sites/prod/files/2015/05/f22/MD-Energy%20Sector%20Risk%20Profile.pdf](http://www.energy.gov/sites/prod/files/2015/05/f22/MD-Energy%20Sector%20Risk%20Profile.pdf).

<sup>5</sup> [Maryland Energy Sector Risk Profile.pdf](#)

<sup>6</sup> *Maryland Liquid Fuels Plan* at 8.

<sup>7</sup> 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 \(ny.gov\)](#).

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

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

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

<sup>11</sup> Md. Code Ann., State Government § 9-2005 (West).

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

<sup>13</sup> 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.*,<sup>14</sup> 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.

Michael S. Giaimo  
Northeast Region Director  
Phone: 603.777.0467  
Email: [gaiamom@api.org](mailto:gaiamom@api.org).

---

<sup>14</sup> See 993 F.3d 81, 90 (2d Cir. 2021).

# **HB 128\_MDCC\_Responding to Emergency Needs From Ext**

Uploaded by: Hannah Allen

Position: UNF



**LEGISLATIVE POSITION:**

**Unfavorable**

**House Bill 128 - Responding to Emergency Needs From Extreme Weather (RENEW) Act of 2025**

**House Economic Matters Committee**

**Thursday, January 23, 2025**

Dear Chairman Wilson 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 7,000 members and federated partners working to develop and promote strong public policy that ensures sustained economic health and growth for Maryland businesses, employees, and families.

HB 128 establishes the Climate Change Adaptation and Mitigation Program (the Program) in the Department of the Environment, which would serve to secure payments from businesses that derive revenue from fossil fuels or petroleum products. The Program would be used to fund climate change mitigation infrastructure projects, address health impacts of climate change, and impose and collect cost recovery payments on responsible parties. The bill also outlines the total liability will be proportionately divided by “responsible parties.”

The Maryland Chamber has serious concerns over the strict liability, retroactive application, and constitutional issues outlined in this legislation, among many other factors. HB 128 retroactively imposes costs and liability to businesses engaged in the trade or business of extracting fossil fuel or refining crude oil beginning March 21, 1994, violating due process rights and equal protection under the U.S. Constitution. Courts may view the extreme retroactivity as “harsh and oppressive” given that the targeted companies’ actions were lawful. Reaching back over 28 years is extremely harsh and excessive, along with imposing liability on prior activities that were legal.

Additionally, businesses should not be held liable because fossil fuels they extracted or refined were placed into the marketplace and used by a third party. The Chamber urges the committee to consider removing the strict liability and apply this legislation only prospectively to ensure the affected business community has proper notice.

Moreover, the bill potentially violates the “Excessive Fines” Clause and the “Takings” Clause of the U.S. Constitution, which prohibit disproportionate financial burdens on individual entities for costs that should be shared by society as a whole. Signaling out energy producers for penalties while ignoring the economy-sustaining use of that energy is misguided.

Further, the Chamber is concerned that domestic companies will take on greater costs as companies not completely connected to the state, like foreign entities, may argue that they have insufficient connections to Maryland and do not satisfy the nexus requirement of the U.S. Constitution, as outlined in the legislation.

This legislation concludes that one segment of the economy should bear large and excessive costs. Singling out the refining industry, placing a sizeable financial burden on them, and even specific companies for other's use of fossil fuels is inappropriate and tremendously unfair. The bill also fails to recognize that many state and local governments encouraged and approved the production, delivery, and use of these fuels, making it inequitable to retroactively penalize producers for meeting societal needs.

Finally, the payments required by this bill may be preempted by federal law, as greenhouse gas emissions are subject to numerous federal statutory regimes, including the Clean Air Act. These emissions are global in nature, and attempting to regulate them at the state level raises significant federal preemption concerns.

The Maryland Chamber of Commerce urges the committee to not consider passing legislation that retroactively imposes costs and liability during a period when the target companies' actions were lawful. For these reasons, the Maryland Chamber of Commerce respectfully requests an **Unfavorable Report on HB 128.**



# **HB128 testimony.pdf**

Uploaded by: Kirk McCauley

Position: UNF





WMDA/CAR Service Station  
and Automotive Repair Association

Chair: C.T. Wilson, Vice Chair Brian Crosby, and Members of Economic Matters Committee

RE: HB128 - Responding to Emergency Needs to Extreme Weather

Position: oppose

My name is Kirk McCauley, my employer is WMDA/CAR, we represent service stations convenience stores and repair facilities across the state as a non- profit trade group.

HB128 has an estimate tag of \$9 billion from energy providers! WMDA represents retailers and HB128 will have no direct affect.

The other side of the story is every single penny you eventually receive after litigation will come down to retail level and passed on to consumers. Electric, natural gas, heating oil and motor fuel along with a million other products made from petroleum. A bill of this nature only adds to inflation and cost to live in Maryland.

Products in boarding states attract our customers now because of high taxes, this would enhance that attraction.

Please give HB 128 an unfavorable report

Any questions can be addressed to Kirk McCauley, 301-775-0221 or [kmccauley@wmda.net](mailto:kmccauley@wmda.net)

**HB128\_MAPDA\_unfav UPDATED (2025).pdf**

Uploaded by: Mike O'Halloran

Position: UNF



Mid-Atlantic Petroleum Distributors Association  
P.O. Box 711 ★ Annapolis, MD 21404  
410-693-2226 ★ www.mapda.com

TO: House Economic Matters and Environment & Transportation Committees

FROM: Mid-Atlantic Petroleum Distributors Association

DATE: January 23, 2025

RE: **HOUSE BILL 128** – Responding to Emergency Needs From Extreme Weather Act of 2025

On behalf of Maryland’s convenience store marketers and energy distributors, MAPDA urges the committee to issue an unfavorable report on HB128.

This legislation would establish a program through which certain fossil fuel companies would be fined for historical greenhouse gas (GHG) emissions.

Our members are concerned with the downstream effects of the bill. Specifically, the downstream costs incurred by distributors, retailers, and customers as a result of the fines – estimated at \$9 billion.

There are also serious legal questions surrounding the bill as evidenced in court proceedings in other states where similar legislation has been passed. The fiscal impact to the state must also be considered. As the fiscal and policy note to last year’s introduction (HB1438 of 2024) points out, “MDE general/special fund expenditures increase significantly (almost certainly by more than \$1.0 million annually) beginning in FY 2025.”

Thank you for your consideration. We urge the Economic Matters and Environment & Transportation Committees to issue an **UNFAVORABLE COMMITTEE REPORT on HB128.**

**Feeding and fueling the economy through gas, coffee, food, heating oil and propane.**

MAPDA is an association of convenience stores and energy distributors in Maryland, Delaware & the District of Columbia.

# **RENEW MCIES LOO.pdf**

Uploaded by: Sarah Peters

Position: UNF



**Bill:** SB 149 / HB 128- Responding to Emergency Needs From Extreme Weather (RENEW) Act of 2025

**Position:** OPPOSE

Dear Chair, Vice-Chair, and Members of the Committee:

The Maryland Coalition for Inclusive Energy Solutions (MCIES) a coalition of corporations, associations, and labor organizations advocating for the inclusivity of all energy types, including natural gas, renewable natural gas, hydrogen, propane, and nuclear power, write to express our opposition to Senate Bill 149 and House Bill 128.

Natural gas is critical for Marylanders who use it to heat their homes and cook their food. It is also essential to Maryland's manufacturing, biotechnology, education, and healthcare sectors. Imposing additional financial burdens on this sector may hinder economic growth and deter industries to the State.

Natural gas plays a vital role in ensuring the reliability and resilience of Maryland's energy grid, especially during extreme weather events. PJM, the organization responsible for managing the power grid in 13 states and Washington, D.C., cautions that electricity demand will outpace supply over the next decade<sup>1</sup>. Policy-driven shifts to electrification, the retirement of existing energy sources, and the slow pace of bringing renewable projects online underscore the need for a balanced approach to decarbonizing our energy systems.

Maryland's natural gas infrastructure is advancing low-carbon fuels like Renewable Natural Gas (RNG) and hydrogen into the state's energy portfolio. Advancements in the production and delivery of biogas have proven effective in reducing CO<sub>2</sub> and methane emissions from hard-to-decarbonize sectors. Electrification as a sole decarbonization strategy is unrealistic and ill-advised.

**In fact, the MD Commission on Climate Change recommended<sup>2</sup> that the Maryland General Assembly commission a study of the current and projected costs of anthropogenic climate change in Maryland. This should be done and analyzed before any legislation is passed.**

For these reasons, we respectfully request an unfavorable vote. Should you have any questions, please feel free to contact me at SPeters@hbstrategies.us.

Sincerely,  
Sarah Peters, Executive Director

---

<sup>1</sup> <https://insidelines.pjm.com/pjm-publishes-2024-long-term-load-forecast/>

<sup>2</sup>

[https://mde.maryland.gov/programs/air/ClimateChange/MCCC/Documents/MCCC%20Annual%20Report%202024/MCCC\\_Annual\\_Report\\_2024\\_508.pdf](https://mde.maryland.gov/programs/air/ClimateChange/MCCC/Documents/MCCC%20Annual%20Report%202024/MCCC_Annual_Report_2024_508.pdf)