



## House Bill 472

### *Constitutional Amendment – Environmental Rights*

MACo Position: **OPPOSE**

To: Environment and Transportation Committee

Date: February 20, 2019

From: Leslie Knapp, Jr.

The Maryland Association of Counties (MACo) **OPPOSES** HB 472. This bill creates a new and vaguely defined constitutional right and an expansive new class of litigants with broad standing rights to litigate or intervene.

### **Ill-Defined Constitutional Right**

HB 472 would amend the Maryland Constitution to create a new environmental right under the Declaration of Rights for any “person.”

“Person” is defined as any: (1) resident of the state; (2) corporation incorporated under the laws of the state; or (3) a partnership, organization, association, or legal entity doing business in the state. The right would provide for “clean air; pure water; a healthful environment; ecosystems that sustain the state’s natural resources; and the preservation of the natural, scenic, historic and aesthetic values of the environment.”

The state and local governments are trustees for the state’s resources and may not cause unreasonable diminution or degradation of the state’s natural resources by action or inaction or infringe on a person’s environmental rights.

This language is both vague and overbroad. It could be argued that many basic services provided by a local government could unreasonably degrade natural resources, including: transportation, water and sewer services, and planning and zoning. There are already adequate legal remedies available to address valid environmental concerns, without creating a new ill-defined, legally enforceable right. Enshrining such indeterminate entitlements into the state constitution invites myriad unintended consequences and unanticipated costs.

Longstanding and well-established environmental standards could be upended by an aberrant court decision, causing major policy changes and costs for local governments. County costs to provide critical services or defend against litigation could increase, potentially significantly.

## **Vastly Expanded Standing**

Furthermore, the bill would empower any person to enforce or intervene in any case involving a right created by the bill, against any public or private party. This upsets Maryland's own well-considered standing requirements that have been developed over decades by the Maryland General Assembly and the Judiciary.

Maryland has a narrowly tailored standing definition, based on the more localized decisions typically made by the State, a county, or a municipal corporation. Such decisions can regard the issuance of a permit for a single piece of property. This limited scope calls for a more limited standing threshold.

In Maryland, environmental standing (i.e. the ability to file suit, frequently to hold up a decision or action) is typically limited to an "aggrieved" party – a person with a specific interest or property right that has been harmed in a way different to that of the general public. This standing requirement properly limits legal challenges to those directly affected by a state or local action.

In 2009, the Maryland General Assembly considered and rejected broadly applying federal standing requirements to state and local environmental cases, opting instead for a more narrow and tailored approach (HB 1569/SB 1065). However, HB 472 discards this standing and allow any entity anywhere in the world to sue or intervene as long as the entity does business in the state.

HB 472 would create a new vaguely-defined constitutional right that grants broad standing to bring litigation against both the state and local governments, resulting in a potentially significant increase in costs due to additional litigation. Accordingly, MACo requests the Committee give HB 472 an **UNFAVORABLE** report.