MARYLAND Association of COUNTIES

House Bill 645

Real Property – Landlord Defenses in Nuisance Actions

MACo Position: **OPPOSE**

Date: March 19, 2014

To: Judicial Proceedings

From: Natasha Mehu

The Maryland Association of Counties **OPPOSES** House Bill 645. This bill provides for an overly broad defense against nuisance actions. MACo believes that defense against nuisance actions is best determined and implemented on a local rather than a state-wide level.

This bill would establish for a landlord a legal defense to any nuisance action brought under State or local law if the tenant's actions are the sole basis for the nuisance action and the landlord provides evidence that they have filed an action in the District Court for repossession of the premises. Under amendments adopted by the House, the landlord would have to prove that the repossession action is pending in the District Court, or that the landlord possesses a warrant of restitution and is awaiting eviction. This requirement addresses concerns that this defense would be abused by unlawful landlords who play a significant role in the existence of a nuisance caused by a tenant; however it does not address all the issues with the bill.

The broad defense is problematic most importantly because it has the practical effect of overriding the intent of local jurisdictions in the management of the scope of their own local nuisance laws. At least 18 State and local nuisance laws would be affected. Such an approach inhibits a local government from considering the potential defense in the proper context.

For instance, in cases where the affected statute or ordinance is directly at odds with the proposed defense, the proposed defense would supersede the intent of established law. This is the case with the Baltimore City "padlock" law (Baltimore City Code, Art. 19, Subtitle 43, §43-5(a)). This ordinance allows the Baltimore City Police Commissioner to order the proper relief without proof the owner, operator, or tenant knew of the existence of the nuisance at issue. Likewise the State "drug nuisance" law (MD. Code Ann., Real Prop. §14-120(i)) states

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that a court may order relief without proof the defendant knew of the nuisance. These examples demonstrate that this bill's one-size-fits-all approach is unwise, and that these policies should be implemented on a local rather than a statewide level.

MACo believes that such a defense to a nuisance action should not be widely applied across all local nuisance laws but should rather be determined and implemented by local governing bodies. For these reasons MACo urges an UNFAVORABLE report on HB 645.