



Senate Bill 91

State Ethics Commission – Local Governments and School Boards – Compliance Enforcement

MACo Position: **SUPPORT**
WITH AMENDMENTS

Date: January 23, 2014

To: Education, Health, and Environmental Affairs
Committee

From: Leslie Knapp, Jr.

The Maryland Association of Counties (MACo) **SUPPORTS** Senate Bill 91 **WITH AMENDMENTS**. While MACo supports the intent of SB 91, MACo believes the bill unintentionally limits the ability of a local government or school board to present its case when subjected to a court challenge by the State Ethics Commission.

The bill would authorize the Commission to issue an order directing a local government that has not made good-faith efforts towards complying with State ethics law requirements to comply with State law. Under existing law, the Commission's only option is to petition a circuit court for appropriate relief to compel compliance. The bill also creates analogous provisions for local school boards, which were not previously required to have ethics laws mirroring the State law.

MACo enjoys a strong relationship with the Commission and both MACo and the counties have been very appreciative of the Commission's collaborative approach to the implementation of new State ethics requirements by county governments. Likewise, MACo supports the Commission's underlying and well-intentioned purpose of creating an intermediate step to enforce local government and school board compliance with applicable ethics requirements, rather than having to rely on the onerous and costly proposal of petitioning a circuit court for relief.

However, MACo is concerned that the bill has two unintended consequences that should be addressed. First, under current law the Commission must petition a circuit court to enforce compliance and the burden of proof rests on the Commission as a plaintiff. However, by allowing the Commission to enter an order directing a local government or school board to amend its ethics laws to meet State requirements, the burden shifts from the Commission to

the local government or board. In order to challenge the order, the local government or board would have to file an “administrative appeal” in court. Under the administrative appeal process, the applicable standard of review favors the administrative agency (in this case the Commission) and the reviewing court would defer to the Commission’s interpretation of the ethics law. This burden shift limits the current ability of a county to defend its position.

Second, the “good faith” language, which MACo believes was intended to foster more collaboration between the Commission and local governments and school boards, also inadvertently requires the Commission to make a factual determination about whether the Commission believes a local government or board has acted in good faith. If the Commission were subsequently to petition the circuit court, the court would defer to the determination of the Commission and a local government or board would be limited to the record developed by the Commission in arguing against the determination. Under such limitations, it would be difficult for a county to show that it was in fact acting in good faith.

In the spirit of the collaborative approach taken by the Commission in working with the counties to date, MACo has shared its concerns with the Commission’s Executive Director and is hopeful that we can reach an agreement on amendment language regarding the burden of proof issue. MACo requests that the Committee give the relevant parties a little time to resolve the issue before moving the bill.

In conclusion, MACo supports the underlying idea of SB 91 to grant the Commission greater flexibility in enforcing compliance with State ethics requirements. However, MACo is concerned that the bill unintentionally limits the currently existing ability of a county to argue its position should the Commission seek enforcement through the courts.

Accordingly, MACo recommends the Committee issue a **FAVORABLE WITH AMENDMENTS** report for SB 91.