



Senate Bill 873

Constitutional Amendment – Right to Healthy Environment and Communities

MACo Position: **OPPOSE**

To: Education, Health, and Environmental Affairs
and Judicial Proceedings Committees

Date: March 6, 2018

From: Leslie Knapp, Jr.

The Maryland Association of Counties (MACo) **OPPOSES** SB 873. The bill creates a new and vaguely defined constitutional right and an expansive new class of litigants with broad standing rights to litigate or intervene.

SB 873 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, healthy communities, an environment free of conditions that degrade public health or natural resources, and the preservation of the natural, scenic, historic, and aesthetic values of the environment.”

This language is both vague and overbroad. It could be argued that many basic services provided by a local government could 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 ill-defined entitlements into the state constitution invites myriad unintended consequences and unanticipated costs.

Furthermore, the bill would empower any person who meets the threshold standing requirements *under federal law* to enforce the 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.

Federal standing requirements establish a broad threshold, commensurate with scope of the environmental issues the federal government addresses. However, Maryland has a more 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 is typically limited to an “aggrieved” party – a person with a specific interest or property right that has been harmed in a way different of that to 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).

SB 873 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 SB 873 an **UNFAVORABLE** report.