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Committee: Environment and Transportation

Testimony on: HB739 – “Multidefendant Oil and Hazardous Substance Pollution Cases – Effect of Settlement”

Position: Support

Hearing Date: February 17, 2021

The Maryland Sierra Club supports HB739, and urges a favorable report. This legislation will modify certain provisions in the Environment Article which negatively affect the State’s ability to bring and fully resolve multi-defendant pollution cleanup actions to protect the health of Maryland residents.

The reality of contamination incidents in Maryland involving oil and hazardous substances is that multiple entities may have contributed to the contamination. Accordingly, a lawsuit brought by the Attorney General to remedy the contamination may involve multiple defendants who the Attorney General asserts should all be held liable pursuant to the applicable legal standards. However, because the involved entities may have differentially contributed to the contamination – i.e., some contributed more, some less – a lawsuit may seek to obtain differential damage amounts from different defendants.

The problem with current law is that, when the Attorney General settles with some defendants in a multi-defendant contamination case but not with others, the legal determination of damage amounts may not be in accord with the reality of how much each defendant contributed to the problem. When some defendants settle and pay damages, it then is necessary to determine the total amount of damages the remaining defendants may be responsible for. If, for example, the settlors were responsible for one percent of the contamination, then the non-settlors (singly or together) should be responsible for the remaining 99 percent of the damages. Under current law, however, the settlors are not assigned the damage percentage they actually caused; instead, they are deemed to be responsible for that percentage which is their proportionate share of the number of named defendants. In other words, in the example given, if the settlors represented ten percent of the named defendants (e.g., ten settlors out of 100 defendants), their damage payments are deemed to cover ten percent of the damages notwithstanding that they actually were responsible for just one percent. This significantly interferes with the ability of the Attorney General to settle cases and to obtain full relief from the non-settling defendants, thus diminishing the ability of the Attorney General to protect the health of Maryland residents.

This bill will fix this by specifying that, in these types of cases, a settlement “reduces the potential liability of other [non-settling] persons responsible for the discharge by the settling person’s proportionate share of liability” (i.e. one percent, not ten percent, in the above example.) This is a common sense change in the law, and we urge a favorable report by this Committee.

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Founded in 1892, the Sierra Club is America’s oldest and largest grassroots environmental organization. The Maryland Chapter has over 75,000 members and supporters, and the Sierra Club nationwide has over 800,000 members and nearly four million supporters.