



**WRITTEN TESTIMONY OF EXELON GENERATION COMPANY
HB 1128**

**Environment – Water Quality Certifications – Requests (Water Quality Certification Improvement Act)
OPPOSE
Environment and Transportation Committee**

Friday, April 28, 2020

Exelon Generation Company, LLC (“ExGen”) appreciates the opportunity to provide written comments in response to House Bill 1128, the “Water Quality Certification Improvement Act.” This legislation would establish a legal framework for Maryland’s implementation of Section 401 of the federal Clean Water Act. ExGen believes that HB 1128 would impact virtually any large infrastructure project in Maryland, including construction or upgrading of roads, bridges, ports, airports, railways, and renewable and other energy projects.

ExGen opposes the bill as currently drafted because it imposes unrealistically stringent requirements that would make it difficult or impossible for any new infrastructure project affecting water quality to obtain a federal permit.

First, the bill should clarify the limits on MDE’s discretion to deny certification. In *Hoopa Valley Tribe v. FERC*, 913 F.3d 1099 (D.C. Cir. 2019), the U.S. Court of Appeals for the D.C. Circuit held a state cannot avoid Section 401’s one-year deadline by allowing or requiring project proponents to withdraw and resubmit a certification request annually. HB 1128 would allow a project proponent to resubmit a request if it has been denied. While Exelon does not oppose this provision, the bill should clarify that the state cannot use it to make unsupported denials or to evade the *Hoopa Valley* decision and Section 401’s one-year clock. Further, the bill should make clear that denial of certification is not permissible: (1) based on claims that more information is necessary beyond what HB 1128 requires the requestor to submit; or (2) without finding that MDE could not instead issue an approval with conditions that would allow the project to go forward without violating water quality requirements.

Second, ExGen would also highlight that this legislation’s legal review standard is far too severe and very likely conflicts with existing Federal Law. Specifically, Maryland is not allowed, under Section 401 of the Federal Clean Water Act, to require *no* adverse effect on water quality. The standard in place today is whether the project will violate applicable water quality standards. Again, this section of the legislation effectively makes it impossible in most cases for any new project to get the necessary permitting.

Last, ExGen believes the legislation employs a scope of review that is overbroad and, again, contrary to existing Federal law. **For these reasons, ExGen respectfully recommends an unfavorable vote on HB 1128.**

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