

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 82 (Delegate W. Fisher, *et al.*)
Environment and Transportation

Constitutional Amendment - Environmental Rights

This proposed constitutional amendment establishes that every person has the fundamental and inalienable right to a healthful environment, including the right to clean air, water, and land, a stable climate, and the preservation, protection, and enhancement of ecological, scenic, and historic values of the environment. The bill authorizes the State, a political subdivision of the State, and any person to enforce these rights against any public party through appropriate legal proceedings. Every person also has the right to intervene in an action brought by the State or a political subdivision of the State to protect the rights established by the bill. The bill also (1) establishes that the State’s natural resources are the common property of every person and (2) establishes standards of treatment for the State’s natural resources.

Fiscal Summary

State Effect: Potential significant increase in State expenditures (all fund types), beginning as early as FY 2023, primarily due to additional litigation. Revenues are not affected.

Local Effect: Potential significant increase in local expenditures, beginning as early as FY 2023, due to additional litigation. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The State is trustee of the air, land, water, living, and historic resources of the State, which must be protected, preserved, and enhanced for the benefit of all the people of the State, including future generations. Further, the State or a political subdivision of the State may not (1) cause unreasonable diminution of or degradation to the State's natural resources by action or inaction or (2) infringe on the rights established by the bill.

Current Law: There is no general provision in the Maryland Constitution or the Maryland Declaration of Rights specifically granting the right to a clean and healthy environment, healthy communities, or preservation of natural resources.

The Maryland Department of the Environment (MDE) is authorized to bring a criminal prosecution or a suit for a civil penalty for a violation of any provision of the Environment Article or any rule, regulation, order, or permit adopted or issued under the article with a specified statute of limitations. MDE is also authorized to institute actions for administrative penalties within a specified statute of limitations.

A political subdivision of the State is authorized to bring a suit for a civil penalty for a violation of any provision of the Environment Article or any rule, regulation, order, or permit adopted or issued under the article, or for a violation under any regulatory program the political subdivision is required to adopt and enforce under the Environment Article within a specified statute of limitations.

Standing in Maryland

Generally, a party to a civil action must be authorized to participate in the action, either by statute or by having common law "standing." Standing means that a party has a sufficient stake in a controversy to be able to obtain judicial resolution of that controversy. Maryland law traditionally has limited standing to a person that is "aggrieved" by an action or decision. To show standing, a person generally must demonstrate that the person has experienced an adverse effect from the law or action in question and the adverse effect will continue unless the court grants relief. Alternatively, a person may be granted standing by statute.

"Aggrievement" has been defined by court decisions to mean that the plaintiff has a specific interest or property right that has been affected by the disputed action or decision in a way that is different from the effect on the general public. With respect to cases involving challenges to specific types of permits and zoning/planning decisions, Maryland courts have defined "aggrievement" to mean the ownership of property either adjacent to

or within “‘sight or sound’ range of the property that is the subject of [the plaintiff’s] complaint.”

The Court of Appeals has held that an association lacks standing to sue where it has no property interest of its own, distinct from that of its individual members. *Citizens Planning & Housing Ass’n. v. County Executive*, 273 Md. 333 (1974). In *Medical Waste Ass’n. v. Maryland Waste Coalition*, 327 Md. 596 (1992), the Court of Appeals stated that if an individual or organization is seeking to redress a public wrong, the individual or organization has no standing unless the wrong suffered is different in character and kind from that suffered by the general public.

Maryland Environmental Standing Act

Under the Environmental Standing Act, the Attorney General (acting on behalf of the State or a unit or officer of the State); a political subdivision of the State; or any other person, regardless of whether the person possesses a special interest different from the general public, may pursue legal action in an appropriate court for mandamus or equitable relief against the State or an agency for its failure to perform a nondiscretionary duty under an environmental statute, ordinance, rule, regulation, or order. However, the Act does not authorize citizen suits against private individuals or entities that violate environmental laws, nor does it authorize actions for monetary damages.

Standing under Federal Law

Federal law is broader than State law in its determination of standing. Under federal law, a party has standing if its use and enjoyment of the area is affected by the challenged action/decision or if the party has a particular interest in the property affected. Federal law also makes little distinction between individual and group standing.

Under federal case law, in order to have standing, “a plaintiff must show (1) it has suffered an ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” Federal case law requires an association to meet a three-part test in order to have standing. Under the test, an association has standing if (1) one or more members of the association have standing as individuals; (2) the interests that the association seeks to protect in the case are germane to the association’s purpose; and (3) neither the claim asserted nor the relief requested requires the participation of the member with individual standing in the lawsuit.

State Expenditures: If approved by the voters, the bill expands the opportunity for “a person” to bring environmental litigation against the State to enforce the constitutional

environmental rights established by the bill. The bill also allows a person to intervene in an action brought by the State to protect those rights. In addition, the bill prohibits the State from causing unreasonable diminution of or degradation to the State's natural resources by action or inaction and from infringing on a person's environmental rights. This leaves State agencies open to a broad range of lawsuits and likely affects State agency operations and planning for large projects. These changes likely result in an increase in litigation costs for State agencies. The increase in litigation that may occur as a result of the bill is unknown but, given the breadth of the rights established under the bill, State expenditures (all fund types) for all or multiple State agencies increase, potentially significantly, beginning as early as fiscal 2023.

As the agency that oversees many of the State's environmental laws, MDE advises that, if there is a significant increase in litigation, it may need to hire several new attorneys to handle the increase in workload. Likewise, the Maryland Department of Transportation (MDOT) also reports that it may need to hire several additional attorneys if the bill results in a significant increase in litigation. MDOT also notes that any increase in litigation will likely cause delays in capital and operating projects and increased project costs due to additional public coordination/outreach and environmental mitigation. Overall, MDOT anticipates that the bill likely results in increased project planning, design, permitting, and construction costs.

Local Expenditures: If approved by the voters, the bill expands the opportunity for "a person" to bring environmental litigation against any public or private party, including a local government. The bill also allows a person to intervene in an action brought by a political subdivision to protect the rights established by the bill. In addition, the bill prohibits local jurisdictions from causing unreasonable diminution of or degradation to the State's natural resources by action or inaction and from infringing on a person's environmental rights. These changes likely result in an increase in litigation costs for local governments. The increase in litigation that may occur as a result of the bill is unknown, but given the breadth of the rights established under the bill, local expenditures increase, potentially significantly, beginning as early as fiscal 2023.

Small Business Effect: If approved by the voters, small businesses that provide environmental litigation services may benefit from an increase in the demand for their services. On the other hand, a small business may also be party to a suit, either as a plaintiff or a defendant, which would increase expenditures related to litigation.

Additional Information

Prior Introductions: HB 517 of 2020, a similar bill, received a hearing in the House Environment and Transportation Committee, but was subsequently withdrawn.

HB 472 of 2019, also a similar bill, received a hearing in the House Environment and Transportation Committee but was subsequently withdrawn. In addition, a similar bill was introduced in the 2018 session.

Designated Cross File: SB 151 (Senator Patterson) - Judicial Proceedings and Education, Health, and Environmental Affairs.

Information Source(s): Montgomery and Prince George's counties; Northeast Maryland Waste Disposal Authority; cities of Annapolis and Bowie; Judiciary (Administrative Office of the Courts); Maryland Department of Agriculture; Maryland Department of the Environment; Department of Natural Resources; Maryland Department of Transportation; Public Service Commission; Department of Legislative Services

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