



Committee: Senate Education, Health, & Environmental Affairs
Legislation: SB0460
Position: FAVORABLE
Date: February 19, 2020

Dear Chairman Pinsky and Members of the Committee:

The Arundel Rivers Federation requests a favorable report for SB 460, which will bring vital transparency to the State's efforts to enforce environmental law.

Introduction

Senate Bill 460 is intended to enhance and exhibit the State's efforts to enforce existing environmental law. The legislation will track the efforts of the Departments of Agriculture, Environment and Natural Resources, without imposing any new substantive requirements on them. Instead, these efforts will now be tracked and disseminated by the ombudsman position that will be created within the office of the Attorney General.

Enforcement Trends

In 2018 the Department of Legislative Services published an Executive Branch Staffing Adequacy Study¹ that identified staffing reductions in the Departments of Agriculture, Environment and Natural Resources from 2002-2018 of 25.7%, 13.1%, and 17.5%, respectively. In the Department of Environment, this depletion of staff resulted in a significant diminution of enforcement actions.²

A similar story exists within the Department of Agriculture (MDA). In MDA's 2018 Annual report on its Nutrient Management Program,³ the Department notes:

Enforcement specialists conducted 725 on-farm audits in Fiscal Year 2018 focusing on farms with missing soils data or a history of compliance issues. The number of audits is down from 2017 due to staff vacancies that have since been filled. Fifty-nine percent of the audited farms were in compliance. The department is actively pursuing full compliance for all audited operations.

Unfortunately, much of the enforcement measures currently being taken are hard to track down by members of the public, notwithstanding the existence of the State's Public Information Act.

Access to Public Information

¹ Available at: <https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/022600/022600/20180149e.pdf>

² See: <https://www.bayjournal.com/article/mde-taking-fewer-enforcement-actions-against-water-pollution>

³ Available at: https://mda.maryland.gov/resource_conservation/counties/2018NMPAnnualReport_FINAL1_19.pdf

On December 27, 2019, the State's Office of the Public Access Ombudsman issued a report.⁴ One passage in particular illustrates the impasse with State agencies that many advocates and members of the public have experienced with obtaining evidence of environmental violations. The report notes:

While we do not suggest that agencies or requestors regularly or intentionally violate or abuse the PIA, experience teaches that all too often, extraneous considerations such as political sensitivity, controversy, fear of public criticism, expedience, unreasonable expectations, or entrenchment for other reasons will dictate many PIA outcomes, making problems such as unlawful delay, wrongful denials, and refusal to compromise or consider alternatives the path of least resistance.

The impact of these "extraneous considerations" on the public's access to information regarding enforcement of environmental law is hard to measure, but anecdotally, many environmental advocates working in Maryland have experienced some form of unnecessary delay, inflated costs, or outright stonewalling on obtaining environmental enforcement data. Members of the general public, with perhaps less experience obtaining information from public agencies, are likely to encounter even less assistance through the public information act process. Senate Bill 460 will help correct some of these problems by housing all information on enforcement matters within one public-facing office with the specific mission to make the information readily available and current.

Conclusion

Senate Bill 460 will streamline information collection and dissemination related to enforcement measures across the State's environmental landscape. As Chesapeake Bay recovery efforts are at a transitional point, where progress is being made in fits and starts, and subject to extreme weather patterns (a la 2018's record rainfall), we cannot afford to let up in our efforts. Robust enforcement of existing law is a vital component of those efforts, and this bill will help empower citizens to assist the State in ensuring that violators of environmental law mitigate the damage they cause. As Abraham Lincoln famously said, "Law without enforcement is just good advice." The Bay deserves better than good advice. It deserves your favorable report on SB 460.

Respectfully submitted,



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⁴ Available at:

http://www.marylandattorneygeneral.gov/OpenGov%20Documents/PIACB/122719_Final_Report_on_the_PIA.pdf