



Larry Hogan, Governor
Boyd Rutherford, Lt. Governor
Jeannie Haddaway-Riccio, Secretary
Charles Glass, Deputy Secretary

February 19, 2020

The Honorable Paul G. Pinsky
Chair, Education, Health and Environmental Affairs Committee
2 West Miller Senate Office Building
Annapolis, MD 21401

The Honorable Cheryl C. Kagan
Vice Chair, Education, Health and Environmental Affairs Committee
2 West Miller Senate Office Building
Annapolis, MD 21401

Re: Letter of Concern – Senate Bill 460 — State Government – Office of the Environmental and Natural Resources Ombudsman – Establishment (Environmental Accountability and Transparency Act)

Dear Chair Pinsky, Vice Chair Kagan, and Committee Members:

Senate Bill 460 requires the agency to submit to a new state ombudsman various information pertaining to suspected natural resources wildlife and fisheries violations and settlements from any cases.

The department is unique in that it houses a law enforcement division, the Natural Resources Police. Administrative staff work closely with the police in order to track and process cases that may result in administrative penalties. There is significant concern that open police cases being made public would endanger undercover officers, joint federal investigations, and general police work related to on-going open cases. Also, informants' personal information could be jeopardized in police investigations which would hinder ongoing police cases.

Similarly, the department administers penalties under Natural Resources Article, Section 4-1210. In these unique cases, the agency staff may be working closely with officers on open cases in order to have the information in a timely manner to process the cases under the time restrictions as specified in the statute. This bill would present a unique issue for staff receiving information on an incident for which a violation will be written. The close working relationship between the police and agency staff to meet the statutory requirements on certain cases in particular may be strained by the requirements of the proposed ombudsman, resulting in fewer administrative cases brought by the agency.

The department also has concerns with a third party — the bill's proposed ombudsman — being involved in case settlements. Agency discussions in case settlements are typically covered by attorney-client privilege. If a third party is involved in those discussions, those discussions are no longer privileged. Additionally, individuals involved in administrative cases may not wish to discuss settlement with a third party involved, which may result in fewer case settlements and increased legal costs for both defendants and the agency.

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Currently, the department tracks issued warnings, citations, on-going investigations, and administrative penalties and outcomes. The department does not assign tracking numbers to all suspected natural resources wildlife and fisheries violations, which may include inquiries by phone and officers stops in the field. Current databases would need to be updated at significant cost to accommodate that additional information. Additional administrative staff would also be required to assist in coordinating and processing the required information. Because the department has a police unit, many calls come in to various agency staff and are then routed to the police communications staff. Administrative staff would need to assure that names and contact information were obtained and not duplicated for all agency interactions. It is not clear if inquiries to staff about possible illegal activity that are re-routed to the police should be recorded with the individual's personal information.

For these several reasons, the Maryland Department of Natural Resources respectfully submits its concerns to the Committee on Senate Bill 460.

Respectfully submitted,
James W. McKittrick
Director, Legislative and Constituent Services