

Senate Committee on Judicial Proceedings
Senator William C. Smith Jr., Chair

RE: Senate Bill 151 Constitutional Amendment – Environmental Rights

Testimony of Nicholas A. DiPasquale
206 N. Queen St.
Chestertown, MD 21620
e-mail: nicholasdi51@yahoo.com
cell: 302-423-4140

My name is Nicholas A. DiPasquale. I previously served as Director of the Chesapeake Bay Program Office, USEPA, from 2011-2017, overseeing the bay restoration effort. I have over 35 years of public policy and environmental management experience in the public, private and non-governmental sectors, including serving as Deputy Secretary for Air, Waste and Radiation Protection in the Pennsylvania Department of Environmental Protection; and, Secretary of the Delaware Department of Natural Resources and Environmental Control. I currently serve on the Governance Board of ShoreRivers and on the Board of Advisors for the Chesapeake Legal Alliance. My testimony is submitted on behalf of the Maryland Campaign for Environmental Human Rights upon whose Advisory Circle I serve.

I am testifying in support of Senate Bill 151 and House Bill 82 to amend the Maryland Constitution to establish a right to a healthy environment for all citizens of the State and to create certain trust obligations for state officials.

Currently, two states have enacted an environment rights amendment to their state Constitutions, Pennsylvania and Montana. Several other states have introduced environmental rights legislation (NY, NJ, WV) and discussions are underway in several other states to do so.

The environmental rights amendment consists of two essential elements:

- An environmental rights component that specifies 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.
- A public trust component that declares the state's natural resources are the common property of every person and establishes the state as a trustee of air, land, water, living, and historic resources of the state, which shall be protected, preserved, and enhanced for the benefit of all, including future generations.

As with other rights specified in the Declaration of Rights section of the Constitution, the environmental rights provision is self-executing. This places environmental health and safety rights on par with other constitutionally protected rights, such as freedom of religion, speech and civil rights. The environmental rights amendment would provide general, legally defensible expectations as to what constitutes a healthy environment regarding clean air, water and a stable climate.

The goals of the environmental rights amendment are to advance better government decision-making that will advance economic development and business and community interests in a way that avoids environmental pollution and injuries and associated health impacts, loss of property values, diminished quality of life, ecosystem function and other environmental degradation. The amendment would also support government actions, community and business interests that are beneficial for environmental protection, such as advancing clean energy projects, environmentally beneficial development, plastic ban bills and other government efforts intended to achieve environmental protection and benefits. Finally, an environmental rights amendment would provide an opportunity to impacted municipalities, businesses, communities, individuals and families to seek court intervention and redress when government officials render a decision, action or requirement that are so harmful they rise to the level of infringing on the right to clean water, air, a stable climate or healthy environment.

The major advantages of having constitutionally protected environmental rights are:

- A constitutional provision is more comprehensive and broader in scope than statutes and regulations, which are often more specific and prescribed and, therefore, less flexible in dealing with a range of possible situations.
- The amendment can address gaps in laws of the state that don't adequately address environmental impacts. The amendment would serve to address emerging contaminants of concern, like micro-plastics, pharmaceutical by-products, nano-particles, endocrine disruptors, etc.
- Allows for actions against the state for not adequately implementing or enforcing existing environmental requirements.
- The Courts can serve as an independent and objective body for determining whether environmental rights have been violated.
- Courts also can determine whether an individual or community has been subject to disproportionate or cumulative impacts.
- The amendment provides for an automatic legal grant of standing to any citizen of the state who feels their rights have been infringed.
- A constitutional amendment cannot be waived or displaced by acts of the legislature; they are indefeasible.
- The State Constitution provides the overarching legal structure, principles and obligations to which all branches of government must conform. Therefore, a constitutional amendment ensures environmental protection is considered throughout the decision-making process when harm can best be addressed and prevented.
- A constitutional amendment ensures that environmental rights are afforded the same protection as other protected rights.
- The amendment serves as a limitation on government authority, not a grant or expansion of authority.
- An environmental rights amendment provides the foundation for communities to seek environmental protections when their rights have been infringed upon by government action, inaction, or activities.

In closing, and drawing upon the experiences of the states that have already adopted an environmental rights amendment, there has not been an avalanche of litigation, as some may suggest would occur if this amendment is adopted. In fact, this amendment would likely save state tax dollars by providing state and local officials with an incentive to anticipate environmental impacts that would result from their actions and mitigating them before they occur.

The environmental laws of this country at both the state and federal level have been enacted in a piecemeal fashion over the past 50 years. There is no “organic” environmental statute that deals comprehensively with environmental impacts. The environmental rights amendment addresses this deficiency.

I recommend your favorable consideration of this legislation. Thank you.