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SB151/HB82 Constitutional Amendment – Environmental Rights

The *Maryland Constitutional Amendment for Environmental Human Rights* would guarantee that every person has the “fundamental and inalienable right to healthful environment” including the right to clean air, water, land, a stable climate, and the preservation, protection, and enhancement of ecological, scenic, and historic values of the environment.

The state is trustee of the air, land, water, living and historic resources of the state, which shall be protected, preserved, and enhanced for the benefit of all the people of this state, including future generations.

- **The Need for a Fundamental Constitutional Right - The Strongest Protection Provided by a State**
 - In 1973, Maryland’s General Assembly passed the Maryland Environmental Policy Act, establishing and recognizing that every Marylander has the “fundamental and inalienable right to a healthful environment.” Regrettably, that right has yet to become a reality in our state.
 - Without that right, communities of color and low income suffer disproportionate concentrations of pollution and environmental degradation.
 - In a state with siloed laws and lagging compliance, a constitutional right would act as a true guardrail to prevent the most egregious forms of harmful state action now and for future generations.
 - A constitutional right, as opposed to a regular law, would ensure that environmental protection is the highest obligation of the government, and not just an aspirational goal that could be amended at any point in time.
- **A Healthier Place to Live - Less Pollution Means Better Health**
 - As a constitutional guardian of our natural resources, Maryland state officials would be: (a) constitutionally obligated to protect the environment and its impact on the health of Marylanders, and (b) legally prevented from permitting egregious harm to public natural resources that would violate the constitutional right.
 - Every person deserves the fundamental right to a healthy and healthful environment.
- **A Backstop for Better Decision Making – A Smarter Way Forward**
 - This right would require state decision-makers to (a) consider the full extent of harm resulting from any given proposal and (b) consider whether a proposed project increases existing degradation - considering both individual and cumulative impacts of harm.
 - An Environmental Human Rights amendment would provide backing for new laws that better protect the environment and the health of Marylanders.



Frequently Asked Questions

Why is a constitutional amendment needed now?

We need an equitable foundation for our rights to a healthful environment. First, contemporary society provides us with a host of environmental challenges, too many for our state legislature to be able to reasonably handle in its short 90-day sessions. This amendment provides a safety net capturing a broad array of issues, preventing, and correcting environmental degradation, both now and in the future.

Second, none of the environmental laws and policies we have passed are currently secure. None are grounded in anything beyond themselves and legislators' good will. Which means that if a future administration or legislature wants to reverse those laws, they can. We need to ground these laws and policies in fundamental rights, which this amendment would do.

What will a constitutional amendment do?

It will offer the strongest, broadest, and most durable legal tools for environmental protection for government entities as well as individuals, especially those communities disproportionately burdened by environmental degradation.

Equity is an important issue for this session. How will this amendment address equity for black and brown communities?

By assuring that “every person” has a right to a healthful environment, this amendment enables those who suffer from anthropogenic environmental degradation, or who are threatened with harm by proposed actions to the environment around them, to challenge those actions as people whose rights have been violated. Without this amendment, individuals who suffer harm appear as supplicants before the law “requesting that somehow the public interest be interpreted to protect the environmental values from which [they] benefit.”¹ This amendment enables them to stand before the law as claimants to their right to a healthful environment.

What states have environmental rights amendments, or Green Amendments, currently?

Only Pennsylvania and Montana have constitutional language and court rulings that fulfill the definition of an environmental rights amendment. Illinois, Hawaii, and Massachusetts have substantive environmental rights outside the Declaration of Rights language in their state constitutions. In addition to Maryland, environmental rights amendments are being advanced in New York, New Jersey and West Virginia with proposals anticipated in other states.

¹ “The Public Trust Doctrine, Environmental Rights and the Future of Private Property,” David Takacs, UCHastings College of Law, UC Hastings Scholarship Repository. 2008



Is the Maryland environmental rights amendment the same as the Pennsylvania amendment?

Our amendment is unique to Maryland in one major respect: Ours is based on the right articulated in the 1973 Maryland Environmental Policy Act which boldly states: “Each person has the fundamental and inalienable right to a healthful environment.” The amendment assures that the state can now implement the full expectation expressed in MEPA almost 50 years ago.

The trustee provisions are similar to Pennsylvania. The state is trustee of Maryland’s natural resources. The trustee clauses establish an assumed authority and implementing standard that does not currently exist in Maryland’s Constitution or clearly in Maryland statutory law.

How are terms like ‘clean air’ and ‘clean water’ defined? Aren’t these terms too broad for a constitutional provision?

Broad language in a constitution’s Declaration of Rights/Bill of Rights is characteristic of all state and the federal constitutions. The purpose of the Declaration of Rights/Bill of Rights is to identify those rights that “the people” reserve unto themselves as being protected from government infringement. The terms ‘clean air’, ‘clean water’ are no less clear than the language in other Declaration of Rights/Bill of Rights provisions, e.g. “right to a speedy ... trial”, “excessive bail shall not be required”, “people have the right freely to assemble” -- all of these on their face are quite broad, but have received definition through government action and judicial determinations.

It becomes government’s job to, in the first instance, seek to provide legislation, regulations, policies, and decision-making that respects and protects the rights. It is then incumbent on the people and the courts to challenge and/or support such decisions through the judicial system, which will provide further refinement, guidance and understanding as to how these terms are to be applied and fulfilled.

Would the amendment prevent legislators from making legislative compromises or exceptions?

No right guaranteed in the constitution is absolute - not freedom of assembly or speech or religion or even due process. Extenuating circumstances can limit that right. So too this right.

The legislature still has the authority, power and necessity to pass laws that define and implement this right. This amendment rather guides the legislature in the crafting of environmental bills that flesh out, define and fulfill the application of this right.

How will a constitutional amendment be used?

In many ways - it will protect both against those environmental degradations we can identify and anticipate and those we can't. For example, it will require the government to take into



consideration the effects of climate change before approving broad highway and other large development projects; it will guide local governments in proper zoning policies; it will require government to assess the full, long-term impact of pipeline installation and power plant construction; it will allow us to fight against future pollutants and degradations that have yet to be created or recognized; it would prevent any one neighborhood from being over-burdened with a cluster of polluting sources.

What will passing a constitutional amendment cost the state of Maryland?

University of Maryland's Environmental Law Clinic researched four other states that have had environmental rights language in their constitutions for over 40 years. None of them ever had a floodgate of litigation due to this amendment. None had to expend additional public resources responding to such litigation. There is no reason to believe Maryland will be different.

The real question is, what will not passing such an amendment cost the state of Maryland. While it is difficult to put a precise price tag on the current and future costs of climate change and other environmental ills (such as air pollution, heat island effect, water pollution, environmental refugees and the potential for civil unrest that might follow), experts agree that we will spend much more money responding to the destruction and devastation of climate change and negative health impacts of pollution than we will by investing in preventing them. And preventative investment contributes to and spurs a growing, adaptive economy.

How will a constitutional environmental rights amendment help communities meet standing requirements when seeking environmental redress?

Currently, Maryland has a patchwork of environmental standing laws that only provide standing in limited situation. For instance, the Maryland Court of Appeals has found that the Maryland Environmental Standing Act does not “expressly include judicial review of an administrative proceeding,” so the public has no judicial recourse for a state or local permitting decision that could have significant impacts on their water, air, or environment. Creating a constitutional right to healthful environments will support standing when there is a claim that the government has acted in a way that will infringe on constitutional environmental rights – e.g., have contaminated the water or air in dangerous ways that harm human health for surrounding communities -- even if there is no specific regulation or law that would otherwise allow impacted individuals or communities to bring a legal challenge to the specific government action taken. Yet as the Pennsylvania Supreme Court ruled regarding their environmental rights amendment, the amendment *does not* open the doors to litigants who cannot show (i) injury-in-fact, (ii) causation and (iii) redressability.

In addition, it needs to be noted that this amendment does not give individuals a right to sue other private actors. This amendment is designed to constrain government from acting or allowing others to act in a way that violates an individual's right to a healthful environment.



Will the Constitutional language force commercial, energy or economic development to grind to a halt?

A constitutional environmental right will encourage sustainable, environmentally protective, and innovative development, industry, and business growth. It will also provide a powerful incentive for government officials to render decisions and advance businesses in ways that accomplish economic and business objectives, while at the same time protecting water, air, soils, food, forests, wetlands, climate and other natural resources critical to sustaining healthy, safe and successful lives and economies.

Will the amendment stop residential or commercial property development?

As well-explained by the Pennsylvania Commonwealth Court when speaking about development proposals in the context of that state's Green Amendment: The Environmental Rights Amendment was not intended to "deprive persons of the use of their property or to derail development leading to an increase in the general welfare, convenience, and prosperity of the people." *Robinson Twp. v. Commonwealth*, 623 Pa. 564, 83 A.3d 901, 954 (2013). It does, however, require that economic development not take place at the expense of an "unreasonable degradation of the environment." *Id.* (emphasis added). Furthermore, with respect to the environment, "the state's plenary police power ... must be exercised in a manner that promotes sustainable property use and economic development." *Id.* (*Feudale v. Aqua Pennsylvania, Inc.*, 122 A.3d 462 (Pa. Commw. Ct. 2015)).

The inclusion of trust language in an Environmental Rights Amendment helps to provide further legislative and judicial guidance that can help guide both its implementation and interpretation.

How is a constitutional amendment better than legislation?

Constitutional rights cannot be waived or displaced by acts of the legislature. Constitutions provide the overarching legal structure, principles, and obligations to which all branches of government must conform. Therefore, a constitutional amendment will ensure environmental protection is considered throughout the decision-making process when harm can best be addressed and prevented. It will ensure environmental rights are given the same protection as

other rights. This amendment provides the foundation for communities to seek environmental protections when their rights have been infringed upon by government action, inaction, or activities.

Maryland has a robust system of environmental laws, why do we need something more?

Despite Maryland's existing environmental protection laws, we face significant environmental problems, including, but not limited to, contaminated drinking water, communities living next to



highly contaminated sites that are harming human health and reducing property values, and air pollution causing asthma attacks in children and harming the health of Maryland communities. Not only do our state laws allow significant harms on a case by case basis, but they are allowing cumulative impacts to go unconsidered and unaddressed. Communities of color and low income communities continue to be unfairly targeted for heavy polluting industry. Most Maryland environmental laws adopt the review, permitting and management approach rather than a focus on prevention first. And gaps in the law are allowing harmful pollution and environmental degradation to advance unaddressed. As we see in other areas of law, such as civil rights, these deficiencies can best be addressed by the overarching protections provided by the state constitution's Declaration of Rights.

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Green Amendment Frequently Asked Questions & Answers

What is a Green Amendment?:

Green Amendments are self-executing provisions placed in the Declaration of Rights/Bill of Rights section of a constitution that recognize and protect the inalienable rights of all people, including future generations, to clean water, clean air, a stable climate and healthy environments. Green Amendments serve as a check on government authority, and make clear government's duties, as trustee, to protect the environment for the benefit of the beneficiaries, i.e. the people of the state, including future generations.

What states have Green Amendments currently?

Only Pennsylvania and Montana have constitutional language that fulfill the definition of a Green Amendment. Both states have state Supreme Court rulings that interpret and apply the constitutional language in keeping with the legal interpretation and application of other constitutional bill of rights/declaration of rights provisions.

Pennsylvania's Constitutional Provision is the most recent (within the past 5 years) to advance legally and provides strong recent judicial interpretation and guidance for the values, benefits and limitations of such a Green Amendment provision:

Pennsylvania's Green Amendment was passed unanimously by both houses of the PA Legislature in 1971 but was quickly declared to be a simple statement of public policy by the Pennsylvania courts. It was only as the result of a 2013 PA Supreme Court decision written by the conservative Chief Justice R. Castille that legal recognition of environmental rights in Pennsylvania was restored. The 2013 decision has since been reaffirmed by the PA Supreme Court with a different composition of justices and is already having a significant positive effect on positive environmental decision-making and the rule of law in PA.

The goals of a Green Amendment are:

- To advance better government decision-making that will advance economic development, business and community interests in a way that avoids environmental pollution and harm and as a result avoids the costs, health harms, lost property values, diminished quality of life, and other adverse impacts that pollution and environmental degradation cause;
- To 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 or other government efforts intended to proactively advance environmental protection and benefits;
- To provide an opportunity to impacted municipalities, business, communities, individuals and families to seek court intervention when government officials render decisions, actions or laws

that are so harmful they rise to the level of infringing on the constitutional rights to clean water, clean air, a stable climate and/or a healthy environment.

Why do we need a Green Amendment, when our state already has a well-developed set of environmental protection laws?

While states have well-developed systems of environmental protection laws, they also all have a significant number of devastating environmental problems: – communities with contaminated drinking water; communities forced to live next to highly contaminated sites that are harming human health and reducing property values; schools located in areas with such severe air quality issues that the air pollution is impacting the health of students; and ongoing environmental justice issues as minority, indigenous and immigrant communities continue to be target for highly polluting and environmentally degrading activities. It is clear there are multiple gaps in the law. In addition, poor implementation and politically expedient rollbacks of protections are too commonplace. As we see in other areas of law, such as civil rights, that the deficiencies can best be addressed by the overarching protections constitutional protection provides– i.e. a Green Amendment.

How are terms like ‘pure water’, ‘clean air’, ‘ecologically healthy habitats’, a ‘stable climate’ defined? Aren’t these terms too broad for a constitutional provision?

Broad language in a constitution’s Declaration of Rights/Bill of Rights is characteristic of all state and the federal constitutions. The purpose of the Declaration of Rights/Bill of Rights is to identify those rights that “the people” reserve unto themselves as being protected from government infringement. The terms ‘pure water’, ‘clean air’, ‘ecologically healthy habitats’, a ‘stable climate’ are no less clear than the language in other Declaration of Rights/Bill of Rights provisions, e.g. “right to a speedy ... trial”, “excessive bail shall not be required”, “people have the right freely to assemble” -- all of these on their face are quite broad, but have received definition through government action and judicial determinations.

It becomes government’s job to, in the first instance, seek to provide legislation, regulations, policies, and decision-making that respects and protects the rights. It is then incumbent on the people and the courts to challenge and/or support such decisions through the judicial system, which will provide further refinement, guidance and understanding as to how these terms are to be applied and fulfilled.

The inclusion of trust language in a Green Amendment helps to provide further legislative and judicial guidance that can help guide both its implementation and interpretation.

Why Must a Green Amendment be Placed in the Bill of Rights/Declaration of Rights Section of the Constitution?

The rights described in the Bill of Rights/Declaration of Rights section are those rights that are recognized as natural and unalienable rights that are to be protected from government infringement.

Clean water, clean air, a stable climate and healthy environments are essential for supporting healthy human lives – in terms of physical health, mental health, and economic health. Without an environment in which human life can thrive, a person is deprived of all other rights. As such, it is the basic human right that should be given the highest priority, recognition, and protection.

The rights identified in Bill of Rights/Declaration of Rights are reserved by the people for the people to be protected from illegitimate government interference. As such, placement in Bill of Rights/Declaration of Rights ensures we are recognizing that this constitutional amendment is a restraint on government action and overreach, and not a grant of new authority or new rights.

Placement in Bill of Rights/Declaration of Rights ensures that the right to pure water and clean air and a healthy environment are legally recognized and protected on par with other fundamental rights like the right to free speech, due process rights, freedom of religion, and property rights. This is particularly important in order to prevent the argument that environmental rights are of lesser legal importance than property rights, and it is essential for ensuring proper and equitable balancing of these rights in the eyes of legislators and the courts.

Given that pure water, clean air and healthy environments are essential for sustaining healthy human life, it is only appropriate that these rights be placed in the Bill of Rights/Declaration of Rights.

Placement in Bill of Rights/Declaration of Rights confirms the self-executing nature of the constitutional provision – i.e. that the legislature does not need to pass laws in order to activate these rights, they become defensible and actionable by virtue of the fact that they are in constitution. For those who want to be crystal clear on this point, by placing language that specifically recognizes the amendment as self-executing, we can ensure there is no question or doubt as to the intent of the framers or the people when they voted to add the Green Amendment.

How will the provision change/affect government decision-making?

Green Amendments provide broad overarching guidance that ensures government decision-making considers environmental impacts early in the process, provide a focus on preventing degradation, and provide a back stop that can be used by community, public, government and even business interests to provide a check on government authority that overreaches and fails to protect environmental rights.

- A trust obligation included in a Green Amendment instills a fiduciary duty of prudence, mandating that government actors act in an informed and cautious way. In practice, this should result in government officials considering local conditions in the areas to be impacted by proposed actions as well as the resulting impacts. In order to ensure prudent and informed decision-making, government actors will need to secure, consider, and incorporate relevant science into decision-making processes.
- A trust obligation included in a Green Amendment instills a fiduciary duty of loyalty requiring that government actors administer the trust solely in the interest of the beneficiaries, which is all the people, including future generations. In practice, this means government cannot prioritize the goals or needs of a single industry or actor above the interests of the people to a clean and healthy environment.
- A trust obligation included in a Green Amendment instills a fiduciary duty of impartiality mandating that the trustee treat all beneficiaries equitably. In practice this means that

government actions and decisions cannot target or sacrifice a single community with repeated environmental harm in order to better protect the interests of another community. This has powerful environmental justice implications in that now all individuals and communities -- regardless of ethnicity, income or address -- have the same rights and must be treated equitably.

- It will require government officials – before passing a law, issuing a permit, or approving a new industrial operation – to consider compliance with their constitutional duty, not simply the applicability of existing legislation and regulations. This ensures a bigger picture consideration and investigation into the ramifications of the proposed action *prior* to acting and mandates consideration of how environmental impacts can be avoided as part of the decision-making process.
- It clarifies that there is a constitutional duty of environmental protection on all government officials operating at the state, county and local level.
- It ensures that when there may be serious environmental consequences from government action, government must demonstrate that there is a compelling state interest that supports such action and that the government has taken the necessary steps to avoid and minimize the environmental impacts as much as possible.
- It focuses government decisionmakers on preventing degradation of the environment rather than setting aside environmental considerations and simply relying on permitting and regulations to manage the environmental harm that will result.

Will this cause an onslaught of frivolous lawsuits?

Green Amendments do not support an onslaught of frivolous litigation. In Pennsylvania and Montana, where Green Amendments now exist, there has not been an onslaught of frivolous litigation relying on constitutional environmental rights. Rather, the lawsuits brought have been reasonable and helped to shape the understanding of the constitutional requirement.

There already exist other meaningful tools that prevent frivolous litigation in any context, including where there are Green Amendments. Attorneys are subject to ethical and legal standards that prohibit advancing frivolous litigation and can be enforced through a variety of sanctions from fines to implications for their law license in egregious situations. And attorneys who pursue frivolous legal actions will inevitably lose their cases which will anger the fee-paying clients and result in a bad reputation that will most certainly impact the attorneys' business and ability to attract clients. There are ethical considerations, the threat of sanctions, and the expectations of legal clients who are paying the bill that serve as a check on attorney misuse and frivolous lawsuits.

Will the Constitutional language force commercial, energy or economic development to grind to a halt?

A constitutional environmental right will encourage sustainable, environmentally protective, and innovative development, industry, and business growth. It will also provide a powerful incentive for government officials to render decisions and advance businesses in ways that accomplish economic and business objectives, while at the same time protecting water, air, soils, food, forests, wetlands, climate and other natural resources critical to sustaining healthy, safe and successful lives and economies.

Will the amendment stop residential or commercial property development?

As well-explained by the Pennsylvania Commonwealth Court when speaking about development proposals in the context of that state's Green Amendment:

The Environmental Rights Amendment was not intended to “deprive persons of the use of their property or to derail development leading to an increase in the general welfare, convenience, and prosperity of the people.” Robinson Twp. v. Commonwealth, 623 Pa. 564, 83 A.3d 901, 954 (2013). It does, however, require that economic development not take place at the expense of an “unreasonable degradation of the environment.” Id. (emphasis added). Furthermore, with respect to the environment, “the state’s plenary police power ... must be exercised in a manner that promotes sustainable property use and economic development.” Id.

(Feudale v. Aqua Pennsylvania, Inc., 122 A.3d 462 (Pa. Commw. Ct. 2015).

Why is a Green Amendment beneficial for environmental justice protection?

By recognizing environmental rights as individual rights that belong to all people, it becomes clear that government decisions and actions must protect these rights *for all people* and that government is not entitled to undermine/sacrifice/minimize the rights of one beneficiary community in order to enhance/protect the rights of another beneficiary community.

Including a trust obligation in a Green Amendment ensures that all government officials have a clear fiduciary duty to act with prudence, loyalty and impartiality for the benefit of all beneficiaries, including present and future generations. This ensures a duty of equitable treatment, and careful and informed decision-making. Given that the fiduciary obligation is owed to all beneficiaries it also prevents the government from justifying harms to one community in order to benefit another.

In order to ensure fulfillment of the constitutional obligation and to do so in a way that treats/protects the environmental rights of all beneficiaries equitably, a Green Amendment requires a pre-action analysis that considers: 1) the current status of potentially impacted people's environment and environmental rights (e.g. what pollution burdens residents already bear); and 2) the impacts of a proposed action or activity on their environment. Only by having an understanding of the current situation and the potential ramifications of the proposed action/decision/permit/legislation, can decisionmakers be said to have fulfilled their fiduciary duties of prudence, loyalty, and impartiality – operating without information or based on assumptions and presumptions cannot support the informed decision-making required by the constitutional obligation. This pre-action analysis necessarily requires data and science, and must include consideration of cumulative impacts (both near term and long term). It is not simply a process-focused inquiry.

Government must take the results of the pre-action analysis seriously, including the consideration of impacts, and may not allow proposed projects to proceed if they would violate residents' right to a healthy environment. This science-based, fact-based assessment helps to ensure that some communities do not simply shoulder all the pollution burden under the guise of “jobs” or convenience so that other communities may enjoy the benefits of clean water and air, and healthy environments.

How can legislators be responsible for protecting the right to a stable climate, to access clean air, or to protect species when these are not entirely within the control of any one state, or even country?

Rights enumerated in the Bill of Rights/Declaration of Rights are inalienable rights that the people reserved unto themselves to be protected from government infringement by direct action or through the acts of third parties. Just as with other fundamental freedoms in the Bill of Rights/Declaration of Rights, government has a duty to take what actions it can to protect these rights within its jurisdiction and to ensure that its own actions do not induce, garner or allow for infringement. But just as government officials in one state do not have the power to prevent acts or activities outside the boundaries of their jurisdiction that might overreach and affect constitutional rights in another jurisdiction, the same holds true for environmental rights. Each state is bound to take what action it can to respect and protect the environmental rights of the people within its jurisdiction, to ensure that its actions or activities do not result in infringement, but they are not duty bound (nor are they necessarily able) to take or prevent actions outside of their jurisdictional boundaries (e.g. state borders) in order to address/prevent infringement in other jurisdictions (e.g. states).

For example, the constitutional right to due process means government officials can and should fulfill their obligation to ensure their own laws/actions/decisions within their own jurisdictions (state) do not infringe on the constitutional rights to due process and to be free from illegal searches and seizures. The same goes for the environment – when included in the Bill of Rights/Declaration of Rights section of the state constitution, government officials are prohibited from undertaking actions/activities/laws that will infringe upon these rights directly or through the actions of third parties within their jurisdictional boundaries; the fact that they do not directly control actions of persons outside of their state jurisdictional reach that may have an impact on these rights in no way changes their own constitutional obligation within the state.

Will the Federal Supremacy Clause prevent states from being able to pass and enforce State Constitutional Green Amendments?

No. It is common for states, particularly in their constitutions, to provide more rights and/or protections than the federal constitution or laws. This has included providing greater protection for fundamental rights than the U.S. Constitution, including in their Bill of Rights/Declaration of Rights. This legal and constitutional ability to provide greater protections includes the environmental context. Only if there were an unavoidable or irreconcilable conflict between a state constitutional provision (e.g. addressing environmental rights) and a federal statute or federal Constitutional provision, would the state provision yield to the federal law under the Supremacy Clause and then the yield would only be in that context, not across the board in every instance where the environment or environmental rights were implicated. While there are many federal laws in place that implicate the environment, generally a state Green Amendment would provide a higher level of protection and not result in a direct contradiction with the federal law at issue.

In specific instances where a federal statute or constitutional provision is alleged to conflict with a state Green Amendment, federal courts will still attempt to give meaning to both unless it

is impossible to comply with both provisions or to otherwise reconcile the provisions. Such a scenario has yet to arise or be identified.

Particularly in the environmental context, the rights of states to provide greater protections to their citizenry, to address the special conditions and contexts of their state that warrant greater protections, and to be more responsive to in-state environmental concerns, is widely recognized and protected. For example, environmental statutes, such as the federal Clean Water Act and Clean Air Act, are generally written so as to promote cooperative federalism (i.e. federal, state and local governments all share in the responsibility of addressing common problems, issues and/or concerns).

Does a State Green Amendment mean that state government actions/activities/laws can never infringe on the constitutional environmental right?

No. As well-explained by the Montana Supreme Court, when a fundamental right articulated in the Bill of Rights/Declaration of Rights section is at issue, court review requires strict scrutiny, meaning that any demonstrated infringement can only withstand constitutional challenge if “the State establishes a compelling state interest and that its action is closely tailored to effectuate that interest and is the least onerous path that can be taken to achieve the State's objective.” (*Montana Env'tl. Info. Ctr. v. Department of Env'tl. Quality*, 1999 MT 248 (1999).)

Nina letter for SB151 2021.pdf

Uploaded by: Cardin, Nina

Position: FAV

Rabbi Nina Beth Cardin
Baltimore County
District 11

January 17, 2021

SB151 Favorable

Dear Chairman Smith, Chairman Pinsky, Vice-Chair Waldstreicher, Vice-Chair Kagan and Honorable Members of the Committees.

The earth is suffering by our actions, and without urgent responses, we will continue and increasingly suffer at hers.

Despite the best efforts and intentions of the Maryland General Assembly, there is no way that granular legislation – essential as it is – can respond quickly enough, broadly enough and anticipate problems well enough to respond to the diverse assaults on the earth. We need a constitutional amendment that assures us that we all – equally and fully – have a right to a healthful environment, and that no one should be harmed by the degradations we cause.

The Environmental Rights amendment says that everyone has a fundamental and inalienable right to a healthful environment – words taken directly from the Maryland Environmental Policy Act of 1973.

Its benefits

- The amendment itself is not granular. It does not prescribe particulars. That is up to the General Assembly. Rather it ensures that government always consider the protection of the environment and the people it impacts as a “matter of the highest public priority” (in the words of MEPA) in all its deliberations and planning.
- The amendment will prevent the future weakening of hard fought environmental laws and standards and enhance compliance and implementation.
- It will place our right to a healthful environment on par with all our other civil rights.
- It will promote Environmental Justice – asserting that no person has more of a right to a healthy environment than any other person; and that no neighborhood has a greater right to a healthy environment than any other neighborhood.

- It will strengthen standing for those who can claim that environmental harms impact them directly.

In short, it makes clear once and for all that it is the government's uncontested duty and high priority to protect the environmental rights of all people.

No floodgates of litigation

For those who fear that such an amendment will open the floodgates of litigation, students at the University of Maryland Environmental Law Clinic studied four states that have had an environmental rights provision in their constitutions for over 40 years and found no evidence of a rash of lawsuits. Indeed, they found that the environmental rights provision was never the sole cause of action in a suit, meaning that it is highly likely that those suits would have been brought even without such a provision.

This will not stymie development

Nor will this amendment stymie development. We can learn this from the Pennsylvania Supreme Court ruling in *Robinson Twp. v. Commonwealth* (623 PA 564, 83 A3d 901, 954 (2013)) that found in favor of seven municipalities - the plaintiffs - who used the Environmental Rights amendment to seek the ability to ban fracking in their jurisdictions. In that same opinion, the Court explained that while they found for the plaintiffs in this case, the amendment was not reckless in preventing all progress, that it was not intended to "deprive persons of the use of their property or to derail development leading to an increase in the general welfare, convenience and prosperity of the people."

No right is absolute

Nor will this amendment unduly constrain the legislature, for no right is absolute. The Montana Supreme Court (*Montana Env'tl. Info. Ctr v Dept of Env Quality* 1999 MT 248 (1999)) affirmed this in its decision when it used that state's amendment to find in favor of the plaintiff against the state, and yet wrote, as explained by For the Generations: "When a fundamental right articulated in the Declaration of Rights section is at issue, court review requires strict scrutiny, meaning that any demonstrated infringement can only withstand constitutional challenge if [here they quote the Court] 'the State establishes a compelling interest and that its action is closely tailored to effectuate that interest and is the least onerous path that can be taken to achieve the State's objective.'" The court realizes that life requires affecting and sometimes disturbing the environment. The question is, how much,

for how long, at what impact and are there other ways that the same or comparable result can be achieved.

At root, the Environmental Rights amendment will assure that environmental health, and the health of all that depends upon it – our bodies, our society and our economy – will be “a matter of the highest priority” in all that we do.

I urge you to pass SB151 and put this matter before the populace of Maryland to decide.

Sincerely,

Rabbi Nina Beth Cardin

sign on letter submitted to JPR EHEA.pdf

Uploaded by: Cardin, Nina

Position: FAV



Support SB151 Maryland Constitutional Amendment for Environmental Rights

Dear Senators,

On behalf of a coalition of organizations and supporters across Maryland, we are writing to you today to urge you to support passing HB82/SB151 Maryland Constitutional Amendment for Environmental Rights.

In 1973, the Maryland General Assembly passed the Maryland Environmental Policy Act which recognized that “each person has the fundamental and inalienable right to a healthful environment.” State agencies were directed to implement this right but few developed the mandated rules to enforce it. As a result, this right has largely been ignored. Despite some subsequent bright spots in our laws, the lack of enforcement of this right contributes to the decline of our state’s environmental and public health.

In addition, environmental inequities continue. Environmental pollution and degradation are often concentrated in communities of color and low-income neighborhoods across Maryland. Such clustering has led to disproportionate health disparities, including increased rates of asthma hospitalization, heart disease, and cancer. These inequities demand that we protect the right for all to a healthful environment in our state constitution. Requiring the state to protect Maryland’s natural resources and our right to live in a healthful environment resets the priority of the government to put the health of the public first.

Supporting and voting yes for the Amendment will give the right to live in a healthful environment to everyone - especially the children and future generations. The Amendment would ensure that the right to a healthful environment would be enforceable, that all levels of government would be mandated to protect it, and that public and environmental health would

remain a top priority regardless of administrative and political changes in leadership. It will also create a compelling legal impetus to pass additional environmental legislation that will protect our environment, economy, and public health.

We ask that you support and vote for HB82/SB151 - the Maryland Constitutional Amendment for Environmental Human Rights. Our youth and future generations are counting on you!

Signed

Maryland Campaign for Environmental Human Rights
Assateague Coastal Trust
Audobon Maryland-DC
BALTIMORE Blue+Green+Just
Be the Change Bmore
Black by Nature
Blue Water Baltimore
Catonsville Indivisibles
Cedar Lane Unitarian Universalist Church, Environmental Justice Ministry
Center for Progressive Reform
Central Maryland Beekeepers Association
Chesapeake Climate Action Network
Clean Air Prince George's
Clean Water Action
Climate Law & Policy Project
Coalition for Smarter Growth
Creation Care Action & Advocacy, Baltimore-Washington Conference of UMC
Echotopia LLC
Emmanuel United Methodist Church
Frederick Friends Meeting
Glen Echo Heights Mobilization
Greenbelt Climate Action Network
GreenGrace (Maryland Episcopal Environmental Partners)
Green Muslims
Howard County Climate Action
Interfaith Partners for the Chesapeake
Interfaith Power & Light (DC.MD.NoVA)
Jewish Community Council of Greater Washington
Ji'Aire's Workgroup
Kentlands Psychotherapy
Laurel for the Patuxent
Maryland Conservation Council
Maryland Episcopal Public Policy Network
Maryland League of Conservation Voters

Maryland Legislative Coalition
MLC Climate Justice Wing
Maryland Pesticide Education Network
Maryland Presbyterian Church
Maryland Public Health Association
Maryland United for Peace and Justice
Maryland Children's Environmental Health Coalition
Montgomery Countryside Alliance
Mount Olive United Methodist Church, Randallstown
Multiface Alliance of Climate Stewards
National Aquarium
Native by Design, LLC
Our Revolution Howard County
Progressive Maryland
Rachel Carson Council
Safe Grow Montgomery
Safe Skies Maryland
St Vincent de Paul Church, Green Team
Seneca Creek Watershed Partners
ShoreRivers
Sierra Club, Greater Baltimore Group
Sierra Club, Maryland Chapter
Sunrise Movement Baltimore
Sunrise Movement Howard County
Takoma Park Mobilization, Environment Committee
The Climate Mobilization, Montgomery County Chapter
Unitarian Universalist Legislative Ministry of Maryland
Waterkeepers Chesapeake
Wicomico Environmental Trust
WISE

Whitepaper on FAQs for Environmental Human Rights

Uploaded by: Cardin, Nina

Position: FAV

Authors: University of Maryland Francis King Carey School of Law Environmental Law Clinic
Re: Whitepaper on FAQs to Maryland’s Proposed Environmental Human Rights Constitutional Amendment
Date: January, 2021

Background and Purpose

Multiple non-profit and community organizations have worked in recent years to advocate for an amendment to the Maryland Constitution providing a substantive right to a healthful environment. A proposed amendment, in various iterations, has been in front of the Maryland legislature in 2018, 2019, and 2020. It will soon be in front of the legislature again in 2021. The Maryland Campaign for Environmental Rights has partnered with the Environmental Law Clinic at the University of Maryland Francis King Carey School of Law to create this whitepaper answering frequently asked questions regarding this proposed amendment. This whitepaper is for educational and informational purposes only. No part of this whitepaper is intended to provide legal advice.

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Maryland’s Proposed Environmental Human Rights Constitutional Amendment 2021 (EHR)

1. Each person has a fundamental and inalienable right to a healthful environment, including clean air, water and land, a stable climate, and to the preservation, protection, and enhancement of the ecological, scenic, and historic values of the environment.
2. The State has a duty as trustee to protect, preserve and enhance the air, land, water, living and historic resources for the benefit of the people of this State including future generations.

FAQ 1: Is the EHR a new idea and if not, do other states have a right similar to Maryland’s proposed EHR amendment?

Answer:

As of 2020, more than twenty states have varying forms of environmental rights located within their constitutions. The majority of those are policy declarations: “the protection of the state’s beautiful and healthful environment is hereby declared to be of fundamental importance to the public interest, health, safety and the general welfare”¹; “it shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry”²; or “it shall be the policy of the Commonwealth to conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings.”³ Amendments containing policy declarations can

¹ N.M. CONST. art XX, § 21.

² N.C. CONST. art. XIV, § 5.

³ VA. CONST. art. XI, § 1.

also designate funds and order the legislature to enact laws to the requested end. Six states have Environmental Rights Amendments that confer to the people a substantive right, that may look like: “each person has the right to a healthful environment.”⁴

Other states use their amendment to help confer standing⁵, bolster existing environmental legislation⁶, and produce environmental wins⁷. The concept of an EHR evolved from the substantive environmental rights enacted in the 1970s.⁸ Both have similar goals of environmental protection, recognizing the intrinsic benefits of a healthy and clean environment, but the EHR puts more emphasis on environmental effects as they relate to humans. Depending on its intended use, legislative comments and history, and judicial interpretation, an EHR may be a better tool for fighting certain environmental issues.

Environmental justice issues have not been the predominant focus of litigation in Pennsylvania, Illinois, or Hawaii in cases utilizing their Environmental Rights Amendments. However, scholars believe that the language of the amendments could be very effective at tackling environmental justice problems.⁹ An amendment focusing more on environmental problems as they relate to humans could be more effective as a way to garner support from groups other than environmentalists, such as economists and other human-focused factions. Further, since most environmental problems can be framed by how they affect humans, an EHR could be an effective method of solving environmental problems.

FAQ 2: What will the EHR do and how will it benefit the public?

Answer:

The EHR, first and foremost, will clarify the state’s environmental priorities, guide subsequent legislation, and declare the state’s public trust obligations. If the EHR acts like the Environmental Rights Amendments of the 1970s¹⁰, it could help confer legal standing in

⁴ IL. CONST. art. XI, § 2.

⁵ Historically helpful in Illinois, like in *Glisson v. Marion*, 720 N.E.2d 1034 (Il. 1999).

⁶ This occurred in Pennsylvania in *Commonwealth v. Parker White Metal Co.*, 515 A.2d 1358 (Pa. 1986).

⁷ Environmentalists in Hawai’i used the amendment to require the government body deciding new power sources to consider the effects of Green House Gases. *In re Hawai’i Elec. Light Co.*, 445 P.3d 673 (Haw. 2019).

⁸ See PA. CONST. art. I, §27; ILL. CONST. art. XI, §§ 1,2.

⁹ Neil A.F. Popovic, *Pursuing Environmental Justice with International Human Rights and State Constitutions*, 15 STAN. ENVTL. L.J. 338, 360-61 (1996).

¹⁰ The substantive Environmental Rights Amendments that are seen today were promulgated in the 1970s, this includes Illinois, Pennsylvania, Hawaii, and others.

environmental lawsuits.¹¹ Legal standing is a prerequisite to any case; it requires injury, traceability, redressability, and sometimes contains harsher common law requirements for environmental lawsuits. An example of an Environmental Rights Amendment helping citizens with standing occurred in Illinois. In Illinois, the Supreme Court of Illinois held that their Environmental Rights Amendment

declares that individuals have 'standing' to assert violations of this right. . . [i]t was the intent of the committee to broaden the law of standing by eliminating the traditional special injury prerequisite for standing to bring an environmental action. As such, section 2 gives standing to an individual for a grievance common to members of the public. The committee comments also indicate that section 2 is limited to granting standing and does not create any new causes of action.¹²

One of the largest objections to the Environmental Amendment proposed in Maryland in 2018 was “the substantial and unnecessary expansion of the standing standard in Maryland . . . and this bill would widen the scope drastically of those who would be able to bring suit against local governments . . . and all levels of government as lawsuits increase as well as the costs associated with them.”¹³ This same argument was brought up in 2020 in committee hearing.¹⁴ Based on what occurred in other states after passage of their Environmental Rights Amendments, Maryland has no reason to expect significantly expanded litigation. One way to ensure this is to say in the committee hearing that the EHR does not create an independent cause of action, as Illinois did. Thus, supplemental legislation, which Maryland has and will continue to build, would be required in order to bring an environmental lawsuit. Hawai’i did not stipulate such limitations to their amendment and their courts inferred their amendment created a private cause of action to enforce certain legislation.¹⁵ Enen then, the Hawai’ian legislature saw so little

¹¹ See *Kahana Sunset Owner's Association v. Maui County Council*, 948 P.2d 122, 124 (Haw. 1997) (“The legislature finds that article XI, section 9, of the Constitution of the State of [Hawai’i] has given the public standing to use the courts to enforce laws intended to protect the environment.”).

¹² *Glisson v. Marion*, 720 N.E.2d 1034 (Il. 1999).

¹³ *Constitutional Amendment - Right to a Healthy Environment and Communities: Hearing on SB0872 Before the S. Comm. on Education, Health, and Environmental Affairs*, 2018 Leg., 438th Sess. (Md. 2018) <http://mgahouse.maryland.gov/mga/play/730997f9-bcad-4e8a-9b84-b51f172b7ea6/?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c&playfrom=10331000> (at 3:12:47).

¹⁴ *Constitutional Amendment - Environmental Rights: Hearing on HB0517 Before the H. Comm. on Environment and Transportation*, 2020 Leg., 441st Sess. (Md. 2020) http://mgaleg.maryland.gov/mgawebsite/Committees/Media/false?cmte=ent&ys=2020RS&clip=ENV_2_19_2020_meeting_1&url=http%3A%2F%2Fmgahouse.maryland.gov%2Fmga%2Fplay%2F19a12ac2-5dec-4667-a8e0-3d5cbb99bba3%2F%3Fcatalog%2F03e481c7-8a42-4438-a7da-93ff74bdaa4c%26playfrom%3D689700 (at 00:30:15).

¹⁵ *County of Hawai’i v. Ala Loop Homeowners*, 235 P.3d 1103, 1127 (Haw. 2010) (For the reasons set forth below, article XI, section 9 creates a private right of action to enforce chapter 205 in the circumstances of this case, and the legislature confirmed the existence of that right of action by enacting HRS § 607-25, which allows recovery of attorneys' fees in such actions).

increase in litigation that they chose to promulgate an act that facilitated more lawsuits by obtaining attorneys' fees against private parties in certain circumstances.¹⁶

It is unclear exactly how the EHR would interact with the Maryland Environmental Standing Act and the common law of Maryland. However, if the EHR does help facilitate standing, an influx of litigation is not expected, as evidenced by Hawai'i and Illinois.

FAQ 3: How would the EHR be used to ensure environmental justice?

Answer:

Since the EHR clarifies that clean air, land, and water is an inherent right of all citizens, actions with disproportionate environmental impacts should come under stricter scrutiny.¹⁷ For example, Pennsylvania's Environmental Rights Amendment's trusteeship provision, which is similar to Maryland's proposed EHR's trusteeship provision, states "as trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people." In theory, these types of negative rights give all people protection from environmental harms and allow them to assert that right against the government. The language of the Pennsylvania provision "implies that a government failure to protect environmental rights for some people to the same extent it protects those rights for other people would violate the Pennsylvania constitution."¹⁸ The language of the EHR should provide similar protections. Further, the EHR would create legally enforceable obligations for the state, as trustee, and would entitle citizens to hold the state accountable if it fails to act in accordance with those obligations. Citizens will have an easier

¹⁶ *Kahana Sunset Owner's Association v. Maui County Council*, 948 P.2d 122, 124 (Haw. 1997) ("The legislature finds that article XI, section 9, of the Constitution of the State of [Hawai'i] has given the public standing to use the courts to enforce laws intended to protect the environment. However, the legislature finds that the public has rarely used this right and that there have been increasing numbers of after-the-fact permits for illegal private development. Although the legislature notes that some government agencies are having difficulty with the full and timely enforcement of permit requirements against private parties, after-the-fact permits are not a desirable form of permit streamlining. For these reasons, the legislature concludes that to improve the implementation of laws to protect health, environmental quality, and natural resources, the impediment of high legal costs must be reduced for public interest groups by allowing the award of attorneys' fees, in cases involving illegal development by private parties."); *County of Hawai'i v. Ala Loop Homeowners*, 235 P.3d 1103, 1127 (Haw. 2010) (citations omitted) (expressed concern that the broad, liberalized standing-to-sue provision in the subject amendment will encourage a flood of lawsuits. The report noted that the experience to date in Hawai'i with the provision, as well as that in other states (such as Illinois) with similar provisions, did not justify those concerns).

¹⁷ Barry E. Hill, *Time for a New Age of Enlightenment for U.S. Environmental Law and Policy: Where do we go from Here?*, 49 ENVTL. L. REP. NEWS & ANALYSIS 10362, 10383 (2019) ("An environmental rights amendment is essentially an additional tool in the proverbial toolbox that can be utilized to ensure environmental justice for all by not only affected individuals and communities, but also by federal, state, and local environmental regulatory agencies in their decisionmaking processes").

¹⁸ Neil A.F. Popovic, *Pursuing Environmental Justice with International Human Rights and State Constitutions*, 15 STAN. ENVTL. L.J. 338, 360-61 (1996).

time holding the state accountable for disproportionate impacts that cause some people to have worse air, land, and water than the rest of the citizens.

The EHR would work best to promote environmental justice if it was coupled with supporting legislation. While the EHR establishes state trust obligations and a fundamental right to a healthful environment for the general public, an environmental justice bill would be focused on the most disadvantaged communities, and, therefore, most effective at tackling environmental injustice. For instance, an environmental justice bill could specifically target cumulative impacts or otherwise lawfully permitted emissions that, in the aggregate, build up and tend to disproportionately impact low income and minority communities.¹⁹ The proposed constitutional amendment is broad in scope and secures a general right; it is unlikely that it alone would cover specific issues such as cumulative impacts, which are environmental impacts produced incrementally by a collective of individual parties acting in compliance with permit obligations and the law. Therefore, while the constitutional amendment secures a right to a healthful environment for all persons, supporting legislation will likely be required to achieve specific environmental justice goals. To this end, an EHR would form a basis for complimentary environmental legislation, as it did in Pennsylvania.²⁰

FAQ 4: Would the EHR address the issue of climate change or cumulative impact?

Answer:

It depends upon how the Courts interpret the EHR. The first method of analysis a court uses with contested language is to look to the plain meaning. The EHR specifically includes a “stable climate” in the language of the EHR, which indicates that climate change is included under the protections of the EHR. Additionally, in the context of the EHR’s expansion of Maryland’s public trust obligations, the right to a stable climate emboldens the State to take further action on climate change adaptation and mitigation.²¹ This was seen very recently when Rhode Island utilized their Environmental Rights Amendment to take on twenty-one oil and gas companies and hold them liable for “causing climate change impacts that adversely affected the

¹⁹ Isaac Kort-Meade, *State Sponsored Environmental Justice: New Jersey’s Cumulative Impacts Act*, ARIZONA STATE UNIVERSITY LAW JOURNAL FOR SOCIAL JUSTICE, <https://lawjournalforsocialjustice.com/2020/10/18/state-sponsored-environmental-justice-new-jerseys-cumulative-impacts-act/> (last visited Jan. 8, 2021).

²⁰ *Commonwealth v. Parker White Metal Co.*, 515 A.2d 1358 (Pa. 1986).

²¹ See Robin Kundis Craig, *Adapting to Climate Change: The Potential Role of State Common-Law Public Trust Doctrines*, 34 VT. L. REV. 781 850–52 (2010).

state's natural resources, as well as the rights of its inhabitants' access to and use of those natural resources in violation of the state's Environmental Rights Amendment.”²²

Further, extending the right to a healthful environment “for future generations” recognizes the detrimental long-term, cumulative effects of numerous pollution sources.²³ By ensuring the state must consider future generations, the EHR would further emphasize the necessity of assessing the cumulative impacts of State actions over time.²⁴ Addressing cumulative impacts is imperative because MEPA only requires consideration of cumulative impacts for a narrow set of circumstances.²⁵ Most state actions (and all local actions) affecting the environment do not require a MEPA environmental analysis. Thus MEPA does not sufficiently address cumulative impact analysis.²⁶ Additionally, many current federal and state administered permitting schemes fail to fully consider pollution from a combination of different sources (non-point source pollution).²⁷ Even when a permitting scheme establishes a certain threshold of pollution for individual sources, it can fail to adequately account for multiple polluting sources in a small geographic area that all fall below the pollution threshold but nonetheless aggregate to create a high concentration of pollution. The EHR could force the state to consider the aggregate environmental effects of issuing certain permits in a way that no existing regulations or laws require. The EHR would promote and help facilitate the promulgation of cumulative impact and other environmental bills. The EHR is also meant to act as a backstop for when existing legislation fails to fully address adverse environmental effects. Therefore, if cumulative impacts are detrimentally affecting a community, and existing environmental legislation does not adequately solve the problem, the EHR can bolster existing legislative frameworks and provide a basis for future environmental legislation.

²² Barry E. Hill, *Environmental Rights, Public Trust, and Public Nuisance: Addressing Climate Injustices Through State Climate Liability Litigation*, 50 ELR 11022, fn 4 (2020).

²³ *Gardner v. N.J. Pinelands Comm'n*, 593 A.2d 251, 258 (N.J. 1991).

²⁴ See Michelle Bryan Mudd, *A Constant and Difficult Task: Making Local Land Use Decisions in States With a Constitutional Right to a Healthful Environment*, 38 ECOLOGY L.Q. 1, 42–43 (2011).

²⁵ 11 COMAR ch. 8, § 3 (A-B). MEPA applies only to “Proposed State Actions”, that significantly affect the environment. “Proposed State action” is defined in the Natural Resources Article, §1-301(c) as “requests for legislative appropriations or other legislative actions that will alter the quality of the air, land or water resources. It does not include a request for an appropriation or other action with respect to the rehabilitation or maintenance of existing secondary roads.” The Act requires environmental effects reports only in connection with requests for legislative appropriations or legislative actions that “significantly affecting the environment, natural as well as socioeconomic and historic.”

²⁶ See *Pitman v. Washington Suburban Sanitary Commission*, 368 A.2d 473 (Md. 1977); *Mayor & City Council of Baltimore v. State*, 281 Md. 217 (Md. 1977); *Leatherbury v. Peters*, 332 A.2d 41 (Md. 1975).

²⁷ See e.g. Steven P. Lipowski, *In Search of Further Regulation of Cattle Under the Clean Water Act: Cattle as Point Sources After Oregon Natural Desert Association*, 6 WIS. ENVTL. L.J. 167, 172 (1999) (The court stated that the CWA clearly does not pertain to non-point sources, and thus cattle grazing activities here are outside the purview of the CWA).

States with Environmental Rights Amendments have extended their citizens the most environmental protections by supplementing their general constitutional environmental rights with more targeted pieces of legislation. New Jersey recently passed a cumulative impacts bill that targets the cumulative effects of all permitted facilities on burdened communities (defined as those communities in the bottom 33% for state median annual household income).²⁸ New Jersey's Cumulative Impacts Statute is specifically geared towards preventing additional polluting facilities from moving into already burdened communities. It even touches those facilities that plan to comply with permit obligations because each polluting facility, though they may be complying with laws and permits, may contribute enough pollution, in the aggregate, to overburden the surrounding community. The level of sophistication, detail, and specificity required for an environmental justice bill like the one passed in New Jersey would be difficult to replicate without an EHR to rely on, like the one proposed in Maryland. It is imperative that supplemental legislation be passed to work with the EHR and fully address the effects of cumulative impacts.

FAQ 5: How do State and local governments benefit from the EHR?²⁹

Answer:

Environmental Rights Amendments often provide tangential support weighing in favor of protecting the environment and illustrating that the people have elevated environmental protection to a constitutional level. In other states with Environmental Rights Amendments, this proposition helped state and local governments prosecute air³⁰, waste³¹, and water³² pollution and

²⁸ See S.B. 232 (N.J. 2020).

²⁹ In 2020, committee members asked how this will affect local governments. *Constitutional Amendment - Right to a Healthy Environment and Communities: Hearing on HB0517 Before the H. Comm. on Environment and Transportation*, 2020 Leg., 441st Sess. (Md. 2020)

http://mgaleg.maryland.gov/mgaweb/Committees/Media/false?cmte=ent&ys=2020RS&clip=ENV_2_19_2020_meeting_1&url=http%3A%2F%2Fmgahouse.maryland.gov%2Fmga%2Fplay%2F19a12ac2-5dec-4667-a8e0-3d5cbb99bba3%2F%3Fcatalog%2F03e481c7-8a42-4438-a7da-93ff74bdaa4c%26playfrom%3D689700

³⁰ *Commonwealth Dep't of Environmental Resources v. Locust Point Quarries*, 396 A.2d 1205 (Pa. 1979) (Defendant charged for violating the Air Pollution Control Act, however, while witnesses testified to fugitive emissions, the trial court held that DER had failed to prove that the emissions caused or contributed to a condition of air pollution, but the Supreme Court of Pennsylvania held that fugitive emissions are prohibited because the board concluded they cause air pollution and the act forbids them).

³¹ *Nat'l Wood Preservers v. Commonwealth Dep't of Envtl. Res.*, 414 A.2d 37 (Pa. 1980) (Pollution on property not caused by owner, DER ordered owner to clean up and the Court affirmed DER's order and that the police power of the state was authorized).

³² *Meadowlark Farms Inc. v. Illinois Pollution Control Board*, 308 N.E.2d 829 (Ill. App. Ct. 1974) (Pollution Control Board found Plaintiff guilty of violating environmental regulations under the EPA, specifically water pollution and contested PCB's power and constitutionality and Court affirmed the Board's decision and power).

win permitting cases³³. For example, early in Pennsylvania’s Environmental Rights Amendment’s existence, the state tried to condition a mining permit on a mine company treating the discharge of acid mine drainage from not only the owner’s mine but also from an adjacent mine not owned by the permittee.³⁴ The Court, utilizing the recently enacted amendment, recognized that the people had raised the environment to a constitutional level, and the Supreme Court of Pennsylvania approved the permit prerequisites.³⁵

These types of amendments have additional benefits for local governments. The EHR would encourage and facilitate better long term environmental and land use planning and could further embolden local government to incorporate sustainable development principles into city planning.³⁶ The EHR could also help local governments protect their citizens from disproportionate impacts and address environmental justice problems.³⁷

FAQ 6: What does the EHR mean when it says everyone has a right to a healthful environment, including clean air, water and land, a stable climate?

Answer:

The EHR’s plain text defines a “healthful environment” as clean air, water, land, and a stable climate. In the context of Illinois’ green amendment, courts have interpreted “healthful” to refer to the relationship between the environment and human health.³⁸ This reading is bolstered by the second paragraph of the EHR, which obligates the State to ensure this right “for the benefit of the people.” Thus, the EHR establishes clean air, water and land, and a stable climate

³³ *Commonwealth v. Harmar Coal Co.*, 306 A.2d 308 (Pa. 1973) (Coal mine owner requested a discharge permit from the Sanitary Water Board and the Board conditioned the permit on the mine company treating the discharge of acid mine drainage from an adjacent mine (due to worry that it could collapse into the mine in question and kill minors) and treat all the discharge from its own mine, which the court affirmed); *Tri-County Landfill Co. v. Illinois Pollution Control Board*, 353 N.E.2d 316 (Il. App. Ct. 1976) (Landfill found to be polluting into a water source within their property. Landfill contested the water body falling within “Waters of the State” since it was not public property nor factually navigable. Defendants also contended that the Board and IEPA were estopped from asserting and pursuing violations of the Act since the landfill was previously approved, however, the Court specifically prohibited estoppel because that would interfere with the people’s constitutional right to a healthful environment).

³⁴ *Commonwealth v. Harmar Coal Co.*, 306 A.2d 308 (Pa. 1973).

³⁵ *Id.*

³⁶ Michelle Bryan Mudd, *A “Constant and Difficult Task”: Making Local Land Use Decisions in States with a Constitutional Right to a Healthful Environment*, 38 ECGLQ 1, 38-40 (2011).

³⁷ Barry E. Hill, *Time for a New Age of Enlightenment for U.S. Environmental Law and Policy: Where do we go from Here?*, 49 ENVTL. L. REP. NEWS & ANALYSIS 10362, 10383 (2019) (“An environmental rights amendment is essentially an additional tool in the proverbial toolbox that can be utilized to ensure environmental justice for all by not only affected individuals and communities, but also by federal, state, and local environmental regulatory agencies in their decisionmaking processes”).

³⁸ See *Glisson v. Marion*, 720 N.E.2d 1034 (Il. 1999).

as the baseline standard of environmental quality in order to facilitate a minimum decency in standard of living to all current and future Marylanders.

Beyond its plain meaning, there is no specific definition for “clean”. The term “clean” will not set a numerical value on amounts any person or company can pollute. Legislators asked the same questions in 2018 and 2019, voicing worry that it would leave deciding the definitions up to the courts.³⁹ Yet, “it is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule.”⁴⁰ Constitutions usually do not proscribe definitions and strict language, rather constitutional text is often left intentionally broad. For example, what is cruel and unusual punishment? Due process of the law? In Maryland, Article 6 of the Declaration of Rights dictates the imperative right to establish a new government, but only “when the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual.”⁴¹ What are the “ends” of government? When are they “perverted”? When is the public liberty “manifestly endangered”? Constitutional provisions are purposefully broad, so that the provision can stand the test of time and change, as necessary, with the times.⁴² “Clean” may very well need to be more strictly construed in the future as the effects of climate change worsen.

³⁹ *Constitutional Amendment - Right to a Healthy Environment and Communities: Hearing on SB0872 Before the S. Comm. on Education, Health, and Environmental Affairs*, 2018 Leg., 438th Sess. (Md. 2018) <http://mgahouse.maryland.gov/mga/play/730997f9-bcad-4e8a-9b84-b51f172b7ea6/?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c&playfrom=10331000> (at 3:10:38); *Constitutional Amendment - Environmental Rights: Hearing on HB0472 Before the H. Comm. on Environment and Transportation*, 2019 Leg., 440th Sess. (Md. 2019) http://mgaleg.maryland.gov/mgawebsite/Committees/Media/false?cmte=ent&ys=2019RS&clip=ENV_2_20_2019_meeting_1&url=http%3A%2F%2Fmgahouse.maryland.gov%2Fmga%2Fplay%2Fd4bc37a6-49fb-420e-97b2-d1ab16360543%2F%3Fcatalog%2F03e481c7-8a42-4438-a7da-93ff74bdaa4c%26playfrom%3D10676000 (at 03:26:30).

⁴⁰ *Marbury v. Madison*, 5 U.S. (1 Cr.) 137, 177 (1803).

⁴¹ Md. Dec. of Rights art. 6.

⁴² See generally Jack M. Balkin, Symposium: *Jack Balkin's Constitutional Text and Principle: Nine Perspectives on Living Originalism*, 2012 U. ILL. L. REV. 815 (2012).

FAQ 7: Don't Marylanders have those rights anyway?⁴³

Answer:

Past committee members have questioned the need for a green amendment when courts already have the ability to provide injunctive relief to protect human health.⁴⁴ They further asserted that Maryland has already taken many environmental steps including promoting offshore wind, banning fracking and offshore oil drilling, all without a constitutional amendment. They also asserted that the EHR "is completely unnecessary," especially compared to Pennsylvania who has an amendment, yet has done none of the above.⁴⁵ Maryland does not confer to the people the right to a clean and healthful environment. Contrary to popular belief, environmental regulation typically does not demand a clean environment. Rather, pollution control regulations and permitting schemes are "permissions to pollute" and allows environmental pollution up to a certain point.⁴⁶ Although current environmental laws are intended to prevent the degradation or facilitate the restoration of natural resources, they do not set a basic minimum standard for achieving and maintaining a healthful environment. Nothing besides a constitutional amendment can actually guarantee a right to a healthful environment in such a powerful and longlasting way.

⁴³ In 2019, legislators asked if MDE already had the right/authority to protect the environment and asked again in 2020. *Constitutional Amendment - Environmental Rights: Hearing on HB0472 Before the H. Comm. on Environment and Transportation*, 2019 Leg., 440th Sess. (Md. 2019)

http://mgaleg.maryland.gov/mgawebsite/Committees/Media/false?cmte=ent&ys=2019RS&clip=ENV_2_20_2019_meeting_1&url=http%3A%2F%2Fmgahouse.maryland.gov%2Fmga%2Fplay%2Fd4bc37a6-49fb-420e-97b2-d1ab16360543%2F%3Fcatalog%2F03e481c7-8a42-4438-a7da-93ff74bdaa4c%26playfrom%3D10676000 (at 03:35:30); *Constitutional Amendment - Right to a Healthy Environment and Communities: Hearing on HB0517 Before the H. Comm. on Environment and Transportation*, 2020 Leg., 441st Sess. (Md. 2020)

http://mgaleg.maryland.gov/mgawebsite/Committees/Media/false?cmte=ent&ys=2020RS&clip=ENV_2_19_2020_meeting_1&url=http%3A%2F%2Fmgahouse.maryland.gov%2Fmga%2Fplay%2F19a12ac2-5dec-4667-a8e0-3d5cbb99bba3%2F%3Fcatalog%2F03e481c7-8a42-4438-a7da-93ff74bdaa4c%26playfrom%3D689700 (at 00:39:20).

⁴⁴ Injunctive Relief "is a remedy which restrains a party from doing certain acts or requires a party to act in a certain way." LEGAL INFORMATION INSTITUTE, *Injunctive Relief*, https://www.law.cornell.edu/wex/injunctive_relief (last visited Jan. 8, 2021).

⁴⁵ *Constitutional Amendment - Right to a Healthy Environment and Communities: Hearing on HB0517 Before the H. Comm. on Environment and Transportation*, 2020 Leg., 441st Sess. (Md. 2020)

http://mgaleg.maryland.gov/mgawebsite/Committees/Media/false?cmte=ent&ys=2020RS&clip=ENV_2_19_2020_meeting_1&url=http%3A%2F%2Fmgahouse.maryland.gov%2Fmga%2Fplay%2F19a12ac2-5dec-4667-a8e0-3d5cbb99bba3%2F%3Fcatalog%2F03e481c7-8a42-4438-a7da-93ff74bdaa4c%26playfrom%3D689700 (at 00:39:20).

⁴⁶ See Andrew P. Morriss & Roger E. Meiners, *Borders and the Environment*, 39 ENVTL. L. 141, 152 (2009) ("In some cases, the polluters may have obtained state permission to pollute, thereby blocking nuisance actions"); E. Donald Elliot, *EPA's Existing Authority to Impose a Carbon "Tax"*, 49 ELR 10919, 10922 (2019) (like governmental permission to broadcast over the public's air, governmental permission to pollute the public's air is a privilege granted by government).

FAQ 8: What is the public Trust Doctrine and how will it interact with the EHR?

Answer:

The Public Trust Doctrine is a legal doctrine providing that the state holds certain lands and resources in a trust for the benefit of the public. Essentially, this doctrine places certain limitations on private uses of public trust lands and prohibits the state from engaging in actions contrary to public interest in those lands. In Maryland, this doctrine applies to fish, navigable waterways, and the submerged land beneath navigable waterways.⁴⁷ This doctrine is more robust, however, in other states.

The common law Public Trust Doctrine and Maryland's EHR could reinforce each other in a variety of ways. First, it expands the doctrine to cover almost all natural resources. Second, by expanding the doctrine, it also clarifies the scope of Maryland's Trusteeship requirements beyond that of substantive caselaw. The next two paragraphs review how Environment Rights Amendments can interact with the Public Trust Doctrine.

The Public Trust Doctrine and a Constitutional Environmental Right interacted in *People ex. rel. Scott v. Chicago Park District* where, in 1963, the legislature conveyed 194 acres of land submerged under Lake Michigan. The Supreme Court of Illinois chose to rely predominantly on the Public Trust Doctrine and used the EHR supplementarily to show that the public has an interest in "conserving natural resources and in protecting and improving our physical environment" because "[t]he public has become increasingly concerned with dangers to health and life from environmental sources and more sensitive to the value and, frequently, the irreplaceability of natural resources."⁴⁸

In contrast to Illinois's Environmental Rights Amendment, Maryland's EHR will contain a trusteeship provision, which will likely be treated differently by the courts than the Illinois amendment. Pennsylvania's Environmental Right Amendment contains a trusteeship provision so the Pennsylvania court's treatment might provide some guidance on what to expect. The Pennsylvania Environmental Rights Amendment declares: "As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people." In the recent 2016 case *Pennsylvania Environmental Defense Foundation v. Commonwealth*, the Supreme Court of Pennsylvania analyzed the trusteeship provision and held it to mean:

⁴⁷ *Dept. of Natural Resources v. Mayor and Council of Ocean City*, 274 Md. 1, 5, 332 A.2d 630, 633 (Md. 1975). See Douglas F. Gansler, *Protecting Maryland's Environment: A Holistic Solution*, 40 U. BALT. L. F. 205, 226 (2010).

⁴⁸ *People ex. rel. Scott v. Chicago Park District*, 360 N.E.2d 773 (Il. 1976).

As trustee, the Commonwealth is a fiduciary obligated to comply with the terms of the trust and with standards governing a fiduciary's conduct. The explicit terms of the trust require the government to 'conserve and maintain' the corpus of the trust. See Pa. Const. art. I, § 27. The plain meaning of the terms conserve and maintain implicates a duty to prevent and remedy the degradation, diminution, or depletion of our public natural resources. As a fiduciary, the Commonwealth has a duty to act toward the corpus of the trust—the public natural resources—with prudence, loyalty, and impartiality.⁴⁹

In Pennsylvania and likely in Maryland, not only is the trusteeship provision self-executing,⁵⁰ but also the trustee responsibilities applied to all three branches of government.⁵¹

FAQ 9: Why does Maryland need a constitutional amendment, especially if the language is already in MEPA?

Answer:

Existing Maryland law recognizes a strong, substantive right to certain aspects of a healthful environment.⁵² An EHR, however, would provide a catchall for when there is a lapse or gap in coverage. For example, there is currently no existing Maryland state law that addresses environmental justice and cumulative impacts.⁵³ Further, an EHR would bolster existing Maryland laws that do not work well to protect the environment, like the Maryland

⁴⁹ *Pa. Env'tl. Def. Found. v. Commonwealth*, 161 A.3d 911 (Pa. 2017) (the trusteeship provision of Pennsylvania's environmental rights amendment requires consideration of 3 factors "the Commonwealth, as trustee under Section 27's public trust, should (1) exercise the duty of loyalty by administering the trust solely for the benefit of all the people, including future generations, (2) abide by the duty of impartiality by balancing the interests of all the beneficiaries, including balancing the interests of current versus future generations, and (3) act with prudence by managing the resources with ordinary skill and caution.").

⁵⁰ *Pa. Env'tl. Def. Found. v. Commonwealth*, 161 A.3d 911 (Pa. 2017).

⁵¹ *Commonwealth v. Parker White Metal Co.*, 515 A.2d 1358 (Pa. 1986).

⁵² Maryland's Statutory Code on Environmental and Natural Recourse Laws encompasses much legislation including water pollution, hazardous substances, sanitary facilities, gas and oil drilling, mining, renewable energy requirements, and much more. MD. CODE ANN., Env't & Nat. Res.

⁵³ See e.g. Elizabeth Shwe, *MD. LCV Scorecard Faults Lawmakers on Failure of Bills Addressing Climate Change, Transportation*, MARYLAND MATTERS (Oct. 15, 2020), <https://www.marylandmatters.org/2020/08/24/md-needs-an-environmental-justice-plan-advocates-say/> ("state legislators need to focus on environmental justice issues in the upcoming session, particularly on cumulative impact legislation that would require all environmental permits issued by the state to include an assessment of the potential impacts on surrounding communities. . . Maryland's Commission on Environmental Justice and Sustainable Communities, which has recently received criticism for its ineffectiveness, needs to be 'reimagined' have a stronger mandate and include real voices from impacted communities").

Environmental Policy Act (MEPA). MEPA contains language similar to the EHR.⁵⁴ Indeed, the Maryland Court of Appeals has endorsed that MEPA confers a “fundamental inalienable right” to a healthful environment and establishes the State as stewards of the environment.⁵⁵ However, Maryland courts have also found that MEPA does not establish any substantive or legally actionable obligations upon the state.⁵⁶ Further, since Maryland courts have interpreted MEPA’s applicability to only a specific set of circumstances,⁵⁷ MEPA’s judicially recognized⁵⁸ substantive requirements do not apply to most State legislative and executive actions. Given MEPA’s limited applicability, any rights or governmental obligations the statute recognizes are of limited import.⁵⁹ Simply put, MEPA’s declarations of policy itself do not impose any substantive or legally actionable obligations on the state.⁶⁰ By giving substantive legal weight to the “fundamental inalienable right” articulated in MEPA and enveloping that right in the Maryland Constitution, the EHR would clarify and expand the scope of the State’s environmental policy obligations.⁶¹

The EHR would also provide necessary guideposts for the adoption and implementation of future environmental law and policy. For example, the EHR could bolster arguments to promulgate more and stronger environmental protections, as it has done in states like Pennsylvania.⁶² In Pennsylvania, the Solid Waste Management Act was promulgated to help

⁵⁴ While MEPA provides that “each person has a fundamental and inalienable right to a healthful environment,” this right is undercut by its charging of “each person” rather than just the State government with the “responsibility to contribute to the protection, preservation, and enhancement of the environment.” MD. CODE ANN. Nat. Res. § 1–302(d).

⁵⁵ See *Bausch & Lomb, Inc. v. Utica Mutual Insurance Co.*, 625 A.2d 1021 (Md. 1993).

⁵⁶ See Russell B. Stevenson Jr., *The Maryland Environmental Policy Act: Resurrecting a Tool for Environmental Protection*, 45 ELR 10074, 10078–80 (2015).

⁵⁷ See *Pitman v. Washington Suburban Sanitary Commission*, 368 A.2d 473 (Md. 1977); *Mayor & City Council of Baltimore v. State*, 281 Md. 217 (Md. 1977); *Leatherbury v. Peters*, 332 A.2d 41 (Md. 1975).

⁵⁸ See *Bausch & Lomb, Inc. v. Utica Mutual Insurance Co.*, 625 A.2d 1021 (Md. 1993).

⁵⁹ See Russell B. Stevenson Jr., *The Maryland Environmental Policy Act: Resurrecting a Tool for Environmental Protection*, 45 ENVTL. L. REP. 10074, 10076 (2015) (noting how MEPA’s narrow applicability deprives it of “beneficial action-forcing effects”).

⁶⁰ See Russell B. Stevenson Jr., *The Maryland Environmental Policy Act: Resurrecting a Tool for Environmental Protection*, 45 ENVTL. L. REP. 10074, 10078–80 (2015).

⁶¹ Amending MEPA could fix many of MEPA’s insufficiencies, and the EHR could help facilitate MEPA through the legislature. See Russell B. Stevenson Jr., *The Maryland Environmental Policy Act: Resurrecting a Tool for Environmental Protection*, 45 ELR 10074, 10078–80 (2015). However, amending MEPA alone will not solve Maryland’s environmental problems and will not provide the people of Maryland a right to challenge government actions like the EHR will.

⁶² *Commonwealth v. Parker White Metal Co.*, 515 A.2d 1358 (Pa. 1986) (“In declaring sections 606(a) and 606(b) of the Solid Waste Management Act unconstitutional, the lower court has given little, if any, consideration to the strong and fundamental presumption of constitutionality that must attend judicial review of a legislative enactment. That presumption is further strengthened in this case by the explicit purpose of the Act to implement Article I, section 27 of the Pennsylvania Constitution, a remarkable document expressing our citizens’ entitlement and ‘right to clean air, pure water, and -- to the preservation of the natural, scenic, historic and esthetic values of the environment’”).

implement and further strengthen the purpose of Pennsylvania’s ERA.⁶³ Compared to laws and regulations, amendments are broader in scope and applicability and apply generally to all State actions. Considering the scope of environmental actions authorized by the legislature and undertaken by the executive branch, a constitutional amendment would provide the State greater flexibility in implementing law and policy, given the constant applicability of the EHR. While over time, narrowly crafted legislation could accomplish similar results, a constitutional amendment provides legislative and regulatory accountability without rewriting statutory law or the regulatory code.

Lastly, amendments are more capable of standing the test of time. Unlike a statute, which can be amended with a standard majority of the legislature, a constitutional amendment requires a supermajority in order to be amended. An amendment allows this generation of legislators to more permanently secure distinctly important rights for current and future Marylanders that can protect us for a longer period of time than a statute.

FAQ 10: Will the EHR open a “slippery slope of rights”? How is an environmental right different than the right to access to healthcare, or housing, or education?

Answer:

The EHR will not lead to a “slippery slope of rights.” Unlike rights concerning access to healthcare, housing, or education, this right would not establish or expand specific entitlements for individual citizens. This is because the right to healthcare, housing, or education is a positive right, a right that requires the government to provide something.⁶⁴ Comparatively, an environmental right is similar to the negative rights already existing in the Maryland Bill of Rights like the right to a speedy and fair trial⁶⁵ or the prohibition on poll taxes⁶⁶. Negative rights do not expand entitlements or require the government to provide anything, but rather puts limitations on government actions, and prohibit the government from doing certain things.⁶⁷ The proposed EHR is a negative right because it imposes substantive limitations on and basic minimum standards for State actions that equally affect the interests of all Marylanders.⁶⁸ The

⁶³ *Id.*

⁶⁴ Linda R. Monk, *Rights*, PBS, https://www.pbs.org/tpt/constitution-usa-peter-sagal/rights/#.X_nBCS2z3OQ (last visited Jan. 9, 2021).

⁶⁵ MD. DEC. OF RIGHTS art. 19.

⁶⁶ MD. DEC. OF RIGHTS art. 15.

⁶⁷ Linda R. Monk, *Rights*, PBS, https://www.pbs.org/tpt/constitution-usa-peter-sagal/rights/#.X_nBCS2z3OQ (last visited Jan. 9, 2021) (They say what government cannot do, not what it must do).

⁶⁸ *Id.* See Mary Ellen Cusack, *Judicial Interpretation of State Constitutional Rights to a Healthful Environment*, 20 B.C. ENVTL. AFFAIRS L. REV. 173, 200 (noting how courts “appear to agree universally that [environmental rights] provisions do place an obligation on state governments to consider the environmental effects of their decisions”) (1993).

EHR is framed to provide general policy guidance to the legislative, executive, and judicial branches. This approach simply recognizes the broad consensus on the importance of maintaining healthful environment rather than constitutionalizing specific policy outcomes, such as expanding healthcare or housing access.⁶⁹

FAQ 11: Who would decide between competing values (for example producing clean energy with wind or solar arrays that some believe would destroy the viewshed)?⁷⁰

Answer:

Courts make decisions between competing values all the time, that is the role of the judiciary.⁷¹ The EHR, however, does not seek to decide between competing environmental values; rather, it seeks to ensure, at a minimum, a basic standard of environmental health. By securing a fundamental right to a clean environment for the general public, the EHR does not seek to establish winners and losers, or even be the deciding factor in circumstances of competing values. The EHR seeks to place minimum obligations on state action, and establish the basic standard of environmental health to which the public is entitled.

⁶⁹ See Barton H. Thompson Jr., *Environmental Policy and State Constitutions: The Potential Role of Substantive Guidance*, 27 RUTGERS L.J. 863 (1996) (concluding that, by placing greater emphasis on general substantive values rather than detailed [policy] prescriptions, states would avoid constitutional provisions that would undermine public policy).

⁷⁰ A similar type of question was asked at the committee hearing for the Environmental Amendment in 2019 and 2020. In addition to the competing values argument, the questioner coupled the question with wouldn't people want the competing values to be decided by the legislature instead of the courts. *Constitutional Amendment - Environmental Rights: Hearing on HB0472 Before the H. Comm. on Environment and Transportation*, 2019 Leg., 440th Sess. (Md. 2019)

http://mgaleg.maryland.gov/mgaweb/Committees/Media/false?cmte=ent&ys=2019RS&clip=ENV_2_20_2019_meeting_1&url=http%3A%2F%2Fmgahouse.maryland.gov%2Fmga%2Fplay%2Fd4bc37a6-49fb-420e-97b2-d1ab16360543%2F%3Fcatalog%2F03e481c7-8a42-4438-a7da-93ff74bdaa4c%26playfrom%3D10676000 (at 03:20:00) (Delegate Barve followed this up by saying the courts should not decide these difficult questions because judges are not held accountable since they are not elected to office. However, judges can be held accountable, they can be removed and their decisions can be appealed. They also have enough information with the number of witnesses and amicus briefs get presented at trial and through discovery. Additionally, judges do not have to worry about pandering to the interests of interest groups who could hurt their chances next election if they do not hold a particular way. This is especially important because the strength of industry groups and other powerful entities can sway elections); *Constitutional Amendment - Environmental Rights: Hearing on HB0517 Before the H. Comm. on Environment and Transportation*, 2020 Leg., 441st Sess. (Md. 2020)

http://mgaleg.maryland.gov/mgaweb/Committees/Media/false?cmte=ent&ys=2020RS&clip=ENV_2_19_2020_meeting_1&url=http%3A%2F%2Fmgahouse.maryland.gov%2Fmga%2Fplay%2F19a12ac2-5dec-4667-a8e0-3d5cbb99bba3%2F%3Fcatalog%2F03e481c7-8a42-4438-a7da-93ff74bdaa4c%26playfrom%3D689700 (at 00:36:30).

⁷¹ Kathleen Sullivan, *Post-Liberal Judging: The Roles of Categorization and Balancing*, 63 U. COLO. L. REV. 293 (1992).

FAQ 12: How does a constitutional amendment get passed in Maryland?

Answer:

Under Article XIV of the Maryland Constitution, there are two ways to pass a constitutional amendment. The first requires a 3/5th vote from the representatives in both houses of the Maryland legislature. If the EHR receives the requisite 3/5th vote in both houses, it must be submitted to the citizens of Maryland for a vote, and must be approved by the majority of citizens who voted. The second method is by constitutional convention, wherein a ballot is sent to the people every twenty years, most recently 2010 and next 2030, to gauge if the citizens want to convene a constitutional convention. If the majority of the electorate votes to call a convention, the General Assembly, at their next session, must facilitate a convention and the delegates participating (equal to the number of representatives in both legislative houses, which represents the respective counties and Baltimore City). If adopted at the convention, the EHR must still be approved by a majority vote from the people of Maryland.

Find Article XIV here: <https://msa.maryland.gov/msa/mdmanual/43const/html/14art14.html>

Appendix

HB0082 – 2021

1. Each person has a fundamental and inalienable right to a healthful environment, including clean air, water and land, a stable climate, and to the preservation, protection, and enhancement of the ecological, scenic, and historic values of the environment.
2. The State has a duty as trustee to protect, preserve and enhance the air, land, water, living and historic resources for the benefit of the people of this State including future generations.⁷²

HB0517 - 2020

Every person has the right to a clean and healthy environment, including the right to clean air; pure water; ecosystems that sustain the State's natural resources, including the waters of the State, air, flora, fauna, climate, and public lands; and the preservation of the natural, healthful, scenic, and historic values of the environment. The bill authorizes the State, a political

⁷² This language is similar to the existing language in MEPA that states “[a]ll State agencies must conduct their affairs with an awareness that they are stewards of the air, land, water, living and historic resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.” Maryland Environmental Policy Act (MEPA), MD. CODE ANN., Nat Res. §§1-301 to 1-305 (LEXIS 2020).

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.

HB0472 - 2019

Every "person" has the right to a clean and healthy environment, including the right to clean air; pure water; a healthful environment; ecosystems that sustain the State's "natural resources"; and the preservation of the natural, scenic, historic, and aesthetic 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 or private 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.

SB0873 - 2018

Every "person" has the right to clean air, pure water, healthy communities, an environment free of conditions that degrade public health or natural resources, and the preservation of the natural, scenic, historic, and aesthetic values of the environment. In addition, an agency or a political subdivision of the State, or any person that meets the threshold standing requirements under federal law, may enforce these rights against any public or private party through appropriate legal proceedings. Every person has the right to intervene in an action brought by the State to protect the rights established by the bill.

Zoonotic Diseases and the Environment (1).pdf

Uploaded by: Cardin, Nina

Position: FAV

For Educational Purposes

Supplement to UNIVERSITY OF MARYLAND FRANCIS KING CAREY SCHOOL OF LAW ENVIRONMENTAL LAW CLINIC, WHITEPAPER ON FAQs TO MARYLAND'S PROPOSED ENVIRONMENTAL HUMAN RIGHTS CONSTITUTIONAL AMENDMENT

Zoonotic Diseases and the Environment

An Environmental Human Rights amendment could help slow climate change.¹ Slowing and decreasing the effects of climate change is imperative now, more than ever, because of the link between zoonotic diseases—diseases that jump between animals and humans—and climate change.² Growing climatic warming increases the frequency of future pandemics.³ There may be more than 3,200 strains of coronavirus among bats, and the likelihood that other strains of the virus spread to humans increases with the mounting effects of climate change.⁴ Climactic warming, biodiversity loss, and deforestation all contribute to animals, such as bats, expanding their geographic boundaries and therefore allowing further overlap between humans and disease-carrying animals.⁵ Further, progress on slowing climate change is likely to benefit marginalized groups the most. Marginalized groups tend to have a higher risk than others to ill effects from climate change and pandemic.⁶ Due to the cumulative negative health affects already burdening

¹ UNIVERSITY OF MARYLAND FRANCIS KING CAREY SCHOOL OF LAW ENVIRONMENTAL LAW CLINIC, WHITEPAPER ON FAQs TO MARYLAND'S PROPOSED ENVIRONMENTAL HUMAN RIGHTS CONSTITUTIONAL AMENDMENT 6-8 (2021) (“The EHR could force the state to consider the aggregate environmental effects of issuing certain permits in a way that no existing regulations or laws require. The EHR would promote and help facilitate the promulgation of cumulative impact and other environmental bills. The EHR is also meant to act as a backstop for when existing legislation fails to fully address adverse environmental effects”).

² Abrahm Lustgarten, *How Climate Change Is Contributing to Skyrocketing Rates of Infectious Disease*, PROPUBLICA (May 7, 2020), <https://www.propublica.org/article/climate-infectious-diseases>; Ilana Cohen, *Covid-19 and Climate Change Will Remain Inextricably Linked, Thanks to the Parallels (and the Denial)*, INSIDE CLIMATE NEWS (Jan. 1, 2021), <https://insideclimatenews.org/news/01012021/covid-climate-parallels-denial/> (Reporting that “[c]limate change is also responsible for the proliferation of zoonotic diseases, like Covid-19, as drought, flooding and extreme weather force food production to encroach on habitats populated by bats, monkeys and other virus-carrying wild animals”).

³ *Id.*

⁴ *Id.* (Asserting “[c]limate change is making outbreaks of disease more common and more dangerous. . . . Over the past few decades, the number of emerging infectious diseases that spread to people — especially coronaviruses and other respiratory illnesses believed to have come from bats and birds — has skyrocketed. A new emerging disease surfaces five times a year. One study estimates that more than 3,200 strains of coronaviruses already exist among bats, awaiting an opportunity to jump to people.”).

⁵ *Id.* (Explaining “[f]here are three ways climate influences emerging diseases. Roughly 60% of new pathogens come from animals — including those pressured by diversity loss — and roughly one-third of those can be directly attributed to changes in human land use, meaning deforestation, the introduction of farming, development or resource extraction in otherwise natural settings. Vector-borne diseases — those carried by insects like mosquitoes and ticks and transferred in the blood of infected people — are also on the rise as warming weather and erratic precipitation vastly expand the geographic regions vulnerable to contagion. Climate is even bringing old viruses back from the dead, thawing zombie contagions like the anthrax released from a frozen reindeer in 2016, which can come down from the arctic and haunt us from the past.”).

⁶ Renee N. Salas, James M. Shultz, & Caren G. Solomon, *The Climate Crisis and Covid-19 — A Major Threat to the Pandemic Response*, NEW ENGLAND J. OF MEDICINE (July 15, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMp2022011> (Discussing how “[c]ardiovascular and chronic pulmonary disease — recognized risk factors for severe Covid-19 — are closely linked to climate change, through effects including extreme heat, ground-level ozone, wildfire smoke, and increased pollen counts over longer seasons. Moreover, fine particulate matter air pollution — linked to combustion of fossil fuels — increases the prevalence of both conditions. Marginalized groups are at higher risk than others for exposure to high levels of air pollution and associated chronic illnesses, as well as for Covid-19–related illness and death. Recent unpublished data have

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ENVIRONMENTAL HUMAN RIGHTS CONSTITUTIONAL AMENDMENT

environmental justice communities, the threat of climate change and zoonotic diseases stresses the importance of action.

suggested direct associations between long-term exposure to particulate air pollution and risk of Covid-19-associated death”).

SB 151_CBF_SUPPORT_RobinClark.pdf

Uploaded by: Clark, Robin Jessica

Position: FAV



CHESAPEAKE BAY FOUNDATION

Environmental Protection and Restoration
Environmental Education

Senate Bill 151

Constitutional Amendment - Environmental Rights

Date: January 22, 2020
To: Senate Health, Education and
Environmental Affairs Committee

Position: Support
Contact: Robin Clark, rclark@cbf.org

Chesapeake Bay Foundation **SUPPORTS** SB 151 which proposes a constitutional right to the environment that would establish the State as the trustee of Maryland's natural resources. The establishment of a constitutional right to the environment in Maryland could support the works of residents, community groups, and environmental organizations seeking to save the Chesapeake Bay.

The State of Maryland is the trustee of its natural resources

SB 151 states,

The State is the trustee of the air, land, water, living, and historic resources of the State, which shall be protected, preserved, and enhanced for the benefit of all of the people of this State, including future generations. (Page 2, lines 8-11)

The State of Maryland is the trustee of its natural resources, including the Chesapeake Bay – and the actions of each branch of State government are critical to its fate. For this reason, the Chesapeake Bay Foundation works closely with the Departments of Agriculture, Natural Resources, and Environment on topics ranging from farming practices, to fisheries management, to urban runoff controls and through litigation in the Maryland Judiciary and advocacy in the General Assembly to protect the national treasure in Maryland's backyard.

State Constitutional rights help protect environmental resources and environmental protection funds

Article I Section 27 of the Pennsylvania constitution states,ⁱ

Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people."

The Pennsylvania Supreme court applied this element of the Amendment to protect funds intended for conservation and maintenance of public natural resources from being diverted by the State into the General Fund and used for other purposes.ⁱⁱ As a trustee, the Court found, the State's role was to protect the funding for its intended purpose.

Reasonableness standards will allow courts to appropriately construe this Amendment

The Constitutional Amendment proposed in SB 151 would prohibit the State or political subdivision to "cause unreasonable diminution of or degradation to the State's Natural resources by action or inaction." The legal construction of reasonable, applied often to common law and statutory law, will allow courts to tailor the application of this Amendment as appropriate to balance the multiple responsibilities of State and local government.

CBF urges the Committee's FAVORABLE report on SB 151.

ⁱ Pa. Const. art. I, § 27.

ⁱⁱ *Robinson Township v. Commonwealth*, 83 A.3d 901 (Pa. 2013); *PEDF v. Commonwealth*, 108 A.3d 140 (Pa. Cmwlth 2015)

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Testimony on SB151-HB82 01-22-21 FINAL.pdf

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Position: FAV

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

RE: Senate Bill 151 Constitutional Amendment – Environmental Rights

Testimony of Nicholas A. DiPasquale
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Chestertown, MD 21620
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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 inalienable.
- 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.

Senate testimony of Barry Hill.pdf

Uploaded by: hill, barry

Position: FAV

Professor Barry E. Hill

Maryland Campaign For Environmental Human Rights

Barryhill09@comcast.net

SB 151: Constitutional Amendment-Environmental Rights

Testimony: Favorable

TESTIMONY OF PROFESSOR BARRY E. HILL
BEFORE THE
SENATE EDUCATION, HEALTH AND ENVIRONMENTAL AFFAIRS COMMITTEE
(January 26, 2021)

GOOD AFTERNOON CHAIRMAN PINSKY, VICE CHAIR KAGAN AND MEMBERS OF THE COMMITTEE.

MY NAME IS BARRY HILL AND I HAVE BEEN A LONG-TIME RESIDENT OF PRINCE GEORGE'S COUNTY AND OF MONTGOMERY COUNTY. CURRENTLY, I AM AN ADJUNCT PROFESSOR OF LAW AT VERMONT LAW SCHOOL WHERE I HAVE TAUGHT AN ENVIRONMENTAL JUSTICE COURSE FOR 25 YEARS. I HAVE WRITTEN EXTENSIVELY ON THE TOPIC, AND I WAS THE DIRECTOR OF U.S. EPA'S OFFICE OF ENVIRONMENTAL JUSTICE FROM 1998-2007.

THE MESSAGE THAT I WOULD LIKE TO LEAVE WITH THE COMMITTEE TODAY IS THAT SB 151 CAN BE A POWERFUL TOOL FOR THE STATE AS WELL AS COUNTIES AND MUNICIPALITIES TO MORE EFFECTIVELY PROTECT THE NATURAL RESOURCES, AND THE ENVIRONMENT AND HEALTH OF ALL MARYLANDERS.

I APPEAR BEFORE THIS COMMITTEE TO SUPPORT SB 151, THE "CONSTITUTIONAL AMENDMENT-ENVIRONMENTAL RIGHTS." SB 151 DECLARES THAT "EACH PERSON HAS THE FUNDAMENTAL AND INALIENABLE RIGHT TO A HEALTHFUL ENVIRONMENT," WHICH INCLUDES THE RIGHT TO CLEAN AIR, CLEAN WATER AND CLEAN LAND, AND A STABLE CLIMATE. THIS IS EXACTLY WHAT ENVIRONMENTAL JUSTICE COMMUNITY-BASED ORGANIZATIONS THROUGHOUT THIS COUNTRY HAVE BEEN SEEKING FOR

DECADES SINCE NUMEROUS INDEPENDENT RESEARCH STUDIES HAVE DEMONSTRATED CONCLUSIVELY THAT BLACK AND BROWN COMMUNITIES, AND POOR COMMUNITIES HAVE BEEN DISPROPORTIONATELY EXPOSED TO ENVIRONMENTAL HARMS AND RISKS AS COMPARED TO OTHER COMMUNITIES. NO ONE CAN ARGUE WITH THAT UNDENIABLE FACT.

THE POLITICAL LEADERSHIP IN MARYLAND HAS RECOGNIZED FOR DECADES THAT ENVIRONMENTAL INJUSTICE WAS A PROBLEM IN THE STATE. THAT WAS THE REASON WHY THEN-GOVERNOR PARRIS GLENDENING CREATED, ON JANUARY 1, 2001, THE COMMISSION ON ENVIRONMENTAL JUSTICE AND SUSTAINABLE COMMUNITIES BY EXECUTIVE ORDER. SUBSEQUENTLY, THAT WAS THE REASON WHY THE GENERAL ASSEMBLY CODIFIED THE COMMISSION BY STATUTE, EFFECTIVE OCTOBER 1, 2003. IN SPITE OF THE GOOD EFFORTS OF THE COMMISSION OVER THE YEARS, ENVIRONMENTAL INJUSTICE STILL CONTINUES TO EXIST IN MARYLAND.

THAT IS WHY THIS COMMITTEE'S LEADERSHIP IN MOVING SB 151 FORWARD IS ABSOLUTELY ESSENTIAL AT THIS TIME SINCE THE COMMISSION, AS AN ADVISORY BODY, COULD BE MORE EFFECTIVE IN CARRYING OUT ITS LEGISLATIVE RESPONSIBILITIES AS SET FORTH IN THE 2003 STATUTE.

IN LIGHT OF THE FACT THAT ENVIRONMENTAL INJUSTICE CONTINUES TO EXIST IN THE STATE, A RHETORICAL QUESTION MAY BE POSED: "WHO CAN BE AGAINST ENVIRONMENTAL JUSTICE, AND THE NOTION THAT EVERY MARYLANDER HAS A RIGHT TO CLEAN AIR, CLEAN WATER, AND CLEAN LAND, AS WELL AS A STABLE CLIMATE? PUT ANOTHER WAY: "WHO CAN BE FOR ENVIRONMENTAL INJUSTICE, AND THE CURRENT SITUATION OF POLLUTED AIR, CONTAMINATED WATER, AND DIRTY LAND, AND AN UNSTABLE CLIMATE TO CONTINUE UNABATED IN SOME COMMUNITIES IN THIS GREAT STATE?

YOU WILL NOTE THAT THE LANGUAGE REGARDING EACH PERSON HAVING A FUNDAMENTAL AND INALIENABLE RIGHT TO A HEALTHFUL ENVIRONMENT IS NOT AT ALL NEW. IN FACT, IT WAS LIFTED

VERBATIM FROM SECTION 1-302(D) OF THE MARYLAND ENVIRONMENTAL POLICY ACT (MEPA) WHICH WAS ENACTED INTO LAW ON MAY 24, 1973. WE, THE MARYLAND CAMPAIGN FOR ENVIRONMENTAL HUMAN RIGHTS, SIMPLY ADDED THE LANGUAGE REGARDING "CLEAN AIR, WATER AND LAND [AND] A STABLE ENVIRONMENT" TO EXPLAIN WHAT A "HEALTHFUL ENVIRONMENT" MEANS IN ACTUALITY IN 2021.

IN ADDITION TO PROVIDING THE COMMISSION WITH MORE "TOOLS IN THE TOOLBOX" TO ADVISE STATE AGENCIES ON ENVIRONMENTAL JUSTICE, SB 151 ALSO PROVIDES "TOOLS IN THE TOOLBOX" FOR THE STATE, COUNTIES, AND MUNICIPALITIES TO BETTER PROTECT THE NATURAL RESOURCES, AND THE ENVIRONMENT AND PUBLIC HEALTH OF ALL MARYLANDERS

SPECIFICALLY, SB 151 PROVIDES THAT: "THE STATE IS THE TRUSTEE OF THE AIR, LAND, WATER, LIVING, AND HISTORIC RESOURCES OF THE STATE" AND THAT THOSE RESOURCES "SHALL BE PROTECTED, PRESERVED, AND ENHANCED FOR THE BENEFIT OF ALL THE PEOPLE OF THIS STATE, INCLUDING FUTURE GENERATIONS." AGAIN, THIS LANGUAGE WAS LIFTED ALMOST VERBATIM FROM SECTION 1-302 (C) OF MEPA.

JUST IN CASE ONE MIGHT ARGUE THAT WE DON'T NEED SB 151 IF THIS LOFTY LANGUAGE OF RIGHTS AND TRUSTEESHIP ARE ALREADY IN MEPA. THAT WOULD BE WRONG. UNFORTUNATELY, MEPA HAS SAT MORIBUND SINCE 1973. NO IMPLEMENTING REGULATIONS HAVE BEEN ISSUED BY THE DEPARTMENT OF THE ENVIRONMENT. MEPA HAS BEEN A NEGLECTED STATUTE: A FORGOTTEN STATUTE.

BUT, MORE IMPORTANTLY, MEPA IS NOT EVEN CLOSE TO BEING AS POWERFUL AS THE PROPOSED CONSTITUTIONAL AMENDMENT.

FOR EXAMPLE, IN THE MUCH TALKED ABOUT PENNSYLVANIA CASE, **ROBINSON TOWNSHIP V. COMMONWEALTH OF PENNSYLVANIA**, IT WAS 9 MUNICIPALITIES THAT SUED THE STATE SINCE THE NEW STATE FRACKING LAW INFRINGED ON THEIR ABILITY TO PROTECT THE ENVIRONMENT AND ABIDE BY THE

ENVIRONMENTAL RIGHTS AMENDMENT IN THE STATE CONSTITUTION. MOREOVER, IN *RHODE ISLAND V. CHEVRON*, THE STATE IS USING ITS ENVIRONMENTAL RIGHTS AMENDMENT IN CLIMATE LIABILITY LITIGATION AGAINST 21 OIL AND GAS COMPANIES. THIS IS WHAT I DISCUSSED IN MY LETTER OF SUPPORT THAT WAS SENT TO ALL MEMBERS OF THIS COMMITTEE. IN SHORT, SB 151 COULD BE A POWERFUL LITIGATION TOOL FOR MARYLAND AND ITS POLITICAL SUBDIVISIONS.

IN CONCLUSION, SINCE NOVEMBER 11, 1776, THE MARYLAND CONSTITUTION IN THE DECLARATION OF RIGHTS SECTION HAS PROVIDED: "THAT EVERY MAN HATH A RIGHT TO PETITION THE LEGISLATURE, FOR THE REDRESS OF GRIEVANCES, IN A PEACEFUL AND ORDERLY MANNER." TODAY, ON BEHALF OF THE MARYLAND CAMPAIGN FOR ENVIRONMENTAL HUMAN RIGHTS, I AM IMPLORING THIS HONORABLE COMMITTEE TO EXERCIZE ITS LEADERSHIP SINCE IT IS ESSENTIAL AT THIS TIME TO ADDRESS THESE MAJOR ENVIRONMENTAL AND PUBLIC HEALTH ISSUES IN ALL COMMUNITIES BY MOVING SB 151 FORWARD IN THE LEGISLATIVE PROCESS.

THANK YOU VERY MUCH FOR YOUR CONSIDERATION OF OUR REQUEST AND YOUR ATTENTION.

rachel hopp letter of support 2021.pdf

Uploaded by: hopp, rachel

Position: FAV

BILLS: SB0151 AND HB0082 – CONSTITUTIONAL AMENDMENT - ENVIRONMENTAL RIGHTS

SUBMITTER: RACHEL M. HOPP, ESQ., GAITHERSBURG, MD

POSITION: FAVORABLE

Thursday, January 7, 2021

The Honorable William C. Smith, Jr., Chair, and
Jeffrey D. Waldstreicher, Vice-Chair,
Senate Judicial Proceedings Committee

The Honorable Paul G. Pinsky, Chair, and
Cheryl Kagan, Vice Chair
Senate Education, Health and Environmental Affairs Committee

The Honorable Kumar P. Barve, Chair, and
Dana M. Stein, Vice-Chair
House Environment and Transportation Committee

Maryland General Assembly Legislative Services Building
90 State Circle
Annapolis, MD 221401

RE: Support SB0151 AND HB0082 – CONSTITUTIONAL AMENDMENT - ENVIRONMENTAL RIGHTS

Dear Chairs, Vice-Chairs and Honorable Members of the Committees:

I write to urge your full support during this 2021 General Assembly's Legislative Session for SB0151 AND HB0082 – CONSTITUTIONAL AMENDMENT - ENVIRONMENTAL RIGHTS. I do so not only as a near life-long resident of our beautiful state, but as an attorney with more than 40 years of experience in environmental law.

My career has focused on some of our most challenging ecological issues, including air and water pollution, climate change, natural resource damage, sustainable development, and environmental justice. I served as a U.S. Environmental Protection Agency enforcement attorney and program manager and was a lead architect of the 1990 Clean Air Act Amendments, and Acid Rain and Stratospheric Ozone Protection programs. I was principal of the Law Offices of Hopp and Associates, PLLC, where I advised and represented international organizations, public service agencies, private sector clients, public interest groups, and disadvantaged communities, on air and water pollution, climate change, hazardous waste, sustainable development, and many other complex administrative, judicial, legislative, treaty,

and regulatory environmental matters. Lastly, before I retired in 2017, I was Legislative and Regulatory Counsel at the Coast Guard's National Pollution Funds Center and was centrally involved in major environmental disasters including Deepwater Horizon, Athos I, and Katrina. I have also taught and authored numerous articles on environmental law topics.

I have remained involved in environment and conservation initiatives in retirement and am on the Advisory Circle of the Maryland Campaign for Human Environmental Rights (MDEHR.org), a coalition of individuals and organizations advocating for this legislation. I also belong to the D.C. Bar Environment, Energy and Natural Resources Committee, the Environmental Law Institute (a national think tank), and I volunteer for and support other environmental organizations, including the Maryland Sierra Club (Zero Waste Committee, Montgomery County), Maryland League of Conservation Voters, Interfaith Power and Light for MD-DC-NoVA, Muddy Branch Alliance, and Izaak Walton League.

My support for SB0151 and HB0082 is informed by my experience working with states, localities, communities and businesses throughout our great Nation, my work on international treaties and sustainable development, and the informative research and consultations I have had with some of the foremost legal experts on environmental constitutionalism and environmental justice. They include Professors Erin Daly and James May at the Widener University Delaware Law School,¹ Professor Barry Hill, Adjunct Professor of Law at Vermont Law School and author of numerous books and articles on Environmental Justice,² Professor Russell B. Stevenson Jr., Visiting Professor of Law at Georgetown University Law Center and author of a well-informed article on the Maryland Environmental Policy Act,³ Professor Robert V. Percival at the University of Maryland School of Law,⁴ Professor David R. Boyd, Associate Professor of Law, Policy, and Sustainability at the University of British Columbia,⁵ and Maya K. Van Rossum author of *The Green Amendment: Securing Our Right to a Healthy Environment*. I urge you to become

¹ See, e.g., *Environmental Rights in State Constitutions: PRINCIPLES OF CONSTITUTIONAL ENVIRONMENTAL LAW*, p. 305, James R. May, ed., American Bar Association, 2011, Widener Law School Legal Studies Research Paper No. 11-47, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1932753 (last viewed 1/5/2021).

² See, e.g., Barry E. Hill *Environmental Justice: Legal Theory and Practice*, 4th Edition, Environmental Law Institute (2018); *Environmental Justice for All Must Be a Human Right Enforceable in U.S. State Constitutions* Barry E. Hill; *Bending the Arc Toward Justice*, Barry E. Hill - Vermont Law School, ELI Environmental Forum, Vol. 37, Issue 4 (July-August 2020).

³ Russell B. Stevenson Jr., *The Maryland Environmental Policy Act: Resurrecting a Tool for Environmental Protection*, 45 ELR 10074 (1-2015).

⁴ Robert V. Percival, "Greening" the Constitution - Harmonizing Environmental and Constitutional Values (2002) available at https://digitalcommons.law.umaryland.edu/fac_pubs/439.

⁵ David R. Boyd, *The Constitutional Right to a Healthy Environment* (February 28, 2013), last viewed on 1/5/2021 at <https://www.lawnow.org/right-to-healthy-environment>.

familiar with the contributions of these experts to better understand the importance of this legislation for all Marylanders, now and in future generations.

COMMENTS

SB0151 and HB0082 (hereafter the MARYLAND ENVIRONMENTAL HUMAN RIGHTS AMENDMENT), is sponsored by Senator Obie Patterson and Delegates Wanika B. Fisher, Erik L. Barron, and Vaughn M. Stewart III. It puts to the voters of our beautiful state whether to amend the Maryland Constitution by adding a new Article 48 to our Declaration of Rights. This important Article fills significant gaps in Maryland's environmental law by recognizing in our State Constitution:

1. The fundamental right of all Marylanders to a healthful environment and stable climate, and
2. The State's authority and responsibility to serve as trustee of Maryland's natural resources.

Hearings on this important legislation are currently scheduled for 1/20/2021 at 1:30 p.m., before the House of Delegates Environment and Transportation Committee, and 1/26/2021 at 1:00 p.m., before the Senate Judicial Proceedings Committee.

Certainly, there will be many excellent questions about the specific wording used in SB0151 and HB0082. But I am convinced of the wisdom of, and need for, this legislation.

Moreover, given the threats posed to all Marylanders by the ongoing and potential future pandemics and the civil society crisis we now find ourselves in, there can be no question that the time has come to submit this legislation to the voters of our State. It is the right and just thing for you to do.

Maryland has many laws on the books. But this important legislation protects Maryland's environment in our State Constitution for the first time in our history. It also complements and strengthens existing Maryland law and preserves long-established principles of separation of powers.

Above all it gives all Marylanders similar protections to those now enjoyed by the residents of many other states and over 100 nations. Those protections include the Pennsylvania "Environmental Rights Amendment" (ERA), a 1971 amendment to Pennsylvania's Constitution

that very recently helped protect local drinking water supplies from pollution due to fracking.⁶ Other states that expressly protect environmental rights in their constitutions include Hawaii, Illinois, Massachusetts, Montana, and Rhode Island.⁷

The MARYLAND ENVIRONMENTAL HUMAN RIGHTS AMENDMENT works in concert with, strengthens, and fills significant gaps in Maryland’s existing statutory and regulatory environmental laws. Here are just a few examples:

- *Filling Gaps in Federal Law and Balancing the State-Federal Relationship*. Although the U.S. Constitution provides the Federal Government with power to regulate on behalf of environmental quality and affords some protections to address “conscience-shocking” conduct such as the Flint, Michigan, water crisis,⁸ it also limits federal power and does not expressly recognize a constitutional right to a clean environment. As a result, although our modern federal environmental laws set a floor of protection, our federal system of government defers to the traditional responsibility of each state to protect its natural resources and the public health and welfare of its residents.⁹ It is, therefore, entirely proper for states to elevate clean air, clean water, and a healthy environment to the level of a state-protected constitutional right.¹⁰ Defining environmental rights as fundamental in our

⁶ *Robinson Township v. Commonwealth of Pennsylvania*, 623 Pa. 564 (2013) [interpreting Article I, section 27 of the Pennsylvania Constitution and concluding at 79 that “economic development cannot take place at the expense of an unreasonable degradation of the environment” and the Commonwealth’s police power must be exercised to promote *sustainable* property use and economic development]. Reaffirmed *Pennsylvania Environmental Defense Foundation v. Commonwealth*, No. 10 MAP 2015 (Pa. June 20, 2017).

⁷ In addition, many other states are well on their way toward recognizing environmental rights in their state constitutions. For example, New York’s Legislators passed S 2072/A 2064 on April 30, 2019, the inalienable and self-executing right of all New Yorkers to clean air and water, and a healthful environment. After a second successful passage in 2021, that amendment will be submitted to New York’s voting public, possibly as early as November 2, 2021. See, also, <https://forthe generations.org>.

For additional discussion of state constitutions addressing environmental issues see: *The Green Amendment: Securing Our Right to a Healthy Environment* by Maya K. Van Rossum (2017); Art English and John J. Carroll *State Constitutions and Environmental Bills of Rights* (2015), viewed on January 5, 2021 at <http://knowledgecenter.csg.org/kc/system/files/English%20Carroll%202015.pdf>; Matthew Thor Kirsch *Upholding the Public Trust in State Constitutions*, Duke L. Journal Vol. 46, No. 5, pp. 1169-1210 (Mar., 1997), viewed on January 5, 2021 at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1003&context=dlj>.

⁸ *Guertin v. Michigan*, 912 F.3d 907 (6th Cir. 2019), *cert. denied*, 140 S. Ct. 933 (2020), *reaffirmed*, 20a0244 p.06 (6th Cir., Aug. 5, 2020) [“conscience-shocking” conduct sustains a substantive due process claim].

⁹ For a comprehensive look at federal constitutional questions see, *Principles of Constitutional Environmental Law*, by James May, American Bar Association (February 26, 2013); Robert V. Percival, *Greening the Constitution - Harmonizing Environmental and Constitutional Values*, 32 *Envtl. L.* 809 (2002).

¹⁰ See U.S. Const. amend. IX and X.

State Constitution and recognizing preservation of our natural resources as a sovereign responsibility of the State also helps delineate the parameters of the State-Federal relationship.

- *Achieving MEPA's Aspirational Goals.* In 1973, the Maryland General Assembly passed the MARYLAND ENVIRONMENTAL POLICY ACT (MEPA), recognizing that every Marylander has the “fundamental and inalienable right to a healthful environment”.¹¹ The State, however, has yet to promulgate overarching implementing regulations in COMAR to preserve this important right. MEPA applicability has, moreover, been so narrowly tailored and construed as to render it effectively dormant.^{12, 13}

That void has, among other things, allowed Maryland to neglect the environmental impacts of government actions and contributed to the concentration of polluting activities, particularly in historically disadvantaged communities. For example:

- According to research conducted by students at the Johns Hopkins Bloomberg School of Public Health, 200 pollution emitting facilities are concentrated in a 2.5 mile radius in South Baltimore. This concentration of pollution has led to serious health disparities in South Baltimore, including asthma hospitalization rates that are four times the Maryland average.¹⁴
- On the Eastern Shore, concentrated animal feeding operations (CAFOs) are contaminating drinking water,¹⁵ runoff from growing development is causing water,

¹¹ MD. CODE ANN., NAT. RES. §§1-301 to 1-305, at §1-302(d) (Westlaw 2021).

¹² Russell B. Stevenson Jr., *The Maryland Environmental Policy Act: Resurrecting a Tool for Environmental Protection*, 45 ELR 10074 (1-2015). Three Maryland agencies, Dept of Planning, Transportation and Labor, promulgated regulations shortly after MEPA was enacted. Those regulations, however, have not been updated in 40 years, and no regulations have been promulgated by the Department of Natural Resources, the Maryland Department of the Environment or any other Maryland agency with responsibilities impacting the environment.

¹³ *Cf.*, 40 CFR Parts 1500-1508 [regulations applicable to *all* Federal agencies implementing the NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 et seq.)]

¹⁴ A Short Report on the Cumulative Health Impacts of Air Pollution in South Baltimore, by Toby Harris, Christian Jenkins, Zain Kazi, Breanne Kincaid & Alina McIntyre, Johns Hopkins Bloomberg School of Public Health Dep. of Environmental Health & Engineering, Principles of Environmental Health II (Fall 2019). See also <https://www.jhsph.edu/news/news-releases/2015/researchers-find-link-between-air-pollution-and-heart-disease.html> and <https://pubmed.ncbi.nlm.nih.gov/25872223>.

¹⁵ Report: Eastern Shore Has Unhealthy Levels of Nitrate in Drinking Water Due to CAFOs, By Elizabeth Shwe, Maryland Matters (October 21, 2020) <https://www.marylandmatters.org/2020/10/21/report-eastern-shore-has-unhealthy-levels-of-nitrate-in-drinking-water-due-to-cafos>.

air and land pollution and, when combined with sea level rise, threaten the livelihoods and very existence of our beloved Chesapeake Bay communities.

- In St. Mary's County and Montgomery County per-and polyfluoroalkyl substances (PFAS) are contaminating seafood and drinking water.
- There, and elsewhere, sewage overflows, single-use plastic pollution, ever more frequent historic flooding, power plant and incinerator emissions, road expansions and transportation emissions, and other insults are choking our ecosystems.¹⁶

We all want a robust economy that benefits all Marylanders. But the sad truth is that, as our population and economy continue to grow,¹⁷ we too often prioritize often short-term economic interests over the livelihoods, health, and well-being of *all* Marylanders. So, we continue to live what I often refer to as the legacy of *laissez faire*, one that perpetuates unsustainable patterns, burdens communities, and ignores the important truth that our economy and our ability thrive are totally beholding to the environment.

In the words of the late Sen. Gaylord Nelson, the father of Earth Day, some 50 years ago:

"The wealth of the nation is its air, water, soil, forests, minerals, rivers, lakes, oceans, scenic beauty, wildlife habitats and biodiversity . . . that's all there is. That's the whole economy. That's where all the economic activity and jobs come from. These biological systems are the sustaining wealth of the world."

"The environment involves the whole broad spectrum of man's relationship to all other living creatures, including other human beings. . . It involves the environment of the ghetto which . . . [has] the worst pollution, the worst noise, the worst housing, the worst situation in this country . . ."

¹⁶ See, e.g., <http://mdehr.org/stories/>, <https://www.cbf.org/about-cbf/locations/maryland/issues/index.html>, <https://www.sierraclub.org/maryland>, <https://www.mdscv.org/issues>.

¹⁷ Since the beginning of the modern environmental movement in the early 1970s Maryland has grown from 4 to more than 6 million people (approx. 33% increase). Meanwhile Maryland vehicle miles traveled have more than doubled, land use under development has increased by approximately 160% and trade has grown exponentially. See, e.g.:

- <https://www.macrotrends.net/states/maryland/population>,
- https://www.roads.maryland.gov/OPPEN/Vehicle_Miles_Traveled.pdf,
- <https://planning.maryland.gov/Pages/OurWork/LandUse.aspx>, and
- <https://msa.maryland.gov/msa/mdmanual/01glance/economy/html/economy.html>.

Clearly, we are falling behind and need stronger legal authority to attain a truly protected, sustainable environment. As compared to MEPA and other statutes and regulations, the constitutional environmental rights created by this Amendment provide that. They elevate a healthful environment, one that protects the well-being of *all* Marylanders, from a mere aspirational goal to an overarching organizing priority of our State.

- *Establishing the State's Trustee Authority and Responsibilities.* Maryland has certified to the Federal Government that the State is "trustee" of its natural resources for purposes of the Federal Clean Water Act, Oil Pollution Act and Comprehensive Environmental Response, Compensation and Liability Act. As compared to other states, however, that authority is not found in Maryland's Constitution. The State's authority to protect Maryland's natural resources now and for future generations, therefore, lacks an organic basis. Our Constitution is also silent on the fundamental notion that the State's responsibility to carry out its trustee duties is as a fiduciary for the benefit of *all* Marylanders. Compare these gaping omissions with the constitutions of Pennsylvania and Montana, among others. The MARYLAND ENVIRONMENTAL HUMAN RIGHTS AMENDMENT fills this gap in our organic law, establishing a clear fiduciary standard for its implementation.
- *Establishing Overarching Protection.* Statutes and regulations do not, and cannot, foresee and timely remedy, all environmental harms. Legislating takes enormous effort, requires difficult compromises, and can often come at great political and economic cost with the outcomes less than certain. Legislators, therefore, frequently are not able to reach a consensus over how to deal with environmental issues, especially systemic ones, until well after the damage is done and they are faced with an outcome that shocks the conscience, the type that gives rise to widespread societal outcries for protection.

In many respects, Maryland is in better shape than some other parts of our country. That includes our recent bans on fracking and polystyrene. But Maryland is uniquely vulnerable to climate change¹⁸ and suffers from other major environmental and health risks.¹⁹

But Maryland is no exception to the weaknesses of the legislative and regulatory process. We know this and we know why. The problems we have are complex, embedded in how we have historically organized ourselves, and not easily resolved. Our state environmental laws, moreover, are for the most part media-specific, require regulatory implementation, and are

¹⁸ See, <https://climatechange.maryland.gov/science>.

¹⁹ See, websites linked at foot note

more-often-than-not a reaction to the changing, often politicized and contradictory, mandates of the Federal Government. The result is a siloed, ineffective, piecemeal assortment of often contradictory requirements, rather than an integrated system responsive to Maryland-specific priorities.

By comparison, because our Constitution is the highest law of the State, it provides the most enduring statement of legal principles and protections that preserve our ability to not only address crises when they arise, but often prevent them from unfolding in the first instance. The MARYLAND ENVIRONMENTAL HUMAN RIGHTS AMENDMENT does just that. It not only allows for a remedy when none is provided for in our statutes and regulations but establishes overarching guiding principles to put our wonderful state on a solid course toward improving and preserving a more healthful environment for *everyone* including our most disadvantaged communities and future generations.

In conclusion, I want to say a few words about the need for you to support the MARYLAND ENVIRONMENTAL HUMAN RIGHTS AMENDMENT and put it to the voters at this time in our history, a time like no other in living memory. The past year of struggle, including the sad events we witnessed in Washington, D.C. over the past 24 hours, has underscored the tremendous dangers we face: a failure of civil society during a global pandemic that has already killed almost 2 million people, including 6,132 souls in our state alone.

Our scientists tell us that this pandemic is due to our increased exposure to zoonotic illnesses (diseases transmitted from animals to humans) and are the direct result of our global mobility, climate change and the unsustainable use of natural resource. These patterns of how we have organized our lives have put us in ever closer contact with animals and other organisms that humans had little prior exposure to. Because of Maryland's unique geography, our heavy involvement in maritime commerce and other trade, and our high levels of mobility and urbanization, we are even more vulnerable.

This pandemic has also underscored the tremendous living and healthcare inequities that exist in our state. One cannot socially distance, stay healthy, grow, and prosper, in a densely-packed urban area with inadequate services and a diminishing environment. In that respect Maryland sadly is not unique.

These circumstances demand that we take better care of our own. That starts with your leadership. It starts with your willingness to allow us to build a legal system that puts Maryland on a stronger footing, one that can effectively address the challenges we now face and protect every Marylander's right to live in a healthy environment.

So, I urge you to support this legislation, and let the voters decide whether to include the MARYLAND ENVIRONMENTAL HUMAN RIGHTS AMENDMENT in our Declaration of Rights.

Thank you for your consideration, and please let me know if you have any questions or need further information.

Sincerely,

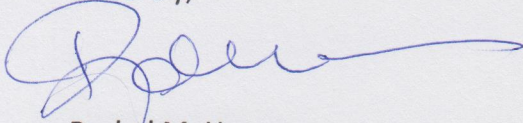
Rachel M. Hopp

Cc: Rabbi Nina Beth Cardin, Executive Director
Maryland Campaign for Human Environmental Rights

So, I urge you to support this legislation, and let the voters decide whether to include the MARYLAND ENVIRONMENTAL HUMAN RIGHTS AMENDMENT in our Declaration of Rights.

Thank you for your consideration, and please let me know if you have any questions or need further information.

Sincerely,



Rachel M. Hopp

Cc: Rabbi Nina Beth Cardin, Executive Director
Maryland Campaign for Human Environmental Rights

IPL Testimony on SB 151 - Constitutional Amendment

Uploaded by: Lacock-Nisly, Jonathan

Position: FAV



Interfaith Power & Light (DC.MD.NoVA)

100 Allison St NW

Washington, DC 20011

202-709-7641 • program@qwipl.org

Jonathan Lacock-Nisly, Director of Faithful Advocacy
January 22, 2021

Testimony on SB151 –
SB151: Constitutional Amendment – Environmental Rights
Judicial Proceedings Committee

Position: Favorable

Interfaith Power & Light (DC.MD.NoVA) supports SB151.

Across Maryland, damaged environments threaten our communities. When pollution makes our neighbors sick, we have failed in our shared responsibility to “keep and tend the Garden,” as the biblical book of Genesis mandates.

All of our traditions teach that protecting Creation means protecting the life of our human neighbors, the well-being of our communities, and the health of our natural places. A damaged environment threatens all life by interfering with the rights of all people to drink pure water, breathe clean air, and live healthfully now and in the future. We are speaking out to explicitly protect the rights of all Marylanders to live in a life-giving environment.

As communities of faith, we support a Maryland Constitutional Amendment for Environmental Human Rights because:

- **Clean air and water are blessings entrusted to us** – This amendment supports all other protections for health and the environment. By affirming a right to a healthy environment, we are expressing the calling of all our faiths to protect and steward our home places.
- **Ensuring healthy communities expresses our love for our neighbors** – This amendment would provide bedrock protections for individual rights and legally-recognizable standing so our neighbors can have access to courts when they are harmed by environmental injustice.
- **Ensuring a healthy environment expresses the calls of our faiths to promote a world in which future generations can live and flourish** – This amendment establishes the government of Maryland as a trustee of the state’s natural resources for the long term, asserting that the right to a healthy environment is on par with other fundamental rights protected in our constitution.

Maryland needs to take proactive steps to protect our communities and enable all of our neighbors to be able to defend their right to a healthy environment.

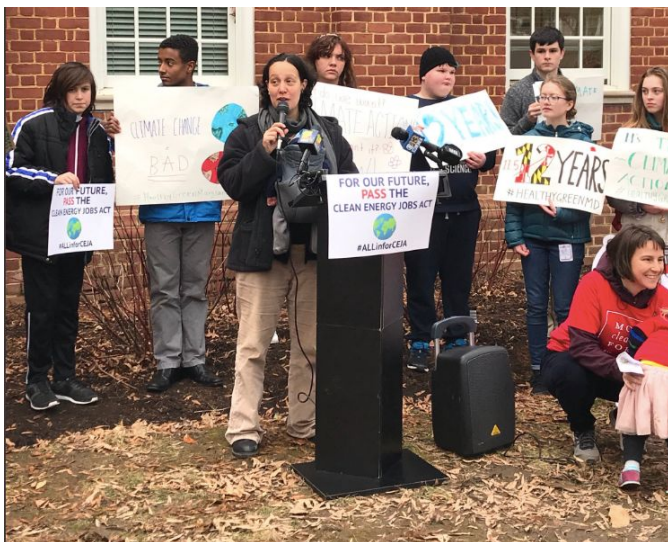
We urge the committee to give SB151 a favorable report.



Attendees at a December 2019 event in Baltimore convened by the Baltimore Jewish Council, the Pearlstone Center, and The Associated: Jewish Federation of Baltimore learn about the Maryland Constitutional Amendment for Environmental Human Rights. Congregations across Maryland are drawn to the Amendment as both an expression of our principles and a concrete way to care for our neighbors and Creation.



Rev. Dell Hinton of Gwynn Oak UMC speaks in support of the Amendment at a 2019 event. “This Amendment is not just economic and environmental. It is spiritual. It speaks to the heart and the soul.”



IPL-DMV Director Joelle Novey speaks with her infant son in support of the Amendment at a 2019 rally. “We have no right to deprive this baby of the healthy, life-giving world that was created anew for them.”

Senate Written Testimony.pdf

Uploaded by: McNary, Ethan

Position: FAV



January, 2021

Testimony on SB151
The Maryland Amendment for Environmental Human Rights
Judicial Proceedings

Position: **FAVORABLE**

I, Ethan McNary, on behalf of Sunrise Movement Baltimore, support SB 151, the Maryland Amendment for Environmental Human Rights.

Maryland's environmental regulations are an interwoven collection of bills, ranging from granular substance bans to far-reaching climate initiatives. Most of these bills are the product of tireless grassroots organizers and receptive legislators in Annapolis. There is however tremendous vulnerability in this approach to environmental regulation. Organizers are stretched thin and state legislators are overworked and face an avalanche of bills each session. Any progressive legislation that manages to get through can be overturned by future legislatures, or sometimes simply ignored. The result is: we are fighting an uphill battle while the ground shifts underneath our feet, often benefiting the polluters and private interests. What is the solution? We need an unwavering foundation to stand on: a constitutional amendment. We need a Maryland Amendment for Environmental Human Rights (EHR).

When you think of an inalienable right, most likely you think of the freedom of speech, religion, or press; the right to due process; or something similar. Codified in the Constitution, these are the most powerful legal protections we have. In this state, our Declaration of Rights in the Maryland Constitution is the highest law of the land. However, there is no constitutional guarantee for a healthful environment.

As a young person, my world is one of uncertainty. I am a freshman in college. Many of my friends and peers, including myself, are deeply concerned about our collective future. We have seen worsening storms like Hurricane Sandy devastate frontline communities. Sea-level rise continues to threaten coastal areas on the Eastern Shore. And due to systemic racial inequalities, communities of color are more likely to contract and die from COVID-19. In this moment of climate and ecological crisis, environmental and racial injustice, it is more essential than ever to

constitutionally commit to health, equity, and morality. That is exactly why the [Maryland Campaign for Environmental Human Rights](#) (MDEHR) is working to pass the EHR.

If the Amendment is added to our Constitution, the right to a healthful environment, clean air, water, land, and a stable climate would be guaranteed to every Marylander, including future generations. Despite the progress made in environmental legislation, Marylanders still face a vast number of environmental problems. Unsafe drinking water; sea-level rise; contaminating facilities, sites, and industries; as well as high levels of air and water pollution, poison our local communities. Without a constitutional right to a healthful environment, communities of color and low income suffer disproportionate concentrations of pollution and environmental degradation. And the environmental protections that do exist are often watered-down and ignored.

One example of ignored policy is the Maryland Environmental Policy Act (MEPA). Passed in 1973, the Act recognized that “each person has the fundamental and inalienable right to a healthful environment.” Because the MEPA only applies to state agencies and has no procedures for enforcement or accountability, it has been dormant for the past 47 years. Almost half of a century later, organizations like [Sunrise Movement Baltimore](#) have endorsed and supported the EHR to ensure the promises of the past are kept.

The EHR emboldens the language and lessons from the MEPA and assures the right to a healthful environment while holding the state government accountable. It would reprioritize environmental protection as one of the state government’s highest obligations. Moreover, the Amendment would codify that the government is a trustee of Maryland’s natural resources, meaning the state would be constitutionally required to protect our natural resources for current and future generations.

Having the right to a healthful environment would empower local communities (especially ones already overburdened by environmental degradation) to protect themselves against potentially harmful new projects like incinerators, pipelines, highway expansions, and much more. In the courts, the EHR would give Marylanders greater standing in legal battles whenever there is a claim that the government infringed on an individual’s constitutional right to a healthful environment.

For me, this Amendment represents whether Maryland is ready to get serious about environmental and racial justice. It also represents whether Maryland is willing to ensure the survival of my generation and those to come. That is why the work of the [MDEHR](#) and [Sunrise Movement Baltimore](#) is vital. These grassroots organizations represent the voices of the affected, recognize the immediacy of the moment, and are committed to derailing the catastrophic path we are currently on. We urge a **FAVORABLE** report for this crucial Amendment.

SB151 Written Testimony_Claire Miller.pdf

Uploaded by: Miller, Claire

Position: FAV

SUPPORT
SB151
Constitutional Amendment-Environmental Rights
Judicial Proceedings Committee
Education, Health & Environmental Affairs Committee
Favorable

Friday, January 22, 2021

Chairman Smith, Jr.
Chairman Pinsky
Vice-Chair Waldstreicher
Vice-Chair Kagan
Members of the Judicial Proceedings Committee
Members of the Education, Health & Environmental Affairs Committee
Miller Senate Office Building
11 Bladen St
Annapolis, MD 21401

Dear Chairman Smith, Jr., Chairman Pinsky, Vice-Chair Waldstreicher, Vice-Chair Kagan, Members of the Judicial Proceedings Committee, and Members of the Education, Health & Environmental Affairs Committee,

My name is Claire Miller and I am writing to you as a concerned citizen who resides in Annapolis, Maryland, and who supports SB151 the Constitutional Amendment - Environmental Rights.

When I was eight years old, Maryland passed the Maryland Environmental Policy Act. The year was 1973 and the state of Maryland recognized the “fundamental and inalienable right to live in a healthful environment.” When I was eight years old, I was swimming in the Elk River and developing a love of the water and nature in Maryland. As a young girl, I didn’t understand that by swimming in that water I was being exposed to pollutants that could harm my developing body and immune system. I’m sure my parents didn’t realize that either.

Today, as a mature woman, I still have a love of the water, but I would never swim in the Bay or its tributaries, given the knowledge that there are pollutants in the water that are causing infections in humans, animals, and fish. As someone with a weakened immune system and auto-immune diseases, I can’t take that risk. Now that I’ve become more educated about pollutants in our air and water in Maryland and their links to increased rates of chronic illness, it makes me wonder whether my exposure to pollutants as a child is connected with the auto-immune diseases I’ve developed over the course of my life. There is no one else in my family who had these auto-immune diseases, so they are not genetic.

In 1973, Maryland acknowledged the right to live in a healthful environment but limited the scope of the policy to state agencies. Most of the state agencies didn't enact rules to enforce the right, so the policy is dormant. What has transpired in the 48 years since that policy was enacted, is morally abhorrent. For the sake of the economy and those who are privileged, Maryland has allowed low-income communities and black and brown communities to suffer from environmental pollution and degradation. Johns Hopkins School of Public Health did an analysis of South Baltimore that documents 200 permitted pollution emitting facilities in a 2.5-mile radius. Maryland Public Health data shows increased rates of asthma hospitalizations at 4 times the rates of the Maryland average in South Baltimore. Maryland is successfully making decisions that are making the population of Maryland chronically ill. At this moment, it is time for our elected representatives to acknowledge what has been allowed to happen for decades and to start making decisions that "do no harm" to the health of its citizens.

As someone who worked in corporate America for twenty years, the engine of growth is innovation. The Maryland legislature can help businesses by encouraging innovation in the form of environmental health and sustainability. By supporting the Constitutional Amendment - Environmental Rights and serving as a trustee of Maryland's Natural Resources, our state can be the driver of innovation in requiring businesses to deliver their products and services in a manner that does not pollute the environment and harm the health of the citizens.

I know what I'm asking for is a fundamental shift in thinking and action. I'm asking as a person of faith because it is morally the right thing to do. You can't unsee the harm that the state is causing the health of current and future generations of Marylanders. Every single piece of environmental legislation heard in front of the General Assembly is related to the right to live in a healthful environment. By protecting this right in the state constitution and protecting Maryland's natural resources, Maryland will be requiring industry to innovate to help sustain this state in a manner that all citizens of the state can live and thrive. It is a vision of Maryland that only the legislature can enact. I ask for a favorable report of SB151 Constitutional Amendment -- Environmental Rights and allow the voters to have their say on the future they are leaving for their children.

Sincerely,

Claire Miller, Communications Director
Maryland Campaign for Environmental Human Rights
www.mdehr.org

SB151 - MD 2021 - CPR Testimony in SUPPORT.pdf

Uploaded by: Minovi, Darya

Position: FAV



Testimony in **Support** of Senate Bill 151 -- Constitutional Amendment -- Environmental Rights

Dear Chairman Smith and Members of the Senate Judicial Proceedings Committee, and Chairman Pinsky and Members the Senate Education, Health, and Environmental Affairs Committee:

The Center for Progressive Reform (CPR) is grateful for the opportunity to submit written testimony in **support** of Senate Bill 151. CPR works alongside people and organizations across the state advocating for cleaner air and water in communities, a healthy Chesapeake Bay, safer workplaces for low-wage workers, and a more sustainable food system.

The passage of Senate Bill 151 would be a critical step demonstrating the state's commitment to safeguarding natural resources and protecting public health. The bill would codify values articulated in the Maryland Environmental Policy Act (MEPA) in the state's constitution. MEPA, passed in 1973, recognizes that "each person has a fundamental and inalienable right to a healthful environment." Unfortunately, few state agencies have implemented rules ensuring this right is protected, which has contributed to vast environmental and health inequalities in Maryland.

Across the state, communities' needs and concerns often fall behind those of polluting industries, and the disparity is even greater for low-wealth and primarily Black communities. For example, over the last decade, Brandywine, Maryland, a community where nearly three-quarters of residents are Black, became the site of rapid power plant expansion. The community is already home to a Superfund site, sludge lagoon, and concrete batching facility. Prince George's County also fails to meet the U.S. Environmental Protection Agency's National Ambient Air Quality Standards (NAAQS) for fine particulate matter and ozone -- two pollutants emitted by power plants.¹ According to the county's 2018 Health Report, rates of conditions that can be made worse by air pollution -- heart disease, stroke, diabetes, infant mortality, and low birth weight -- are higher in the county compared to the state, especially among Black residents.² Despite concerns raised by community members and public health advocates, state and local agencies continued to approve new or expanded power plants. Today, there are five plants clustered within a 13-mile radius around Brandywine.

In another striking example, the state's industrial poultry operations have proliferated over the last decade. Since 2009, the number of registered poultry CAFOs has increased from seven to

¹ U.S. Environmental Protection Agency, Maryland Whole or Part County Nonattainment Status by Year Since 1992 for all Criteria Pollutants, https://www3.epa.gov/airquality/greenbook/phistory_md.html.

² Prince George's County Health Department, 2018 Health Report (2018), <https://www.princegeorgescountymd.gov/ArchiveCenter/ViewFile/Item/3113>.

526, with the majority concentrated on the Lower Eastern Shore.³ The three counties located on the Lower Shore -- Somerset, Wicomico, and Worcester -- have higher rates of poverty compared to the state overall. Among the nine Eastern Shore counties, Somerset and Wicomico counties have the highest proportion of Black residents. Cancer incidence rates in the region are among the highest in the state.⁴ While CAFOs emit harmful air pollutants such as particulate matter, sulfur dioxide, and ammonia, these facilities are not required to install air monitors. Residents who live adjacent to these operations have repeatedly raised concerns about noxious odors, respiratory health issues, and stomachaches, and for years asked the Maryland Department of Environment to assess the public health impacts of CAFO air emissions.⁵ These common sense requests were repeatedly denied, once again leaving residents without recourse. In both of these instances, and in many others, residents and local advocacy organizations called for greater transparency, oversight, and accountability by state agencies, and were largely ignored.

It is time for Maryland to stand by the promise made nearly 50 years ago in MEPA and codify the right that every resident has to a healthful environment in the state's constitution. In addition to clarifying the state's commitment to public health and environmental protection, Senate Bill 151 will help ensure that this right is enforced at all levels of government, ideally compelling agencies to comprehensively consider the cumulative environmental and public health burdens faced by a community before approving polluting projects. The amendment will also provide residents with a path for legal recourse if the state fails to uphold its commitment, serve as a guidepost for the work of public health and environmental regulators in the state, and create a path for future legislation that protects this right.

For the health of all Marylanders, especially those who have for too long borne the consequences of environmental injustices, we urge the Committee to adopt a **FAVORABLE** report on Senate Bill 151. Thank you.

Darya Minovi
Policy Analyst
Center for Progressive Reform

* * *

About the Center for Progressive Reform

The Center for Progressive Reform is a "think-and-do tank" with a network of more than 60 Member Scholars working to build thriving communities on a resilient planet. CPR drives policy reform with rigorous and accessible legal analysis designed for changemakers.

www.progressivereform.org

³ Maryland Department of Environment, Status of Animal Feeding Operations (AFO) Applications (October 1, 2020), <https://mde.maryland.gov/programs/LAND/RecyclingandOperationsprogram/Pages/CAFO.aspx>.

⁴ Center for Cancer Prevention and Control, Maryland Comprehensive Cancer Control Plan 2016-2020, https://phpa.health.maryland.gov/cancer/cancerplan/Documents/MD%20Cancer%20Program_508C%20with%20cover.pdf.

⁵ Food & Water Watch, Industrial Air Monitoring Legislation (CHAA) Introduced in 2019 with New Legislative Support (February 5, 2019), <https://www.foodandwaterwatch.org/news/industrial-agriculture-air-monitoring-legislation-chaa-introduced-2019>.

MD SB151 Env. Rights (Earthworks).pdf

Uploaded by: Mintzes, Aaron

Position: FAV



EARTHWORKS

January 22, 2021

Testimony for SB 151: Constitutional Amendment- Environmental Rights

Position: Support

Senate Committees on Judicial Proceedings and
Education, Health and Environmental Affairs
Maryland General Assembly

Dear Committee Members,

Thank you for the opportunity to provide this testimony in support of SB 151, Constitutional Amendment- Environmental Rights. Please accept this testimony on behalf of Earthworks. We're a national advocacy organization dedicated to protecting communities and the environment from the impacts of mineral and energy development while furthering the just, equitable, fair, and clean energy transition.

Dedicated to protecting communities and the environment from the adverse impacts of mineral and energy development while promoting sustainable solutions.

Montana instituted a similar constitutional amendment in 1972 providing Montanans an inalienable “right to a clean and healthful environment”.ⁱ Montana’s Supreme Court did not decide their first case on this amendment until 1999, a successful challenge to a state agency permit to discharge arsenic-laden water in to the Blackfoot River .ⁱⁱ Explaining the framer’s intent, the Court opined, “Our constitution does not require that dead fish float on the surface of our state’s rivers and streams before its farsighted environmental protections can be invoked”.ⁱⁱⁱ

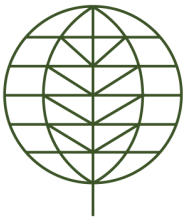
Montana’s courts have repeatedly reaffirmed their Constitution’s commitment to a clean and healthful environment, even as recently as November 2020.^{iv} In whole, the amendment has helped hold agencies and polluters accountable to the people while **not** resulting in a significant increase in litigation. This is in part because the courts have efficiently distinguished procedural and other agency decisions not affecting substantive environmental reviews.^v

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The legal standing SB 151 provides Marylanders better reflects rights we already enjoy under federal law. Almost every major federal environmental statute contains a specific provision granting individuals standing to challenge certain federal agency decisions.^{vi} By contrast, Marylanders usually have standing only where we own nearby property rights, or when we comment on the administrative record for a narrow subset of air, water, and waste permits.^{vii}

Preparing substantive agency comments and potential litigation requires a formidable devotion of time, resources, and technical expertise not frequently available to many Marylanders. Even charitable organizations, with full time staff, tend to do so selectively. For this reason, we do not see floods of litigation clogging Federal or Montana courts.

We ask this Committee to affirm Marylanders also deserve a Constitutional right to protect our environment. SB 151 helps preserve these opportunities for Marylanders and future generations. Thank you for your consideration. We respectfully urge a favorable report.

Sincerely,



Aaron Mintzes

Senior Policy Counsel, Earthworks

Baltimore, MD

ⁱ All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.



EARTHWORKS

Mont. Const. Art II Sec. 3

ⁱⁱ [Montana Env'tl. Info. Ctr. v. Department of Env'tl. Quality, 1999 MT 248, 296 Mont. 207, 988 P.2d 1236, 1999 Mont. LEXIS 266, 56 Mont. St. Rep. 964, 49 ERC \(BNA\) 1402](#)

ⁱⁱⁱ Ibid at 1249.

^{iv} [Mont. Env'tl. Info. Ctr. v. Mont. Dep't of Env'tl. Quality, 2020 MT 288, 402 Mont. 128, 2020 Mont. LEXIS 2497, 476 P.3d 32, 50 ELR 20253, 2020 WL 6737451](#)

^v See [Northern Plains Res. Council, Inc. v. Mont. Bd. of Land Comm'rs, 2012 MT 234, 366 Mont. 399, 288 P.3d 169, 2012 Mont. LEXIS 315](#). (No standing where agency shifts environmental reviews from the leasing to the permitting stages.) See also [Lohmeier v. Gallatin County, 2006 MT 88, 332 Mont. 39, 135 P.3d 775, 2006 Mont. LEXIS 146](#) (No standing for individuals outside water and sewer district boundaries to challenge exclusion therefrom.)

^{vi} 42 U.S.C. § 6872 (Resource Conservation and Recovery Act); 33 U.S.C. § 1365 (Clean Water Act); 42 U.S.C. § 2604 (Clean Air Act); 16 U.S.C. § 1540(g) (Endangered Species Act)

^{vii} See HB 1569 (MGA 2010 Session) <http://mgaleg.maryland.gov/2009rs/billfile/HB1569.htm>

Dedicated to protecting communities and the environment from the adverse impacts of mineral and energy development while promoting sustainable solutions.

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SB0151 MD NARAL SUPPORT.pdf

Uploaded by: Philip, Diana

Position: FAV



SB0151 Constitutional Amendment – Environmental Rights - Establishment
Presented to the Hon. Will Smith and the Senate Judicial Proceedings Committee
January 26, 2021 at 1:00 p.m.

POSITION: SUPPORT

NARAL Pro-Choice Maryland urges the Senate Judicial Proceedings Committee to issue **a favorable report on SB0151 - Constitutional Amendment – Environmental Rights - Establishment**, sponsored by Senator Obie Patterson.

Our organization is an advocate for reproductive health, rights, and justice. There is mounting evidence that pollution and extreme weather conditions caused by climate change have adverse effects on reproductive health and access to reproductive healthcare services. [Communities of color](#) and socioeconomically disadvantaged communities are impacted most acutely. Classifying environmental rights as a constitutional right is a positive step forward to prevent exacerbating environmental damage and the effects of climate change on sexual and reproductive health and freedom.

Climate change is impacting reproductive health in various ways. Research has demonstrated the reproductive health outcomes associated with environmental pollution including infertility, abnormal menstruation and puberty, endometriosis, recurrent pregnancy loss, polycystic ovarian syndrome (PCOS), fetal death, prenatal growth abnormalities, reduced gestational period, low birth weight¹, and genital and breast cancers.² Furthermore, climate change's accelerating impact on global temperatures is making heat a more serious threat to pregnant persons going forward; exposure to unusually hot temperatures can lead to changes in length of gestation, birth weight, stillbirth rates, and neonatal stress.³ Increased instances of natural disasters result in a disruption of reproductive health services which can lead to unplanned pregnancies; conversely, natural disasters can displace families and leave them financially unstable resulting in reduced fertility.⁴ In both cases, individuals lose their reproductive freedom to choose when to become pregnant.

Environmental and reproductive rights are human rights; the intersection between these issues is especially apparent for communities of color and socioeconomically disadvantaged groups. We welcome a constitutional amendment stating the unalienable right to a clean and healthy environment, which will prevent the state from causing or allowing further environmental degradation. For these reasons, NARAL Pro-Choice Maryland **urges a favorable committee report on SB0151**. This amendment is a step in the right direction, but further action is required to ameliorate urban conditions which result in extreme heat, improve disaster preparedness considering the effects on reproductive healthcare access, and mitigate air, water, and soil pollution.

¹ Rashtian, J., Chavkin, D.E. & Merhi, Z. (2019) Water and soil pollution as determinant of water and food quality/contamination and its impact on female fertility. *Reproductive Biology & Endocrinology* 17, 5. <https://doi.org/10.1186/s12958-018-0448-5>

² Bhatt, R.V. (2000). Environmental Influence on Reproductive Health. *International Journal for Gynecology and Obstetrics*, 70: 69-75. [https://doi.org/10.1016/S0020-7292\(00\)00221-6](https://doi.org/10.1016/S0020-7292(00)00221-6)

³ Bekkar B, Pacheco S, Basu R, & DeNicola N. (2020). Association of Air Pollution and Heat Exposure with Preterm Birth, Low Birth Weight, and Stillbirth in the US: A Systematic Review. *JAMA Network Open*; 3(6):e208243. doi:10.1001/jamanetworkopen.2020.8243

⁴ Tobin-Gurley, J, Peek, L, & Loomis, J. (2011). Displaced Single Mothers in the Aftermath of Hurricane Katrina. *International Journal of Mass Emergencies and Disasters* 28, no. 2: 170-206.

TESTIMONY FOR SB0151 Constitutional Amendment for

Uploaded by: Plante, Cecilia

Position: FAV



**TESTIMONY FOR SB0151
CONSTITUTIONAL AMENDMENT – ENVIRONMENTAL RIGHTS**

Bill Sponsor: Senator Patterson

Committee: Judicial Proceedings

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Cecilia Plante, co-chair

Position: FAVORABLE

I am submitting this testimony in favor of SB0151 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of individuals and grassroots groups with members in every district in the state. We have well over 30,000 members across the state.

Our members believe that ALL Marylanders have a right to clean air and clean water. We believe that the state should be making good decisions about sustaining our environment and we believe that this bill is codifying what we expected would already be happening.

However, we know the state is not making good decisions for us. A new pipeline on the Eastern Shore was just approved, bringing in fracked gas from Pennsylvania. Also, a new power plant, the FIFTH in Brandywine within a 13-mile radius of four other plants will soon be built right next to the Elementary School. Is this good decision-making? The answer can only be HELL NO!

That is why we need these rights codified. As a legislator, would you want this fossil fuel infrastructure in your backyard? Probably not. How would you fight it? The answer is, with very little success.

The people of Maryland believe in this and would vote for it if it was on the ballot, especially in light of the reversals of environmental policy that we are seeing from the federal and government and the lack of good environmental stewardship we are seeing at the state level.

We feel that having these ideals codified in the state Constitution would ensure that the state doesn't act in an irresponsible way and continue to build pipelines and other fossil fuel infrastructure or take away environmental protections due to pressure from businesses.

The Maryland Legislative Coalition supports this bill and we recommend a **FAVORABLE** report in Committee.

ERA Testimony - Senate.pdf

Uploaded by: Siegel, Martin

Position: FAV

January 18, 2021

Senator William C. Smith, Jr., Chair
Senator Jeffrey D. Waldstreicher, Vice-Chair
Senate Judicial Proceedings Committee

Senator Paul G. Pinsky, Chair
Senator Cheryl Kagan, Vice-Chair
Senate Education, Health and Environmental Affairs Committee

Delegate Kumar P. Barve, Chair
Delegate Dana Stein, Vice-Chair
House Environment and Transportation Committee

Re: HB 82 Constitutional Amendment: Environmental Rights;
Written Testimony of Martin R. Siegel, Esquire
FAVORABLE

Sen. Smith, Sen. Waldstreicher, Sen. Pinsky, Sen. Kagan, Del. Barve, and Del. Stein:

My name is Martin Siegel. Thank you for the opportunity to present my views in support of HB 82 and SB 151, which would add an environmental rights amendment to Maryland's Constitution. By way of background, I am a relatively recent transplant to Maryland, having moved to Baltimore City approximately five years ago. I am a Pennsylvania environmental attorney and have been in private practice, based in York, PA, since 2016. My clients include energy companies, developers, individuals, and municipalities. Prior to moving to private practice, I worked for approximately 22 years as an environmental litigator for the Pennsylvania Department of Environmental Protection. I also served as a senior attorney for the Centers for Disease Control and Prevention in Atlanta and as a senior research scientist for the U.S. Department of Energy's Pacific Northwest National Laboratory in Hanford, WA. Over the past five years, I have written and presented extensively on legal developments related to Pennsylvania's Environmental Rights Amendment ("ERA").

Pennsylvania's ERA, (Article I, Section 27 of the Pennsylvania Constitution), states:

“The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.”

My goal is to provide some insights regarding the impacts of Pennsylvania’s recently revitalized Environmental Rights Amendment. In short, I believe that the ERA has led to better informed environmental decision-making by state and local governments in Pennsylvania, as well as by developers and businesses. While the ERA has not lived up to the wildest hopes of the environmental community or the fears of the business community, it has provided a valuable foundation for protecting the environmental rights of Pennsylvania residents.

The ERA was added to Pennsylvania’s Constitution in 1971, after the unanimous approval in two sessions of the General Assembly and by a 4-1 margin by voters. The amendment declared that the people had a right to clean air and water and established the Commonwealth as the trustee of Pennsylvania’s public natural resources. It is noteworthy that the Environmental Rights Amendment was placed in Article I of Pennsylvania’s Constitution, enshrining it alongside other basic rights, such as freedom of speech and religion and the right to bear arms.

Despite much fanfare, ERA had little or no practical effect from 1971 to 2013. Pennsylvania’s courts established a standard of review that essentially held that compliance with Pennsylvania’s existing environmental statutes satisfied the ERA. *See Payne v. Kassab*, 312 A.2d 86 (Pa. Cmwlth. 1973). In light of this restrictive standard, few, if any governmental actions were reversed based upon the ERA.

Things began to change in 2013, with the Pennsylvania’s Supreme Court’s decision in *Robinson Township v. Commonwealth*, 83 A.3d 901 (Pa. 2013). This case involved a challenge

to various aspects of Act 13, which amended Pennsylvania's Oil and Gas Act. The challenged provisions included significant restrictions on local municipalities' ability to regulate fracking activity. Expressing a more expansive view of the ERA, a plurality of the Court struck down several provisions of Act 13.

The real game changer for the ERA came in 2017 with the PA Supreme Court's decision in *Pennsylvania Environmental Defense Foundation ("PEDF") v. Commonwealth*, 161 A.3d 911 (Pa. 2017). With this decision, the Court overturned 40 years of jurisprudence on the ERA. In *PEDF*, a majority of the Court accepted the reasoning of the *Robinson Township* plurality. This case involved a challenge to Pennsylvania's practice of funneling money obtained from leasing state forest and park land from fracking to the State's General Fund. The Court explicitly rejected the existing *Payne* test, stating that the ERA acknowledged the people's common ownership of Pennsylvania's natural resources and the Commonwealth's role as trustee of those resources. The Court held that as the trustee, the Commonwealth has a "duty to prohibit the degradation, diminution, and depletion of natural resources, whether those harms result from direct state action or from the actions of private parties." In addition, the Court held that Pennsylvania "must act affirmatively via legislative action to protect the environment." Finally, the Court noted that "all agencies and entities of the commonwealth government, both statewide and local, have a fiduciary duty" as trustee to protect the corpus of the environmental trust. The Court also endorsed language from *Robinson Township* that the ERA "does not call for a stagnant landscape; nor . . . for the derailment of economic or social development."

Subsequent litigation before courts and Pennsylvania's Environmental Hearing Board, which hears appeal from final actions by the Department of Environmental Protection, continues to define the parameters of state and local governments' responsibilities and the protections

afforded by Pennsylvania's ERA. While the ERA is now a frequent and valuable tool in environmentalists' arsenal to challenge legislation and projects, it has not come close suffocating developments or overwhelming municipal and state government. Land development has continued. Municipalities have not been required to hire staff to do environmental assessments, and fracking and mining have not been halted. That said, even though the case law under the ERA continues to develop, I believe the revitalized ERA has had positive environmental impacts without imposing significant burdens of government and businesses.

To appreciate the impact of the ERA in recent years, it is first necessary to understand the context in which the ERA is been used. In general, the ERA has been utilized to challenge 1) legislative actions by the General Assembly; 2) programmatic actions by state agencies; or 3) specific permitting actions or approvals by DEP or local municipalities, such as zoning decisions. The principles enunciated by the Pennsylvania Supreme Court in *Robinson Township* and *PEDF*, which addressed challenges to legislation, do not easily translate to evaluating specific actions taken on an almost daily basis by local and state governmental entities.

We can, however, glean some insights on how the ERA has impacted environmental actions in Pennsylvania. First, it is safe to say that DEP and many local municipalities now must incorporate more in-depth assessment and analysis of environmental impacts in decision-making regarding major projects. For example, there have been cases where the Environmental Hearing Board has remanded approvals to DEP because of lack of appropriate consideration of environmental impacts. In addition, it is now routine for parties challenging DEP approval of permits or other DEP actions before the Environmental Hearing Board to allege that DEP has failed to comply with the ERA. These imperatives have led DEP to adopt policies to incorporate consideration of its ERA responsibilities into its review processes.

Second, despite fears from the business community, it is apparent that projects will not be rejected simply because they may have temporary or limited impacts on the environment. For a project to run afoul of the ERA, it must have a significant impairment of the environment over time.

My impression is that the recent revitalization of the ERA has not led to an onslaught of litigation. What generally appears to be the case is that the ERA is used as an additional basis for challenging projects that would already have been challenged. In addition, DEP has not hired additional attorneys in order to address ERA litigation since the ERA was revitalized by the Pennsylvania Supreme Court. I believe the same is true for Pennsylvania local governments.

Perhaps most significantly, it is likely that the ERA has led many developers and businesses to submit better project proposals to municipalities and the DEP by incorporating heightened consideration of environmental impacts into their design of projects. Doing so reduces the potential that projects will be delayed by challenges and the need for developers to go back to the drawing board. While it is difficult to objectively assess the magnitude of the ERA's impact in this regard, I know that I, as well as many of my colleagues, routinely advise our clients to do such analysis to help streamline approvals and avoid appeals.

The ERA has also provided a tool for local governments to use if they wish to encourage more environmentally friendly development within their boundaries. It does not, however, compel them to ban potentially environmentally unfriendly land uses, such as fracking. Municipalities, at a minimum, must assess the potential environmental impacts of actions such as changes in zoning ordinances to ensure that they do not infringe on fundamental rights protected under the ERA.

Based upon my experience with the implementation of Pennsylvania's ERA, I firmly believe that amending Maryland's Constitution to include a similar provision is essential to protecting fundamental environmental rights and to clearly establishing the obligations and ability of state and local government to protect these rights. The experience in Pennsylvania demonstrates that this can be done in harmony with the needs of the business community and local government by ensuring that all development is done in a way that respects the environmental rights of Maryland's residents.

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SB 151 - Constitutional Amendment -- Environmental

Uploaded by: Tulkin, Josh

Position: FAV



7338 Baltimore Ave
Suite 102
College Park, MD 20740

Committee: Judicial Proceedings

Testimony on: SB 151 “Constitutional Amendment – Environmental Rights”

Position: Support

Hearing Date: January 26, 2021

The Maryland Chapter of the Sierra Club submits this testimony in support of SB 151, the Maryland Constitutional Amendment for Environmental Rights. This amendment has the potential to help address the growing climate emergency and longstanding degradation of our air, water, and natural places.

Environmental degradation negatively and profoundly impacts public health and well-being. It is important, therefore, that protections for our environment be established as a fundamental right of all Marylanders. The linkages between air quality and public health are strong and well documented.¹² Yet, almost 90% of Marylanders live in counties with unhealthy air as designated by the EPA.³ Communities of color and low income are particularly overburdened from ill effects of pollution because of their proximity to toxic facilities and lack of resources and legal means to hold polluters accountable.⁴ Baltimore, for instance, has one of the highest rates of childhood asthma in the country (20 percent) – more than double the national average.⁵ Abuse of our natural resources threatens our children's health and the future of our coastlines. It is time for this situation to stop. **This amendment will provide widespread benefits to our state in codifying the fundamental principle of environmental human rights.**

A constitutional amendment that enshrines environmental rights into law would be effective and legally prudent. The New York State Bar Association's Environmental and Energy Law Section published a detailed analysis and recommended the adoption of a constitutional environmental right.⁶ A 2013 study found that nearly all the world's nations recognize this right through constitutional or other forms, as do a growing number of states and cities.⁷ We urge Maryland to join as leaders across the country and beyond codify the right to a healthful environment.

¹ “Asthma Hospitalizations Drop After Power Plants Reduce Emissions.”

<https://www.publichealth.columbia.edu/public-health-now/news/asthma-hospitalizations-drop-after-power-plants-reduce-emissions>

² “LA Environmental Success Story: Cleaner Air, Healthier Kids” News USC.edu

³ <https://www.sierraclub.org/maryland/beyond-coal>

⁴ L. Cushing, et al. “Racial/Ethnic Disparities in Cumulative Environmental Health Impacts in California: Evidence from a Statewide Environmental Justice Screening Tool (CalEnviroScreen 1.1).” *American Journal of Public Health*, 2015.

⁵ Asthma, Baltimore City Health Department <https://health.baltimorecity.gov/node/454>

⁶ New York State Bar Association Environmental and Energy Law Section, Report and Recommendations Concerning Environmental Aspects of the New York State Constitution, 38 *Pace L. Rev.* 182 (2017)

⁷ D. Boyd, “The Effectiveness of Constitutional Environmental Rights,” Yale UNITAR Workshop April 2013

Founded in 1892, the Sierra Club is America's oldest and largest grassroots environmental organization. The Maryland Chapter has over 75,000 members and supporters, and the Sierra Club nationwide has over 800,000 members and nearly four million supporters.

The Maryland Chapter of the Sierra Club submits this testimony in support of the Maryland Constitutional Amendment for Environmental Rights. The amendment will protect the fundamental right of all Marylanders to live in a healthful environment with clean air, water, land, and a stable climate. It will also recognize the state as trustee of Maryland's natural resources. It is time for our state constitution to protect and prioritize all Marylanders' right to live in a healthy environment.

Rosa Hance
Chapter Chair
rosa.hance@msierra.org

Josh Tulkin
Chapter Director
josh.tulkin@msierra.org

SB0151-FAV-Constitutional Amendment-Environmental

Uploaded by: Younts, Diana

Position: FAV



Committee: Judicial Proceedings
Testimony on: SB0151 - “Constitutional Amendment-Environmental Rights”
Organization: MLC Climate Justice Wing
Person
Submitting: Diana Younts, co-chair
Position: Favorable
Hearing Date: January 26, 2021

Dear Mr. Chairman and Committee Members,

Thank you for allowing our testimony today in support of SB0151. MLC’s Climate Justice Wing is a statewide coalition of over 50 grassroots and grasstops organizations focused on getting State level climate justice legislation passed. Each bill for which we advocate is evaluated through an equity lens, with a particular focus on how disadvantaged communities are affected by the bill and the bill’s climate impact.

The Constitutional Amendment would require the government to consider the right to a healthful environment on par with all other civil rights, ensuring that this right would be enforceable, and that environmental health - upon which the health of all Marylanders depends - would remain top priorities now and for future generations, regardless of administrative and political changes.

In 1973, the Maryland General Assembly passed the Maryland Environmental Policy Act which recognized that “each person has the fundamental and inalienable right to a healthful environment.” It further stated that this policy rises to the level of highest priority. Yet, without enforcement power, over these past 48 years, MEPA has largely been under-utilized and forgotten.

Despite the significant progress we have made, Marylanders across the state continue to suffer from unclean air, water, soil and an increasingly unstable climate.

This amendment would become the legal foundation and rationale for the legislature to pass and enforce robust environmental legislation and policies to protect current and future generations from harm due to environmental degradation and pollution.

It is a backstop for better decision-making requiring decision-makers to (a) consider the full extent of harm resulting from any given proposal and (b) consider whether a proposed project increases existing degradation - considering both individual and cumulative impacts of harm.

It would support both the government's and the local communities' ability to pursue actions that are beneficial for environmental protection.

HB82 would help address environmental inequities. Environmental pollution and degradation are often concentrated in communities of color and low-income neighborhoods across Maryland. Such clustering has led to disproportionate health disparities, including increased rates of asthma hospitalization, heart disease, and cancer. These inequities demand that we protect the right for all to a healthful environment in our state constitution. Requiring the state to protect Maryland's natural resources and our right to live in a healthful environment resets the priority of the government to make the health of the public among our highest priorities.

This is not a novel idea. Five states in the United States have environmental rights provisions in their constitutions for over 40 years. Not a single one of these states experienced a floodgate of litigation. Development was not arrested. Now, there is a second round of interest in passing environmental rights amendments. New York is in the midst of passing one now. Indeed at least six other states are exploring how they might do this. We are in an emerging second wave of environmental constitutionalism.

For these reasons we urge you to vote favorably for SB0151.

SB 151_UNF_MML.pdf

Uploaded by: Bailey, Angelica

Position: UNF



Maryland Municipal League

The Association of Maryland's Cities and Towns

TESTIMONY

January 26, 2021

Committee: Senate Judicial Proceedings

Bill: SB 151 – Constitutional Amendment – Environmental Rights

Position: Oppose

Reason for Position:

The Maryland Municipal League strongly opposes SB 151. This bill proposes an amendment to the Maryland Constitution to establish that every person has the right to a certain clean and healthy environment; authorizes the State, a political subdivision, and any person to enforce certain rights; and establishes that every person has the right to intervene in an action brought by the State or a political subdivision of the State to protect certain rights.

Under this legislation, the League feels that the actions of municipal governing bodies, planning commissions, boards of zoning appeals, and historic district commissions will be more apt to be questioned in a judicial setting under SB 151. This legislation would impose the burden of ensuring that EVERY person in the State, regardless of where they reside, would have the expectation that every municipality has jurisdiction over and the ability to provide clean air, pure water, healthful environment, natural resources ecosystems, the preservation of natural, scenic, historic, and aesthetic values of the environment. While these are lofty and important goals, the reality is that local governments are unable to ensure that these goals can be met, especially when most of these responsibilities may not be under their direct control. Not only would every municipality be subject to the impact of what other jurisdictions in the State may be doing, it would also mean that every city or town would be subject to abuses and must take responsibility for actions taken or not taken by jurisdictions outside the State of Maryland, over which they have no control.

This legislation would blow the State's existing standing statute wide open and leave local governments completely vulnerable to the whim of any person living anywhere in the State with a real or perceived environmental impact which would likely result in legal action. Therefore, it is the opinion of the League that the existing standing statute in Maryland is more than adequate to address land use and environmental conflicts, and that this legislation significantly and unnecessarily widens the scope of those able to file suit against a local government. It is highly likely that municipal finances will be significantly impacted to the extent that the bill results in
Over...

1212 West Street, Annapolis, Maryland 21401

410-268-5514 | 800-492-7121 | FAX: 410-268-7004 | www.md-municipal.org

more individuals or entities seeking judicial review of land use and environmental actions of a legislative body and/or an increase in the length of time and resources needed to address individual cases.

For these reasons, the Maryland Municipal League opposes SB 151 and respectfully requests an unfavorable committee report.

FOR MORE INFORMATION CONTACT:

Scott A. Hancock
Angelica Bailey
Bill Jorch
Justin Fiore

Executive Director
Director, Government Relations
Director, Research & Policy Analysis
Manager, Government Relations

SB0151- Constitutional Amendment - Environmental R

Uploaded by: Ballentine, Tom

Position: UNF



January 22, 2020

The Honorable William C. Smith, Jr., Chair
Senate Judicial Proceedings Committee
Miller Senate Office Building, 2 East
Annapolis, MD 21401

Oppose: SB 151 – Constitutional Amendment – Environmental Rights

Dear Chair Smith and Committee Members:

The NAIOP Maryland Chapters representing more than 700 companies involved in all aspects of commercial, industrial and mixed-use real estate oppose Senate Bill 151.

The bill would create broad new rights to litigate government actions based, not on scientific standards adopted through laws and regulations, but on the plaintiff's personal tastes; their personal definition of the new, constitutionally guaranteed air, and water rights. A personal view of what constitutes, "*scenic, and historic values of the environment*" would become the basis for litigation that would paralyze activities conducted under government permits. The courts would be faced with adjudicating matters of taste and how the subjective values of the plaintiffs should be achieved with no objective standard of review on which to rely.

The bill is very different than current state and federal rights to citizen suits and would mark the end of carefully balanced approaches to rights of appeal land use and environmental permits. It would also allow private parties to intervene in agency enforcement actions and sue government entities for perceived inaction.

The bill should raise serious concerns that routine functions of state and local governments would become chaotic and some ungovernable. Activities performed under state and local permits would never really be vested and reliably carried out because virtually any opponent could use the broad language of this bill to initiate tactical litigation to oppose legitimate work under government permits. Our specific concerns follow:

1. The bill would guarantee conditions that are beyond the control of the state to provide. For example, the bill would cause the state to guarantee Marylanders undefined, "pure water" and "clean air." The state is in attainment for three of four of the primary Federal air quality standards and is near attainment in the fourth. Sophisticated, long-term, enforceable measures are in place through the Greenhouse Gas Reduction Act (GGRA) to improve air quality. HB 82 would allow virtually anyone to initiate litigation against any number of government agencies, entities and individuals arguing that this status does not qualify as constitutionally guaranteed, "clean air" and that the GGRA, standards of review for permits and other measures are inadequate management strategies. Given that one of the most influential remaining factors is air pollution from downwind states that Maryland has no jurisdiction to regulate, how could a court judgement, administrative enforcement action or settlement agreement provide a remedy?
2. Maryland's well-developed case law and closely negotiated legislative provisions that define appeals to environmental permits and land use decisions, would both be abrogated. In Maryland standing to appeal environmental permits is broadly granted, and similar to federal rules appeals are reviewed based on the

administrative record. The proposed amendment does not limit review to the record and would allow challengers to “surprise” defendants with new allegations at the last minute. The content of comprehensive land use plans is the product of a wide-open public consensus building process. Once adopted, standing to appeal the planning and zoning decisions made to implement the community vision embodied in those plans is limited to those who can show they are harmed by the decision in a way that is different than the general public. SB 151 would allow determined opponents to block implementation of local land use plans and activities performed under state environmental permits.

3. The bill would conflict with federal rules in many respects because it does not bring over any of the structure, and limitations present in the United State Code. Differing versions of citizen suits and standing to intervene in enforcement actions are found in the Clean Water Act, the Clear Air Act, code sections dedicated to management of solid waste and CERCLA or Superfund. One of the fundamental differences between those provisions and SB 151 is that federal rights relate back to enforcing specific regulations and defined standards and tolerances whereas SB 151 has at its foundation subjective qualities and values that are not defined. The structure used to implement federal standing provides rights to citizens but also protects the interests of regulatory agencies and those who are defendants through limitations on how those rights are carried out. That structure is completely missing from HB 82.
4. Federal provisions permitting citizen suits to enforce environmental laws are designed to permit private parties to sue only when the government fails to diligently enforce the law. The federal statutes provide that the private party must give the agencies notice of an intent to sue 60 days before bringing an action and, if the agency then diligently enforces the law, the private party cannot initiate the action. HB82 ignores that requirement allowing the private party to displace the agency charged with responsibility for enforcement.

Proponents point to Pennsylvania as precedent. Pennsylvania does not have the private cause of action contained in SB 151 and the courts have gone back and forth on how the basket of rights may be enforced. The most celebrated case related to this type of constitutional provision was a case in Pennsylvania that reinstated local land use decision making authority, reversing a state law that had compelled local fracking for natural gas. Ironically, because the language in SB 151 is so broad that it can serve the purpose of any skilled litigator, there is little doubt that SB 151 would be used to dismantle Maryland’s system of local land use decision making rather than preserve it.

For these reasons, NAIOP respectfully requests your unfavorable report on Senate Bill 151.

Sincerely;



Tom Ballentine, Vice President for Policy
NAIOP Maryland Chapters -*The Association for Commercial Real Estate*

cc: Senate Judicial Proceedings Committee Members
Nick Manis – Manis, Canning Assoc.

MITA -- SB 151.pdf

Uploaded by: Beugelmans, David

Position: UNF

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January 26, 2021

VIA ELECTRONIC FILING

The Honorable William C. Smith, Jr.
Chair, Senate Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, MD 21401

Re: Senate Bill 151

Dear Chairman Smith:

This letter is written on behalf of the Maryland Industrial Technology Alliance (“MITA”), a non-profit trade association representing more than 20 industrial, manufacturing and supporting businesses **opposing Senate Bill 151**, which would amend the Maryland Constitution to create environmental rights and allow the State, local governments, and any person to enforce those rights through litigation. MITA opposes this legislation for the following reasons:

- **Unnecessary.** The State and federal government have implemented a robust suite of laws to protect the public from environmental risks, ranging from air emissions to chemicals, and under current statute the Attorney General, local governments, and individuals have authority to ensure those laws are enforced. There is no need to create a separate and amorphous set of environmental rights when these regulatory systems are in place to provide well targeted protections against environmental harm.
- **Substantially increases litigation risk.** SB 873 allows any “person” to enforce environmental rights against any “public party” through “appropriate legal proceedings.” These rights include everything from a right to a “stable climate” to preserving “ecological, scenic, and historic values of the environment.” These rights are broad, highly subjective, and unconstrained, creating virtually unlimited risk of litigation. This would have a significant chilling effect on virtually all regulated activities in the State.

For these reasons, MITA respectfully requests that you give Senate Bill 151 an **Unfavorable Report.**

Very truly yours,

/s/

Todd R. Chason

cc: Senate Judicial Proceedings Committee Members

SB151- Maryland Motor Truck Association - Oppose.p

Uploaded by: Champion, Louis

Position: UNF



Maryland Motor Truck Association

9256 Bendix Road, Suite 203, Columbia, MD 21045
Phone: 410-644-4600 Fax: 410-644-2537



HEARING DATE: January 26, 2021
BILL NO/TITLE: **Senate Bill 151 – Constitutional Amendment – Environmental Rights**
COMMITTEE: Senate Judicial Proceedings Committee
POSITION: **Oppose**

Maryland Motor Truck Association appreciates the need to protect the state's natural resources and ensure that citizens have access to a clean and healthy environment. However, MMTA opposes this legislation as it places broad authority in the hands of a single individual by allowing any person to have legal standing and litigate against the state or a private entity for "infringing on those rights" without specifically identifying what is included in the definition of "infringe."

Granting such broad authority would set a dangerous precedent. It calls into question whether anyone that emits any substance into the air (whether harmful or not) could continue to operate in the state given the potential liability. As written, SB151 could result in litigation against home or commercial builders (for failure to preserve the "natural, scenic, historic and aesthetic values of the environment"), manufacturers, anyone operating a motor vehicle, and many others.

Freight movement is non-discretionary. Within the trucking industry, the passage of SB151 could paralyze our ability to deliver the products Marylander's need. It would result in tremendous liability exposure because of the private right of action that is created. For this reason, MMTA asks for an unfavorable report.

About Maryland Motor Truck Association: Maryland Motor Truck Association is a not-for-profit trade association representing the trucking industry since 1935. In service to its 1,000+ members, MMTA is committed to supporting and advocating for a safe, efficient, and profitable trucking industry across all sectors and industry types, regardless of size, domicile, or type of operation.

For further information, contact: Louis Campion, (c) 443-623-4223

SB 151.pdf

Uploaded by: Castelli, William

Position: UNF



Senate Bill 151 – Constitutional Amendment – Environmental Rights

Position: Oppose

Maryland REALTORS® oppose SB 151 which amends the Maryland Constitution to establish that every person has certain environmental rights. SB 151 greatly expands the legal concept of “standing” in Maryland and creates vague rights that courts would have difficulty defining and enforcing.

SB 151 lacks clarity. There is no general standard by which to measure if the “rights” are being infringed or upheld. Unlike a statute that provides some direction, SB 151 essentially grants the courts broad discretion to interpret what the rights mean and what the enforcement standard will be.

As an example, SB 151 establishes a right to the preservation of the “natural, healthful, scenic, and historic values of the environment.” Because every person now has a constitutional right based on “scenic” values will every condo building or apartment complex proposed for construction be challenged because one person believes it diminishes the scenic value of the environment? How would a court define healthful? It is an impact that imposes a risk to health or an impact that simply makes a person less healthful like a pint of your favorite ice cream? Terms like the “historic value” of the environment are unclear and raise extraordinary concern over the viability of any development project large or small that needs local and state approval.

The concept of legal “standing” exists so that courts deal with cases where individuals can show specific and measurable harm. If the courts must now deal with every trivial complaint, people with measurable and serious complaints will compete with the trivial complaints for timely justice from the courts.

Finally, Maryland needs to be serious about improving conditions for housing opportunity and supply. Creating an opportunity for every development project to be challenged will only decrease needed housing supply and increase the cost of housing. Maryland is already the fifth most densely populated state in the country. To meet future population growth, the state and local governments will increasingly turn to infill development which is almost always challenged because it impacts individuals living in established communities. This bill significantly expands the rights to challenge community developments even if the individual not a member of that community or directly impacted by the project. Moreover, the bill could make infill and affordable housing projects harder to pursue because such projects may be viewed as less historic or scenic.

Rather than empowering people to challenge decisions after they have been made, Maryland has, instead, expanded individual’s opportunity to be heard at the start of the process. In many counties, notice information is given to many interested parties. A person doesn’t have to be aggrieved or impacted in any way, and that person will have an opportunity to express their opinion on the project. In fact, current public input already has a measurable impact delaying and increasing costs for many projects. SB 151 risks making many infill development projects too expensive to pursue.

For these reasons, the Maryland REALTORS® recommends an unfavorable report.

For more information contact bill.castelli@mdrealtor.org, susan.mitchell@mdrealtor.org, or lisa.may@mdrealtor.org

SB 151 Columbia Gas Testimony OPPOSE.pdf

Uploaded by: Collins, Carville

Position: UNF

OPPOSE Senate Bill 151
Senate Bill 151 – Constitutional Amendment – Environmental Rights
Senate Judicial Proceedings Committee

Columbia Gas of Maryland, Inc. opposes Senate Bill 151, which proposes an amendment to the Maryland Constitution to establish that every person has the right to a clean and healthy environment, and that any person may enforce such rights. Columbia Gas opposes SB 151 because it significantly changes the legal landscape in Maryland in regards to standing (i.e., the ability to bring a court action against another party) and private property rights.

At the outset, Columbia Gas notes that it is committed to providing its customers with safe and reliable natural gas utility service in an environmentally responsible manner. However, Columbia Gas opposes Senate Bill 151 due to the ramifications that are likely to occur if the bill is passed. Under Maryland law, an individual only has standing to bring court action against another party if that individual is aggrieved personally and specifically, in a manner that differs from the general public [See *Sugarloaf v. Dept. of Environment*, 344 Md. 271, 288, 686 A.2d 605, 614 (1996)]. Senate Bill 151, part F, substantially departs from existing law in that it would provide any individual with the right to bring a court action against another party if the individual alleges interference with a “clean and healthy environment,” even if that individual is not personally aggrieved. In other words, an individual will be able to sue simply for an alleged injury to the environment, not an injury to him/her self.

Changing the standing standard will likely have significant adverse impact on any business operating in Maryland that touches the environment in any way. For one, it is anticipated that businesses will face an increase in the number of court actions brought by individuals, as the basic threshold of having standing will no longer limit these types of legal actions. Further, by letting generic claims of environmental harm be addressed in the courts, it will be the courts that will ultimately set public policy on environmental issues as opposed to the legislature. This creates uncertainty for businesses and potential conflicts with the other public policies of the legislature.

Senate Bill 151 also raises questions with regards to private property rights. The “Declaration of Rights” provides that “the State’s natural resources are the common property of every person.” The definition of “natural resources” is broad in that it includes more than public lands, it also includes the air, plants, animal life and climate located within Maryland. This language suggests that the public will have an ownership interest in the natural resources on another’s property, such as trees or minerals. Under this interpretation, any person can object to a property owner removing the trees from his property, or a holder of mineral rights mining the minerals, as any person will have a property interest in those natural resources. By establishing that every person has a property interest in natural resources, including those resources on private property, Senate Bill 151 may run afoul of the Fifth Amendments Takings Clause, which prohibits the taking of private property for a public purpose without payment of just compensation.

For the reasons set forth above, Columbia Gas **opposes Senate Bill 151** and requests an unfavorable report.

January 26, 2021

Contact:
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Carville.collins@dlapiper.com

Contact:
Pete Trufahnestock
(717) 903-8674
ptrufahnestock@nisource.com

MTBMA MAA SB 151 Testimony.pdf

Uploaded by: Evans, Hayley

Position: UNF



MARYLAND ASPHALT ASSOCIATION



UNFAVORABLE

Senator William C. Smith, Jr.
Chair, Judicial Proceedings Comm.
2 East, Miller Senate Office Building
Annapolis, MD 21401

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

January 19, 2021

RE: SB 151-UNFAVORABLE - Constitutional Amendment - Environmental Rights

Dear Members of the Judicial Proceedings and Education, Health, and Environmental Affairs Committees:

The Maryland Transportation Builders and Materials Association (“MTBMA”) and the Maryland Asphalt Association (“MAA”) collectively represent tens of thousands of Marylanders who operate in the areas of transportation construction, production and engineering. Together, for nearly 100 years these organizations have served as the voice of the transportation construction industry. The mission of both MTBMA and MAA is to encourage, develop, and protect the prestige of the transportation construction and materials industry in Maryland by establishing and maintaining respected relationships with federal, state, and local public officials. We proactively work with regulatory agencies and governing bodies to represent the interests of the transportation industry, and also advocate for adequate state and federal funding for Maryland’s multimodal transportation system.

We would like to thank the sponsor for the effort and consideration that went into the introduction of SB 151. However, passage of this bill would greatly overburden businesses like those we represent. We applaud the pursuit of a healthier environment and a healthier Maryland; however, the language in this bill is overbroad, vague, and subjective and its’ passage would be detrimental to our membership. There is considerable room for interpretation as to the language of SB 151 and that subjectivity would leave our members in a vulnerable position.

We thank you for your time and consideration of this bill and ask that you please give Senate Bill 151 an UNFAVORABLE report.

Sincerely,


Michael Sakata

President & CEO, MTBMA


Marshall Klinefelter

President, MAA

Opposition of SB151 - Constitutional Amendment - E

Uploaded by: Ferguson, Colby

Position: UNF



Maryland Farm Bureau, Inc.

3358 Davidsonville Road • Davidsonville, MD 21035 • (410) 922-3426

January 26, 2021

To: Senate Judicial Proceedings Committee

From: Maryland Farm Bureau, Inc.

Re: **Opposition of SB151 - Constitutional Amendment - Environmental Rights**

On behalf of our member families, I submit this written testimony opposing SB151. This bill proposes an amendment to the Maryland Constitution, contingent on a referendum, to establish that every person has the right to a certain clean and healthy environment. The bill elaborates that a clean environment is all of the following: clean air, pure water, ecosystems that sustain Maryland's natural resources, which include that waters of the state, air, flora, fauna, climate, and public lands, the preservation of the natural, healthful, scenic, and historic values of the environment, and states that Maryland's natural resources are the common property of every person. This would give citizens in Maryland standing to intervene on any state application process if they believe it interferes with any of those clean environment definitions mentioned above. Some examples would include, CAFO's, irrigation, hemp, new buildings, composting, commercial fishing and aquaculture permits.

Maryland Farm Bureau Policy: We strongly support responsible and workable actions designed to permit and protect the privilege and rights of farmers, commercial fisherman, and aquaculturalists, to produce without undue or unreasonable restrictions, regulations, or legislation. We support actions to ensure that farmers are protected from liability and nuisance suits when carrying out normal production practices.

MARYLAND FARM BUREAU RESPECTFULLY OPPOSES SB 151

A handwritten signature in black ink, appearing to read "Colby Ferguson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Colby Ferguson
Director of Government Relations

For more information contact Colby Ferguson at (240) 578-0396

MBIA Testimony SB 151.pdf

Uploaded by: Graf, Lori

Position: UNF

January 26, 2021

The Honorable Paul G. Pinsky
Senate Education, Health & Environmental Affairs Committee
Miller Senate Office Building,
2 West Wing 11 Bladen St.,
Annapolis, MD, 21401

RE: Opposition to SB 151 (Constitutional Amendment – Environmental Rights)

Dear Chairman Pinsky:

The Maryland Building Industry Association, representing 1,100 member firms statewide, appreciates the opportunity to participate in the discussion surrounding SB 151 (Constitutional Amendment – Environmental Rights). MBIA Opposes the Act in its current version.

This bill would create a constitutional amendment creating a fright to environmental health. MBIA opposes this amendment due to the imprecise nature of how this will be applied. The definitions of what is and is not good for the environment vary greatly from person to person and most people do not have the technical knowledge or scientific capability to be able to make informed judgments about environmental hazards. This leave the state open to being in continuous contention with frivolous lawsuits brought be citizens and lawyers who lack the expertise to distinguish between real environmental hazards and well meaning, but ultimately counterproductive complaints.

This type of legislation could add costs to projects due to unnecessary litigation. This could have a significant impact on small business. In turn, this could costs to housing. Housing affordability is already a growing problem in this state. A 2020 NAHB study shows that for every \$1000 increase in the price of a median priced new home, 2,881 Marylanders will be priced out of the market.

For these reasons, MBIA respectfully requests the Committee give this measure an unfavorable report. Thank you for your consideration.

For more information about this position, please contact Lori Graf at 410-800-7327 or lgraf@marylandbuilders.org.

cc: Senate Education, Health & Environmental Affairs Committee

SB151_UNF_Chaney Enterprises.pdf

Uploaded by: Hyatt, Steven

Position: UNF

CHANNEY

ENTERPRISES

HEARING DATE: JANUARY 26, 2021
BILL #/TITLE: *SENATE BILL 151 – CONSTITUTIONAL AMENDMENT – ENVIRONMENTAL RIGHTS*
COMMITTEE: JUDICIAL PROCEEDINGS
POSITION: *OPPOSE*

Dear Chairman and Committee Members:

Chaney Enterprises is Maryland's largest concrete producer, proudly employing hundreds of Marylanders and providing essential building supply and construction materials throughout Maryland and **opposes Senate Bill 151**.

SB 151 would amend the Maryland Constitution to provide new, expansive, and ambiguous environmental rights to any "person," which would inevitably result in increased litigation as the proposed overly broad and vague language significantly expands the basis for legal standing to bring suit in Maryland. Such an expansion of legal standing would overly burden Maryland's courts, which, in addition to facing a significant backlog of cases due to the COVID-19 pandemic, would now be confronted with adjudicating an untold volume of arbitrary and subjective claims based on the vague language in SB 151.

The bill would also establish the State's natural resources as "common property of every person" and mandate that the State serve as trustee thereto. As trustee, the State would be prohibited from (i) causing unreasonable diminution of, or degradation to, the State's natural resources by action or inaction; or (ii) infringing on any individuals' newly established constitutionally protected environmental rights. As written, the amendment inherently exposes State and local governments, as trustee, to countless legal claims alleging failure to uphold these environmental rights simply by continuing to provide many of the basic and essential public services offered today (*i.e.*, roadway improvements, water and sewer services, trash/recycling collection, planning and zoning, etc.) or by perceived inaction. These unintended consequences and unforeseen costs associated with these claims would arguably result in greater harm to individuals and the environment than without the proposed constitutional amendment.

As it relates to the concrete industry, there are already numerous environmental requirements imposed by local, State, and federal agencies that must be satisfied prior to and maintained during any industry operations. This proposed amendment, by expanding Maryland's legal standing framework, would undermine the reliability of these existing laws, create regulatory uncertainty, and significantly increase the risk of litigation against existing and future projects, in the concrete industry and beyond, throughout Maryland.

This bill, while well-intentioned, raises serious concerns about the continued operations and viability of many essential government services as well as the ability of countless existing and future Maryland businesses to succeed. ***For these reason, Chaney Enterprises respectfully requests your UNFAVORABLE report on Senate Bill 151.***

For further information, contact:

Francis (Hall) Chaney, III
Chief Executive Officer
hchaney@chaneyenterprises.com

cc: Steven D. Hyatt
Hyatt & Weber, P.A.
shyatt@hwlaw.com

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WEB ChaneyEnterprises.com PHONE 888-424-2639

SB0151_UNF_NWRA_Constitutional Amend. - Env. Right

Uploaded by: Kasemeyer, Pam

Position: UNF

Maryland-Delaware Solid Waste Association

a chapter of the

**National
Waste & Recycling
AssociationSM**

Collect. Recycle. Innovate.

TO: The Honorable William C. Smith, Jr., Chair
The Honorable Paul G. Pinsky, Chair
Members, Senate Judicial Proceedings Committee
Members, Senate Education, Health, and Environmental Affairs Committee
The Honorable Obie Patterson

FROM: Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman

DATE: January 26, 2021

RE: **OPPOSE** – Senate Bill 151 – *Constitutional Amendment – Environmental Rights*

The Maryland Delaware Solid Waste Association (MDSWA), a chapter of the National Waste and Recycling Association, is a trade association representing the private solid waste industry in the State of Maryland. Its membership includes hauling and collection companies, processing and recycling facilities, transfer stations, and disposal facilities. MDSWA and its members **oppose** Senate Bill 151.

Senate Bill 151 proposes a Constitutional Amendment which would establish that every “person” has the right to clean air, pure water, healthy communities, an environment free of conditions that degrade public health or natural resources, and the preservation of the natural, scenic, historic, and aesthetic values of the environment. While the Amendment reflects notable aspirational goals that would appeal to most individuals, the Amendment, if adopted, would dramatically expand Maryland’s current legal standing framework.

Standing means that a party has a sufficient stake in a controversy to be able to obtain judicial resolution of that controversy. Under current Maryland law, to show standing, an individual 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. In contrast, this Constitutional Amendment would essentially provide standing to all individuals to intervene in virtually any action related to protecting the rights established by the bill, whether or not the individual is impacted by the action.

Given the challenges already faced by local jurisdictions and private sector interests in the development of critical solid waste disposal, processing and recycling facilities, the enactment of the proposed Constitutional Amendment will create major regulatory uncertainty and litigation risk for both new project development and the expansion or modification of existing facilities. Maryland did a comprehensive review and modification of its standing requirements in 2009. The legislation had the

strong buy-in of both the environmental and business community given its fair balance of rights and responsibilities.

Maryland has struggled to get its solid waste and recycling infrastructure established, especially for facilities such as landfills and composting facilities. A number of critical workgroups have formed to address the current challenges. Should standing be broadened to the extent reflected in the Constitutional Amendment, it will be virtually impossible to develop essential solid waste management and recycling facilities as they will undoubtedly be challenged by some individual who asserts standing given the perceived negative impacts of the project. Measures like this Constitutional Amendment will create major regulatory uncertainty and litigation risk not just for the solid waste industry but for any use that affects the environment. NWRA strongly urges an unfavorable report.

For more information call:

Pamela Metz Kasemeyer

J. Steven Wise

Danna L. Kauffman

410-244-7000

2021 SB151 Environmental RightsJP.pdf

Uploaded by: Porter, Holly

Position: UNF



Educate. Advocate. Innovate.

Date: January 22, 2021
To: Members of the Senate Judicial Proceedings Committee
From: Holly Porter, Executive Director
Re: SB 151 – Constitutional Amendment – Environmental Rights - **OPPOSE**

Delmarva Chicken Association or DCA (formerly Delmarva Poultry Industry, Inc.), the 1,600-member trade association representing the meat-chicken growers, processing companies and allied business members on the Eastern Shore of Maryland, the Eastern Shore of Virginia, and Delaware opposes SB 151 and urges an unfavorable committee report.

SB 151 has the appearance of being a bill that any resident of Maryland would want – a clean and healthy environment. And no one understands that want more than farmers who are often coined as the “first environmentalists.” Farmers make their living off the land and water that quite often they also live on, and clean water and air are important to them as well.

However, farmers are also under a lot of regulations and restrictions, especially chicken growers. The vast majority of commercial chicken growers are required to apply for a Concentrated Animal Feeding Operation permit which is a general discharge permit issued by the Maryland Department of the Environment (MDE). This permit and the Comprehensive Nutrient Management Plan that is required is written in a way that there is **no discharge** from a chicken farm. These permits already take weeks and even months to obtain, with a public participation process that has caused farmers even years in delay from receiving the permit. Usually those who participate in the public process provide very little substantive input to the permit that is being issued, but it does create stress to the farmer, a small business owner. As a matter of fact, in the ten years of MDE administering this permit for chicken growers, DCA is only aware of one public process that has led to a major change in the permit for the farmer.

If SB 151 were to pass, then the chicken community would anticipate even more frivolous public participation, perhaps even from those that have very little standing or even living in the area where the chicken farms are located. There are a number of laws and rules in place in Maryland to help protect the environment. And there are a number of opportunities for the public to participate and have a right protecting the environment, especially in any permitting process. Chicken farmers have abided by the laws, many of which cause additional expenses of operation than even those in neighboring states. However, we have grave concerns about what unintended consequences and pressures may be put on farmers by those that simply don't understand what laws, rules and processes are already in place, or sadly, don't care.

We urge an **unfavorable** vote on SB 151.

Should you have any additional questions, please feel free to contact me at porter@dcachicken.com or 302-222-4069 or Nick Manis, Manis Canning & Associates, 410-263-7882.

SB151.pdf

Uploaded by: Powell, Michael

Position: UNF

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January 22, 2021

Honorable William C. Smith, Jr., Chair
Senate Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, MD 21401

Re: Opposition to SB151 – Constitutional Amendment –
Environmental Rights

Dear Chairman Smith:

On behalf of the Maryland Builders and NAIOP, I write in opposition to Senate Bill 151.

1. This proposed constitutional amendment goes far beyond any provision in federal law or, as far as we are aware, any state law by specifically authorizing private litigation against the state, counties, municipalities or any “public party” without any limitations or conditions. For example, federal environmental laws generally only allow private citizens to sue when, after 60 days notice, an environmental agency fails to act to diligently pursue a specific violation of law. The proposed amendment would allow suit even if the agency had acted and resolved the issue. The proposed amendment also eliminates any requirement that the plaintiff have standing, even under the loose federal standards, to bring a suit. As another example, the Pennsylvania’s Environmental Rights Amendment does not contain any language authorizing broad private litigation rights.
2. The Amendment purports to allow suit to protect “clean” air, water, and land. That definition is necessarily vague compared to the volumes of Maryland and federal environmental laws. Maryland’s environmental laws, like all state and federal environmental statutes and regulations, have detailed parameters of what is permissible, or “clean” and what is not. Often those parameters are based upon what is technically possible. For example, a water municipal sewage plant must remove almost all nutrients from a discharge, but technology cannot remove 100% of the nutrients. The proposed amendment would permit anyone in the state to sue the plant for not achieving a cleanliness standard that is not achievable. Simply put, the term “clean” is so ambiguous that it invites endless litigation.
3. The Amendment goes beyond environmental rights to include “scenic and historic” values. This would appear to allow private parties to do an end run around zoning by

local authorities. For example a municipality could zone a location as acceptable for manufacturing but a neighbor could sue because the neighbor alleged it violated the neighbor's claim to "the right to ...the preservation, protection, and enhancement of ... scenic... values..."

4. The litigation allowed by this proposed amendment would not be limited to actions that impact the environment. Alleged "inaction" could also be litigated. If an agency or municipality failed to do everything that any citizen felt should be done, the citizen could sue. For example, any person could sue a municipality which continues to allow gasoline powered cars to be sold if the person alleged that the municipality by the "inaction" of not banning the vehicles was "infringing" on the person's right to "a stable climate."

We all support clean air, water, and a healthful environment. That is the reason why the General Assembly and Congress has adopted volumes of environmental laws and the EPA, MDE and DNR have adopted even more volumes of regulations. But those carefully crafted provisions should not be overwritten by a blanket and vague term and then subject to never ending litigation.

Sincerely,

Michael C. Powell

Michael C. Powell

MCP

SB0151-JPR_MACo_OPP.pdf

Uploaded by: Sanderson, Michael

Position: UNF



Senate Bill 151

Constitutional Amendment - Environmental Rights

MACo Position: **OPPOSE**

To: Judicial Proceedings and Education, Health, and
Environmental Affairs Committees

Date: January 26, 2021

From: Michael Sanderson and Alex Butler

The Maryland Association of Counties (MACo) **OPPOSES** SB 151. The bill creates a new and vaguely defined constitutional right and an expansive new class of litigants with broad standing rights to litigate or intervene. SB 151 would amend the Maryland Constitution to create a new environmental right under the Declaration of Rights for any “person,” a dramatic departure from decades of practice.

This newly fashioned right would provide an opportunity for virtually anyone to litigate over “clean air, water and land, a stable climate, and the preservation, protection, and enhancement of ecological, scenic, and historic values of the environment.” Local governments may not cause unreasonable diminution or degradation of the state’s natural resources by action or inaction or infringe on a person’s environmental rights. This language is both vague and overbroad. It could be argued that many basic, essential services provided by a local government could unreasonably degrade natural resources, including: transportation, water and sewer services, emergency management, and planning and zoning. There are already adequate legal remedies available to address valid environmental concerns, without creating a new ill-defined, legally enforceable right. Enshrining such indeterminate entitlements into the state constitution invites myriad unintended consequences and unanticipated costs.

Longstanding and well-established environmental standards could be upended by an aberrant court decision, causing major policy changes and costs for local governments. Furthermore, the bill would empower any person to enforce or intervene in any case involving a right created by the bill, against any public party. This upsets Maryland’s own well considered standing requirements that have been developed over decades by the Maryland General Assembly and the Judiciary.

SB 151 would create a new vaguely defined constitutional right that grants broad standing to bring litigation against both the State and local governments, resulting in a potentially significant increase in costs due to additional litigation over virtually any project or action. Accordingly, MACo requests the Committee give SB 151 an **UNFAVORABLE** report.

SB151, MGPA, Opposed.pdf

Uploaded by: Thompson, Lindsay

Position: UNF



Maryland Grain Producers Association
123 Clay Drive, Queenstown, MD 21658
Lindsay.mdag@gmail.com (p) 443-262-8491
www.marylandgrain.com

Date: January 26, 2021

Senate Bill 151 Constitutional Amendment - Environmental Rights

Committee: Judicial Proceedings and Education, Health, and Environmental Affairs

MGPA Position: **OPPOSE**

The Maryland Grain Producers Association serves as the voice of grain farmers growing corn, wheat, barley and sorghum across the state. On an annual basis, nearly a million acres of these crops are grown in Maryland.

Senate Bill 151 proposes a constitutional amendment to establish that every person has the right to a healthful 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.

Current law allows the Maryland Department of the Environment (MDE) to bring a criminal prosecution or a suit for a civil penalty for a violation of any provision of the Environment Article. In general, a party to a civil action must have standing to bring about or participate in the suit. Maryland law traditionally has limited standing to a person that is "aggrieved" by an action or decision. This would give any Maryland citizen standing to intervene on any state application process if they believe it interferes with their right to a "healthful environment."

Expanding standing to any Maryland citizen, even those not directly impacted by an agricultural operation, could have potentially devastating impacts on family farms. Any citizen would have standing to intervene in application or hearing processes and bring suit. A few examples include irrigation water permits, agricultural building construction, on farm composting, and NPDES permits for pesticide application.

This would further complicate the already arduous process of permitting for farmers and MGPA respectfully asks for a favorable report on SB 151.