

Testimony of the Advocates for Herring Bay¹
Regarding HB 1407, County Tier 1 Renewable Sources
Submitted by Stephen Marley, February 27, 2024

Favorable with amendments

One of the challenges of transitioning to clean energy is the need to balance Maryland's energy goals with other land use and environmental priorities. HB 1407 would address that challenge by altering the role of local governments. For example, the bill would limit the authority of county governments to regulate certain renewable energy facilities and direct the Public Service Commission (PSC) to set targets and oversee plans for counties to provide specified levels of renewable electricity production within a 10-year period.

The approach to local input in HB 1407 appears to be at odds with the findings of a recent federal study on stakeholder acceptance of solar projects. That research suggests that having a “community-centered process” that “gives meaningful consideration” to local economic, environmental, and other impacts is needed to “earn and maintain support from host communities.”²

To ensure that “reforms” do not undermine public confidence in Maryland's decision-making process, the Advocates for Herring Bay (AHB) urge the Committee to amend HB 1407 in four ways:³

- 1. Strike the prohibition on localities “restricting” renewable energy projects.** (See 4-211.1(B)) Barring counties from adopting zoning laws or other regulations that “restrict” the construction or operation of energy projects would usurp local authorities under the Forest Conservation Act, Critical Area law, stormwater acts, and other state statutes to tailor environmental performance standards to local conditions. Exempting energy projects from any regulation deemed to be a “restriction” could harm forests and water quality and set a precedent for other commercial and industrial sectors to be treated in a similar manner. It also could lead to costly litigation regarding the definition of “restrict.”
- 2. Limit the scope of the ban on local “prohibitions” to projects with zero net emissions.** (See 4-211.1(B)) AHB does not support taking away local authority to ban the construction and operation of incinerators and other facilities that may pollute the air and water or harm the health and safety of local residents. In our view, any ban on prohibitions should only apply to Tier 1 sources that will help Maryland achieve its net zero emission goals in an environmentally sound manner.
- 3. Direct the PSC to analyze multiple factors when setting county generation targets.** (See 7-703.1) Under HB 1407, the PSC would set county-specific generation targets based on population and uses of electricity, without regard for the feasibility or consequences of having a county provide that amount of renewable energy in a 10-year period. Ignoring supply-side constraints may result in aspirational plans that yield little new capacity by that deadline.

¹ The Advocates for Herring Bay, Inc. is a community-based environmental group in Anne Arundel County.

² See Lawrence Berkeley Laboratory, [Stakeholder Perspectives on the Impacts and Benefits of Hosting Large-Scale Solar](#), January 2024.

³ Illustrative text for possible amendments is provided at the end of this document.

We question, for example, whether it is realistic to assume that the four most populous counties—Montgomery, Prince George’s, Baltimore and Anne Arundel—could provide over 50 percent of the generation needed to meet the statewide goal, especially given the absence of sufficient state incentives for solar canopies and the smaller average size of available surfaces and parcels in those jurisdictions. While HB 1407 would allow regional cooperation to meet production targets, executing inter-county agreements would add costs and delays to the process.

In our view, tangible progress toward clean energy will require realistic targets. To make the planning process more effective and transparent, AHB recommends authorizing the PSC to examine all relevant supply and demand issues before setting county-specific targets, including an analysis of potential impacts on lands with high ecosystem services value.⁴

- 4. Clarify the geographic and legal scope of “regional” cooperation agreements** to meet county supply obligations (See 7-703.1(D)). Because HB 1407 does not define “regional” cooperation, it is unclear whether counties could partner with any county in the state or whether those transactions would be limited to jurisdictions that are contiguous or within a certain radius. Similarly, the bill does not provide any guidance on the duration or terms of such contracts. AHB recommends clarifying the Committee’s intent.

Illustrative text for amendments to address AHB policy issues

Items 1 and 2 regarding restrictions and prohibitions on local government actions

4-211.1(B), page 3

Line 24: strike “restrict or”

Line 25: insert “with zero net emissions” after “Tier 1 renewable sources”

Item 3 regarding PSC analysis of county generation targets

7-703.1, page 5

Line 11: strike “proportional basis” and insert “feasible and environmentally sound basis.”

Line 17: strike “and”

After line 18, insert:

(III) the potential loss or degradation of forested and other lands identified by the Maryland Department of Natural Resources as having high ecosystem services value;

(IV) the availability of impervious and impaired surfaces that are economically and technically feasible for solar installations, including rooftops, parking areas, brownfields, and rights-of-way; and

(V) any other features or factors identified by the Commission that may affect the ability of a county to meet the state’s generation goals.

⁴ Under the bill, renewable energy development would be concentrated in counties that experienced a significant loss of forests over the 2013-2018 period, including Prince George’s Anne Arundel, and Montgomery (see 2022 report by the Hughes Center on Agro-Ecology).