



THE MARYLAND-NATIONAL CAPITAL
Park and Planning Commission

POSITION STATEMENT

Informational

Bill: HB 1101 Standing – Environmental and Natural Resources Protection Proceedings (Clean Water Justice Act of 2024)

Position: Informational

Date: February 29, 2024

Contact: Debra Borden, General Counsel

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Dear Chair Marc Korman and Vice Chair Regina T. Boyce,

The Maryland-National Capital Park and Planning Commission (M-NCPPC or “the Commission”) has not voted to take a position on this bill. However, Commission staff has prepared an informational statement. The Commission respectfully requests that the Environment and Transportation committee consider this information and include it in the record.

What this Bill Does. As written the bill gives standing to any person or association who asserts an injury that "fall(s) within the zone of interests sought to be protected" by Title 5, Subtitle 16. Standing may include granting certain relief, awarding certain costs of litigation, and imposing certain civil penalties in certain civil actions under certain circumstances.

Background. Recently the Maryland Supreme Court essentially found that persons living near property subject to the Forest Conservation Act were intended beneficiaries of the Act's provisions meaning our approval of Tree Conservation Plans (in Prince George's County) or Forest Conservation Plans (in Montgomery County) may be covered by this Bill. The Commission is responsible for implementing at least one of the Titles identified in the Bill (Title 5, Subtitle 16 Forest Conservation Act). The "injury" that must be suffered by the plaintiff is incredibly easy to meet. They only need to show there was a mere "threat of a negative impact [not actual negative

impact]” to their health, their use and enjoyment of the environment, even simply their aesthetic interests, etc. Furthermore, if that party substantially prevails, they get paid attorney's fees.

Potential Impact on the Commission. This bill has both a potential legal and financial impact on the Commission. The Commission is a multi-county agency and a political subdivision as per the law. The bill extends standing to any “Association” of two or more members, none of whom are required to reside or work near the project, not required to have participated in the case, and are not required to have any connection to the project or even be located in the State. The Commission could potentially experience a large increase in the number of appeals and litigation related to forest conservation and Chesapeake Bay Critical Area decisions such that we may require additional resources to defend these cases. The allowance of attorney's fees in this bill is equally concerning in that this is highly unusual for an appeal of an administrative action, and it may serve as an incentive for frivolous suits related to Forest Conservation plans. The bill also does not appear to require a final decision by the administrative agency and may even be interpreted to apply when an agency is making recommendations related to the listed statutory regimes.