

Environment, Social
Governance

E•S•G

PERMITTING REQUIREMENTS

**LEGISLATION SESSION
JANUARY 2026**

**EDUCATION, ENERGY,
AND THE ENVIRONMENT
COMMITTEE**

**SB00781/HB1268
CHERISH ACT**

ENVIROMENTAL RESIDUALS

Heavy Industrial Facilities Effects on Human Health



Review Authors

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The Undersigned Affiliate Organization in Support



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HB1268 / SB0781 CHERISH ACT

EDUCATION, ENERGY, AND THE ENVIRONMENT

03rd and 10th MARCH 2026 Hearings

FOR: Maryland Legislative Committees
FROM: Brandywine TB Southern Region Neighborhood Coalition (BTB Coalition)
POSITION: UNFAVORABLE without substantial Amendments

Thank you for the opportunity to submit this analysis of HB1268 | SB0781 (CHERISH Act) on behalf of the BTB Coalition, a community development nonprofit and neighborhood coalition representing more than 10,000 Maryland residents, including those directly impacted by decades of concentrated industrial burden. As the originating Title VI community whose 2016 civil-rights complaint initiated Maryland’s environmental justice compliance framework, we submit this testimony not only as policy commentary, but as a matter of civil-rights continuity.

This analysis evaluates the 2026 CHERISH framework as drafted, identifies structural risks associated with percentile-based regulatory triggers, and proposes specific statutory safeguards to ensure durable protection for historically overburdened communities. Our intent is not to weaken the bill, but to strengthen it — by aligning its implementation mechanisms with Title VI compliance standards and lived industrial realities.

We remain prepared to collaborate constructively on targeted amendments, including:

- Independent review of Environmental Justice scoring methodology;
- A dual-trigger structure recognizing documented industrial density;
- Transparent reclassification procedures;
- Title VI compliance certification prior to implementation;
- Community-governance mechanisms that ensure documented resident participation in decision-making.

For continued dialogue, please contact the Executive Community Citizens Board (ECCB) through the Neighborhood Leadership Council at btb.eccb@gmail.com.

We appreciate the Legislature’s commitment to environmental justice and urge adoption of durable guardrails to ensure that protections remain grounded in lived burden rather than fluctuating statistical thresholds

Respectfully submitted,


Kamita Gray

Community Law/Policy Architect & Legislative Consultant
Founder – 2Bridge CDCX: Equitable Finance eXchange Arm
President – BTB Coalition

Parliamentarian | Board of Directors – South County Economic Development Association (SCEDA)
ECCB Directorial Chair – ECCB Community Citizens Board, Neighborhood Leadership Council (NLC)

In solidarity, Brandywine/TB Southern Region Neighborhood Coalition; and the
Executive Community Citizen’s Board (ECCB) Neighborhood Leadership Council (NLC)

HB1268 / SB0781 CHERISH ACT

EDUCATION, ENERGY, AND THE ENVIRONMENT

03rd and 10th MARCH 2026 Hearings

SENATE EXECUTIVE SUMMARY

CHERISH ACT 2026 – STRUCTURAL SHIFT & GUARDRAIL AMENDMENTS

POSITION: Unfavorable Without Substantial Amendments

This testimony identifies a structural shift in the 2026 CHERISH Act that ties enhanced permitting protection to percentile rankings within the Maryland Environmental Justice Screening Tool. Because percentile classification now functions as a regulatory trigger, model recalibration can reduce safeguards absent environmental improvement.

Brandywine — the originating 2016 Title VI community — continues to experience concentrated industrial burden despite a reduced EJ percentile ranking. If protection depends on fluctuating statistical thresholds, Maryland risks creating unequal regulatory protection and foreseeable Title VI disparate-impact exposure.

We respectfully request adoption of five targeted amendments:

1. Independent third-party audit of EJ scoring methodology.
2. Dual-trigger structure recognizing documented industrial density independent of percentile rank.
3. Community petition mechanism for reclassification review.
4. Public notice and legislative oversight before EJ recalibration.
5. Formal Title VI compliance certification prior to implementation.

This submission includes detailed analysis and amendment-ready language. Durable environmental justice requires durable design.

The 2019 Informal Resolution Agreement arising from the 2016 Title VI complaint required structured engagement with directly impacted residents; implementation of a classification-based regulatory framework should reflect that obligation.

Brandywine — the community whose 2016 Title VI complaint initiated Maryland’s environmental justice compliance framework — continues to experience concentrated fossil fuel generation, coal ash contamination, and industrial clustering. Yet our EJ percentile ranking has decreased.

Pollution did not decline. Industrial density did not disappear. Only the percentile classification changed due to methodological recalibration within the screening tool. Only the statistical ranking shifted under the current scoring methodology and the percentile designation changed — demonstrating how regulatory protection can fluctuate without environmental improvement.

If regulatory safeguards are tied solely to percentile thresholds, then model recalibration can reduce protections absent environmental improvement. That creates foreseeable disparate-impact exposure under Title VI of the Civil Rights Act.

Additionally, the 2019 Informal Resolution Agreement resulting from our Title VI complaint required direct engagement with impacted residents in environmental decision-making. When legislation rooted in that civil-rights history is developed without documented drafting participation from the originating community, governance integrity becomes a compliance issue — not simply a procedural concern.

This submission includes detailed analysis and amendment-ready language. Durable environmental justice requires durable design.

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3-PAGE EXECUTIVE BRIEFING

RESHAPING THE CHERISH ACT: CIVIL-RIGHTS DURABLE DESIGN

THE STRUCTURAL SHIFT

The 2026 CHERISH Act represents a fundamental shift in Maryland’s environmental justice framework.

Unlike prior versions, the bill now conditions enhanced permitting scrutiny and potential denial authority on percentile rankings within the Maryland Environmental Justice Screening Tool. This transforms the screening model from an advisory planning instrument into a regulatory gatekeeper.

Under the 2026 framework:

- Percentile rank determines whether enhanced review applies.
- Classification status controls enforcement escalation.
- Permit denial authority is tied to an “at-risk census tract” designation.

When a statistical ranking becomes the legal trigger for protection, the stability and accuracy of that model become civil-rights issues.

Environmental justice protections cannot fluctuate with methodological recalibration.

II. THE RISK

Brandywine — the majority-Black community whose 2016 Title VI complaint initiated Maryland’s environmental justice compliance framework — illustrates the structural concern.

Brandywine continues to experience:

- Concentrated fossil fuel generation
- Coal ash contamination
- Industrial clustering
- Ongoing permitting pressure

Yet its EJ percentile classification has decreased.

Pollution did not decline.
Industrial density did not disappear.
Only the percentile moved.

If regulatory safeguards depend on percentile classification, then model recalibration can reduce protections without corresponding environmental relief.

Title VI of the Civil Rights Act prohibits policies that produce discriminatory effects. When legal protections are triggered by fluctuating statistical thresholds, disparate-impact exposure becomes foreseeable.

This is not theoretical. It is structural.

III. COMPARATIVE CONTEXT

Other states structured environmental justice protections with durable safeguards:

- **New Jersey** pairs permit denial authority with statutory definitions and mandatory public hearings.
- **Massachusetts** hard-codes enhanced participation requirements.
- **California** uses screening tools primarily for planning and investment allocation.
- **New York** embeds equity standards in statewide decision-making.

Maryland’s 2026 framework uniquely ties permit consequences directly to a moving percentile threshold — without guardrails to prevent protection loss due to methodological change.

IV. THE SOLUTION: DURABLE DESIGN

The CHERISH Act can be strengthened — not weakened — through targeted safeguards:

1. Independent third-party audit of the EJ scoring methodology before it functions as a regulatory trigger.
2. Dual-trigger structure recognizing documented industrial density and legacy burden independent of percentile rank.
3. Community reclassification petition mechanism with mandatory hearing and written findings.
4. Transparency and legislative oversight before EJ model recalibration.
5. Formal Title VI compliance certification prior to implementation.

These amendments ensure:

- Protections remain grounded in lived conditions.
- Statistical recalibration cannot eliminate safeguards.
- Federal compliance risk is mitigated.
- Legislative intent is preserved.

BOTTOM LINE

The 2026 CHERISH Act moves Maryland from symbolic environmental justice to enforceable classification-based regulation.

When classification determines protection, classification stability becomes a civil-rights matter.

Durable environmental justice requires durable design.

CHERISH ACT SYNOPSIS

The 2026 CHERISH Act represents a significant structural shift in Maryland’s environmental justice framework. Unlike prior versions, the bill now conditions enhanced permitting scrutiny and potential denial authority on percentile rankings within the Maryland Environmental Justice Screening Tool. This transforms the screening model from an advisory planning instrument into a regulatory gatekeeper. When percentile classification becomes the trigger for legal protection, the stability, transparency, and civil-rights implications of that model become central to the statute’s integrity.

Brandywine — the community whose 2016 Title VI complaint-initiated Maryland’s modern environmental justice compliance framework — illustrates the structural risk. Despite continued industrial burden, fossil fuel generation, and documented contamination concerns, Brandywine’s percentile classification has decreased. If regulatory safeguards are tied solely to percentile ranking, protections may diminish due to methodological recalibration rather than actual environmental improvement. That creates foreseeable disparate-impact exposure under Title VI of the Civil Rights Act, which prohibits policies that result in discriminatory effects.

Other states have structured environmental justice laws with durable guardrails. New Jersey pairs permit denial authority with statutory definitions and mandatory public hearings. Massachusetts hard-codes enhanced participation requirements. California uses screening tools primarily for planning and investment allocation. New York embeds equity standards into statewide decision-making. Maryland’s 2026 approach uniquely ties permit consequences directly to a moving percentile threshold, without sufficient safeguards against classification instability.

The solution is not to weaken the bill, but to strengthen it. Incorporating independent methodology review, a dual-trigger structure recognizing industrial density and legacy burden, a community reclassification petition process, transparency before model recalibration, and formal Title VI compliance certification would ensure that environmental justice protections remain grounded in lived conditions rather than fluctuating statistical thresholds. Durable environmental justice requires durable design.

2-PAGE BRIEFING FOR MEMBERS OF THE LEGISLATIVE BLACK CAUCUS OF MARYLAND

Environmental Justice, Representation, and Civil-Rights Integrity

I. THE CIVIL-RIGHTS FOUNDATION

Maryland’s environmental justice framework began with the 2016 Title VI complaint filed by the Brandywine community. That action resulted in a 2019 Informal Resolution Agreement requiring direct engagement with impacted residents in environmental decision-making.

Environmental justice in Maryland is therefore rooted in federal civil-rights compliance — not branding.

II. REPRESENTATION AND THE CHERISH ACT

The CHERISH Act has been publicly described by Maryland LCV as a “community-driven” or “community collective” effort.

However:

- Brandywine — the originating Title VI community — was not included in drafting the legislation.
- The BTB Coalition and ECCB were not part of the strategic bill-development table.
- No documented governance authority was extended to the originating community.

A formal written request for clarification was made on November 4, 2025

The response provided testimony but did not address drafting authority or community governance questions

This is not a rhetorical dispute. It is a question of authorship and accountability.

When legislation is framed as “community-driven,” yet the originating Title VI community was not involved in shaping it, credibility and compliance concerns arise.

III. THE 2026 STRUCTURAL RISK

The 2026 CHERISH framework ties enhanced permitting protections to percentile rankings within the Maryland EJ Screening Tool.

Brandywine’s percentile classification has been reduced despite continued industrial burden. If regulatory safeguards depend on percentile thresholds that can shift without environmental improvement, protections for majority-Black communities may weaken.

Title VI prohibits policies that produce discriminatory effects.

The Black Caucus must ensure that environmental justice legislation:

- Anchors protection in lived burden
 - Includes impacted communities in authorship
 - Prevents classification-driven inequity
-

IV. SAFEGUARDS NECESSARY FOR CIVIL-RIGHTS INTEGRITY

To align the bill with its 2016 Title VI foundation:

1. Independent audit of the EJ screening methodology
 2. Community petition mechanism for reclassification review
 3. Industrial-density override trigger
 4. Public notice before percentile recalibration
 5. Formal Title VI compliance certification
-

V. THE LEADERSHIP DECISION

1. Environmental justice legislation must reflect the same civil-rights rigor that defines the Caucus' historic leadership.
 2. The question is not whether CHERISH is well-intentioned.
 3. The question is whether its authorship, classification triggers, and implementation safeguards protect Black communities in fact — not just in language.
 4. Durable protection requires governance integrity.
-

VI. EXECUTIVE SYNOPSIS FOR MEMBERS OF THE LEGISLATIVE BLACK CAUCUS OF MARYLAND

The 2026 CHERISH Act represents more than an environmental policy update — it establishes a regulatory classification system that determines which communities receive heightened permitting protection and which do not. By tying enhanced scrutiny and denial authority to percentile rankings within the Maryland Environmental Justice Screening Tool, the bill makes statistical classification the gateway to civil-rights-level safeguards. When protection depends on a percentile threshold that can shift without corresponding environmental improvement, the stability of those protections becomes a matter of equity and accountability.

Brandywine — the majority-Black community whose 2016 Title VI complaint-initiated Maryland's environmental justice compliance framework — demonstrates the structural concern. Despite continued industrial clustering, fossil fuel generation, and documented contamination issues, Brandywine's percentile ranking has been reduced. Pollution did not decline. Industrial density did not disappear. Only the statistical ranking changed. If regulatory safeguards are conditioned on percentile classification, communities may lose protection due to model recalibration rather than lived improvement. Under Title VI of the Civil Rights Act, policies that produce discriminatory effects — even without intent — create federal compliance exposure.

The Legislative Black Caucus has historically safeguarded voting rights, housing equity, education access, and anti-redlining protections. Environmental justice is a continuation of that civil-rights lineage. When legislation framed as community-driven is developed without documented drafting participation from the originating Title VI community, and when regulatory protection hinges on fluctuating statistical thresholds, questions of governance integrity arise. Representation must be demonstrable. Protection must be durable.

The path forward is clear: strengthen the bill to ensure civil-rights durability. Independent review of the EJ methodology, a dual-trigger structure recognizing documented industrial density, a community petition mechanism for reclassification, transparent oversight of percentile recalibration, and formal Title VI compliance certification would ensure that protections for Black and overburdened communities cannot be reduced by statistical adjustment alone. Environmental justice must deliver structural security — not conditional protection.

The Caucus is uniquely positioned to ensure that this legislation does not inadvertently codify a system in which protection for Black communities becomes contingent upon algorithmic ranking rather than documented burden. If percentile recalibration can reduce safeguards without measurable environmental relief, the Legislature risks institutionalizing instability in communities that have historically borne disproportionate harm. That outcome would not reflect the intent of environmental justice policy, nor the civil-rights leadership the Caucus has consistently demonstrated across generations.

Strengthening the CHERISH framework now prevents future oversight hearings, federal scrutiny, and public controversy later. Guardrails are not obstacles — they are protections for both communities and the Legislature. By embedding durable safeguards and clear accountability measures into the statute, the Black Caucus can ensure that environmental justice remains aligned with its foundational purpose: equal protection, meaningful participation, and structural fairness for Maryland's Black and historically overburdened communities.

FORMAL LEGISLATIVE RECORD LETTER

Re: Clarification of “Community-Driven” Representation of the CHERISH Act

To Members of the Maryland General Assembly:

This correspondence is submitted for the legislative record to clarify representations made by the Maryland League of Conservation Voters (LCV) describing the CHERISH Act as a “community-driven” or “community collective” initiative.

Brandywine, Maryland is the community whose 2016 Title VI civil-rights complaint initiated Maryland’s modern environmental justice compliance framework. That complaint resulted in a 2019 Informal Resolution Agreement (IRA) requiring direct engagement with affected residents in environmental permitting and governance matters.

On November 4, 2025, the Brandywine | TB Southern Region Neighborhood Coalition (BTB Coalition) formally requested clarification from Maryland LCV regarding:

1. Who convened and controlled the drafting table for the CHERISH Act;
2. Which directly impacted communities participated in shaping the bill language;
3. Who authorized the use of “community-driven” framing; and
4. Whether originating Title VI communities held decision-making authority.

The response received from Maryland LCV did not address those governance questions. Instead, LCV provided a copy of its written testimony and stated it was responding only on behalf of its organization

No documentation was provided demonstrating that Brandywine — the originating Title VI community — participated in drafting, co-authoring, or approving the legislative language.

Being asked to review completed language does not constitute shared authorship.

Being cited in narrative materials does not constitute governance authority.

When legislation is publicly characterized as “community-driven,” yet the originating Title VI community was not at the drafting table, that representation is inaccurate and potentially misleading to legislators.

Because the 2026 CHERISH framework ties regulatory protections to percentile-based classification, authorship and governance integrity are not procedural details — they are civil-rights compliance issues under Title VI.

This letter is submitted to ensure the legislative record accurately reflects that Brandywine and the BTB Coalition did not participate in drafting or authorizing the CHERISH Act as a community-led initiative.

Email Referenced Next Page

NOVEMBER 5, 2025 EMAIL

Gmail - Re: Response to Nov 4 email

<https://mail.google.com/mail/u/2/?ik=4f611dec3f&view=pt&search...>



BTB ECCB <btb.eccb@gmail.com>

Re: Response to Nov 4 email

1 message

BTB ECCB <btb.eccb@gmail.com>
To: Kim Coble <kcoble@mdlcv.org>
Cc: BTB ECCB <btb.eccb@gmail.com>

Wed, Nov 5, 2025 at 11:58 AM

Kim Coble

Thank you for your response.

We want to clarify that our November 4 correspondence did not request Maryland LCV's testimony. Our inquiry concerned **representation and authority** because Maryland LCV, CEEJH, and related partners have publicly framed the CHERISH effort as "*community-led*" and "*collaboratively developed*." This includes materials circulated in coordination with MDE and the Moore Administration.

However, as you are aware, **the 2019 Informal Resolution Agreement (IRA) between MDE and the Brandywine community requires direct engagement and decision-making with affected residents—not consultation mediated through intermediary organizations.** That is a standing obligation, not a discretionary courtesy.

Accordingly, we documented four questions:

1. Who convened and controlled the strategic table for CHERISH?
2. What criteria determined who was included and who was excluded?
3. Who authorized Maryland LCV and its partners to put forward CHERISH as the statewide "environmental justice" position?
4. How will directly impacted communities hold **decision-making authority** going forward—not advisory or symbolic roles?

Your response did not address these items.

We are noting for the record that **Maryland LCV—while publicly positioned as part of a "community-collaborated" EJ effort and holding direct access to MDE and Governor Moore—has declined to clarify where community authority exists within the framework required under the IRA.**

We are not requesting further clarification.
This documentation will be entered into our ongoing compliance record.

Respectfully,
Karyn Sonu
Managerial Chair, Executive Community Citizens Board (ECCB)

On Wed, Nov 5, 2025 at 10:51 AM Kim Coble <kcoble@mdlcv.org> wrote:
Dear Ms. Sonu,

Thank you for your November 4th email to Kristen Harbeson.

I am sending this response on behalf of Maryland LCV only. We do not represent affiliated organizations. A copy of our written testimony on the 2025 CHERISH Act (SB 978/ HB 1484) is attached.

Sincerely,

Kim Coble

Kim Coble
Executive Director
Maryland League of Conservation Voters
30 West Street, Suite C
Annapolis, MD 20401
kcoble@mdlcv.org
C: 410-507-3521

ACCOUNTABILITY STATEMENT

Re: Intermediary Representation and “Community-Driven” Framing of the CHERISH Act in the Context of Ongoing Title VI Compliance

Maryland LCV, along with affiliated advocacy and academic partners including the Center for Community Engagement, Environmental Justice, and Health (CEEJH) and its MATCH Initiative, has publicly characterized the CHERISH Act as a “community-driven” or “community collective” effort.

That characterization is not accurate with respect to Brandywine and the BTB Coalition — the originating Title VI community in Maryland’s environmental justice framework.

Maryland’s modern environmental justice compliance structure began with a 2016 Title VI civil-rights complaint filed by the Brandywine community. That complaint resulted in a 2019 Informal Resolution Agreement (IRA) requiring direct engagement with affected residents in environmental decision-making and governance.

Against that backdrop, on November 4, 2025, the BTB Coalition formally requested clarification from Maryland LCV regarding:

- Who convened and controlled the drafting table for the CHERISH Act;
- Which directly impacted communities participated in shaping legislative language;
- Who authorized the use of “community-driven” or “community-led” framing; and Whether originating Title VI communities held decision-making authority.

That inquiry is documented in our November 4 correspondence.

The response from Maryland LCV did not address these governance questions. Instead, LCV provided its written testimony and stated it was responding only on behalf of its organization.

Separately, when clarification was requested from CEEJH regarding its role and the use of community-derived data, the response redirected communication to legal counsel in light of pending Title VI matters.

At no point did Maryland LCV, CEEJH, or affiliated partners provide documentation demonstrating:

- A drafting session that included Brandywine;
- A governance structure granting drafting authority to the originating Title VI community;
- Written authorization to present the CHERISH Act as reflecting Brandywine’s endorsement;
- Or evidence that the Executive Community Citizens Board (ECCB), affirmed under the 2019 IRA, was engaged as the designated community governance body.
- Being referenced in policy narratives is not co-authorship.
- Being cited in advocacy materials is not governance participation.
- Receiving completed language for review is not shared decision-making authority.

This is not a rhetorical disagreement. It is a structural governance issue.

When intermediary organizations — whether advocacy groups, academic centers, or lobbying entities — publicly frame legislation as “community-driven” without direct drafting participation by the originating Title VI community, that representation risks mischaracterizing authorship and displacing community authority.

This concern is heightened by the fact that active Title VI investigations involving MDE and MNCPPC remain ongoing. In that context, the integrity of community representation is not a matter of branding — it is a matter of federal civil-rights compliance.

If legislation rooted in a 2016 Title VI complaint is developed through intermediary networks without the originating community at the drafting table, and then publicly presented as “community-led,” legitimate compliance and governance concerns arise.

The question remains straightforward:

If the CHERISH Act was community-driven, which directly impacted Title VI communities held drafting authority, and where is that authority documented?

Accountability requires transparency in authorship, representation, and governance — particularly when civil-rights obligations are implicated.

Community cannot be claimed in absence of shared authority.

INTRODUCTION

OPENING – FROM POLICY DEBATE TO CIVIL RIGHTS CLASSIFICATION

Maryland stands at a defining moment in environmental justice policy. The 2026 CHERISH Act moves beyond advisory cumulative impact language and now creates a **regulatory classification system** that determines which communities receive heightened permitting protection and which do not.

THAT SHIFT RAISES A CRITICAL QUESTION:

What happens when protection depends on an algorithm that has already failed to accurately classify overburdened communities like Brandywine? Warranting an EPA Title VI docketed Formal Compliant currently under Jurisdictional Review by the agency.

This is no longer simply a policy discussion. It is a civil-rights issue.

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal funding from implementing policies that result in discriminatory effects. When environmental protections are triggered by percentile rankings within a screening model — and those rankings shift without a corresponding change in actual burden — the State risks codifying unequal protection.

Brandywine’s lived reality has not improved. The industrial footprint has not diminished. Yet the percentile ranking assigned to our community has been reduced. If regulatory safeguards are tied to that ranking, then protection becomes unstable — and inequity becomes structural.

A civil-rights framework cannot depend on a moving statistical threshold.

COMPARISON: 2025 BILL VS 2026 BILL

Category	2025 CHERISH (SB0978/HB1484)	2026 CHERISH (SB0781/HB1268)
EJ Trigger	Advisory cumulative impact review	Mandatory burden report + percentile threshold
Permit Denial	Weak or advisory language	Mandatory denial unless compelling public interest
Classification	Overburdened concept broad	Defined “at-risk census tract” + 1.5 mile radius
Enforcement	Limited expansion	75% penalty increase in at-risk tracts
Judicial Record	Standard permit record	Burden analysis integrated into judicial review record
Structural Risk	Symbolic	Codifies regulatory protection based on EJ scoring model

KEY SHIFT:

2025 debated process fairness.

2026 creates a regulatory classification regime tied to EJ scoring.

That is a fundamental legal shift.

BRANDYWINE MISCLASSIFICATION SECTION

Brandywine: A Case Study in Statistical Reclassification Without Environmental Relief

Brandywine has endured:

- 15+ heavy industrial facilities
- Two of the largest fossil fuel power plants in the United States
- Coal ash groundwater contamination
- A DRMO Superfund site
- Ongoing industrial expansion

Yet Maryland's Environmental Justice Screening Tool has reduced Brandywine's percentile classification despite continued burden.

- Pollution did not decrease.
- Industrial clustering did not disappear.
- Groundwater contamination did not resolve.
- Only the percentile moved.

Under the 2026 bill, that movement determines whether enhanced permit scrutiny applies. If protection depends on a percentile ranking that does not reflect lived conditions, then the statute creates unequal regulatory protection.

This exposes Maryland to Title VI disparate-impact claims because communities may lose safeguards not due to improved conditions — but due to methodological recalibration.

BILL REVISION DEMANDS (2026-SPECIFIC)

Independent EJ Tool Audit

Mandate third-party review of scoring methodology before it can be used as a regulatory trigger.

Community Verification Clause

Allow communities to petition for reclassification based on documented cumulative burden.

Burden Override Safeguard

Permit scrutiny must trigger based on documented industrial concentration — not percentile alone.

Transparent Model Revision Notice

Require public notice and legislative oversight before EJ percentile methodology changes.

Title VI Compliance Certification

Require MDE to certify that implementation does not produce discriminatory effects.

Resident Co-Authorship Requirement

Mandate documented resident drafting participation for EJ legislation.

SIDE-BY-SIDE REVISIONS

2025 Language Tone:

“This bill fails to meaningfully limit pollution and represents symbolic action.”

2026 Redraft:

“This bill creates a regulatory protection system tied to EJ percentile classification. When classification changes without environmental relief, communities lose safeguards. A civil-rights statute cannot rely on a statistical threshold that is vulnerable to methodological recalibration.”

2025 Language Tone:

“Maryland’s EJ tool is deficient.”

2026 Redraft:

“Maryland’s EJ tool now functions as a legal trigger for permit denial and enforcement escalation. Any inaccuracies in that model translate directly into unequal regulatory protection.”

LEGISLATOR - SUMMARY VERSION

Legislator Brief – CHERISH Act 2026

Core Concern:

The 2026 bill ties enhanced environmental protections to percentile rankings in the Maryland EJ Screening Tool.

Risk:

Brandywine’s percentile ranking has decreased despite continued industrial burden.

Implication:

If regulatory protection depends on percentile classification, communities can lose safeguards due to model adjustments rather than real-world improvement.

Title VI Exposure:

Federal civil-rights law prohibits policies that produce discriminatory effects. A fluctuating classification model used as a legal trigger creates exposure risk.

Requested Safeguards:

1. Independent EJ tool audit
2. Community reclassification petition process
3. Industrial burden override trigger
4. Transparent model revision procedures
5. Title VI compliance certification

Bottom Line:

Environmental justice legislation must ensure stable protection grounded in lived conditions — not statistical thresholds vulnerable to recalibration.

TECHNICAL APPENDIX

ENVIRONMENTAL JUSTICE (EJ) SCORING METHODOLOGY – STRUCTURAL RISK ANALYSIS

I. Overview

The 2026 CHERISH Act establishes regulatory consequences triggered by classification as an “at-risk census tract,” which is defined in part by percentile thresholds within the Maryland Environmental Justice (EJ) Screening Tool. Because permitting scrutiny, denial authority, and enhanced enforcement depend on this classification, the EJ scoring model becomes a **regulatory gatekeeper**.

When a statistical screening model functions as a legal trigger, its methodology must withstand civil-rights scrutiny.

II. Structural Components of the EJ Score

The Maryland EJ Tool aggregates multiple indicators, typically including:

- Environmental exposures (air pollutants, proximity to facilities, waste sites)
- Public health metrics
- Socioeconomic indicators
- Climate vulnerability factors

Each indicator is converted into a percentile ranking relative to other census tracts statewide. The combined percentile determines whether a tract meets the “at-risk” threshold.

Under the 2026 bill, ≥75th percentile (or proximity triggers ≥95th percentile in certain categories) can activate regulatory consequences.

III. Methodological Vulnerabilities

Percentile Compression

If environmental burden increases statewide, percentile thresholds can shift even when local conditions remain unchanged.

Result:

A community may drop below a threshold without environmental improvement.
This creates classification instability unrelated to lived burden.

Indicator Weighting Changes

Adjustments to weighting of environmental vs. socioeconomic indicators can materially alter classification.

Example risk:

Reducing weight assigned to industrial proximity while increasing weight for statewide health trends could reduce percentile score in heavily industrialized but sparsely populated tracts.

Geographic Averaging & Census Boundaries

Census tract boundaries can dilute localized industrial clustering if residential and industrial zones are averaged.

Effect:

High-impact industrial corridors may be statistically softened.

Proximity Radius Limitations

The 2026 bill uses a 1.5-mile buffer for “at-risk” expansion.

Scientific literature often supports 2–3 mile impact radii for particulate matter, heavy metals, and groundwater contamination.

If impact radius is underestimated, affected communities may fall outside protection triggers.

Data Lag & Update Timing

EJ tools rely on historical datasets.

If industrial permits are approved between update cycles, new burden may not reflect in percentile calculations for years.

Protection may therefore lag behind exposure.

IV. Brandywine Case Study – Classification Instability

Brandywine continues to experience:

- Concentrated fossil fuel generation
- Coal ash contamination
- Industrial landfill proximity
- Active permitting expansion

Despite continued burden, the percentile classification has been reduced.

No documented environmental remediation correlates with this reduction.

This divergence between lived burden and percentile ranking indicates model recalibration rather than environmental improvement.

When regulatory protection depends on that ranking, misclassification produces unequal safeguards.

V. Civil Rights Implication

Because:

1. The EJ score determines permit scrutiny and denial authority,
2. The EJ tool is used by a federally funded agency (MDE),
3. Reclassification can reduce regulatory protection without environmental change,

The model’s application may produce discriminatory effects in violation of Title VI if it results in diminished protection for historically overburdened communities.

VI. Recommended Safeguards

- Independent third-party audit of EJ scoring methodology
- Public notice before percentile threshold adjustments
- Community petition mechanism for reclassification review
- Industrial-density override trigger independent of percentile score
- Annual Title VI impact assessment on EJ classification outcomes

COMPARISON: MARYLAND 2026 VS OTHER STATES

New Jersey (strongest “permit denial + cumulative impacts” model)

What NJ did

- Requires an **Environmental Justice Impact Statement** and a **public hearing in the overburdened community**, with notice requirements and transcripts.
- Explicitly authorizes the agency to **deny permits** for new/expanded facilities in overburdened communities if cumulative stressors would cause **disproportionate impacts**.
- Defines “overburdened community” using **demographic and income criteria** (census block groups).

Why NJ matters for your testimony

NJ couples denial authority with **hard procedural safeguards** and an **explicit definition** of protected communities.

Massachusetts (procedural equity model inside environmental review)

What MA did

- In MEPA, if a project affects an **Environmental Justice Population**, the Secretary must require **additional participation measures** (translation, accessible meeting locations, local document repositories, multi-language notices).

Why MA matters

MA hard-wires **meaningful involvement** into the environmental review process. It’s less about denial and more about **procedural fairness you can audit**.

California (screening tool + investment targeting + land-use planning requirements)

What CA did

- Uses **CalEnviroScreen** (OEHHA/CalEPA) to identify disadvantaged communities for programs like **SB 535**, targeting funds to communities with highest burden.
- Requires local governments (SB 1000) to adopt an **Environmental Justice element** in General Plans and identify disadvantaged communities—explicitly tied to CalEPA identification (CalEnviroScreen) and income criteria.
- CalEnviroScreen is regularly updated (e.g., draft CalEnviroScreen 5.0 in 2026), reinforcing the point that these tools **move** over time.

Why CA matters

California treats the screening tool as a **planning + investment lens**, not the sole gatekeeper for whether communities get protection. It also openly acknowledges tool updates.

New York (equity mandate + “don’t disproportionately burden” standard)

What NY did

- CLCPA requires state entities to deliver **at least 35% (goal 40%)** of climate benefits to **Disadvantaged Communities**, with criteria developed by the Climate Justice Working Group.
- NY’s implementation emphasizes that state decision-making should **not disproportionately burden** disadvantaged communities.

Why NY matters

NY ties EJ to **statewide decision standards + benefit flows** and builds governance around who defines DACs.

THE MARYLAND 2026 PROBLEM AND KEY COMPARATIVE POINTS

Maryland's 2026 structure ties regulatory protections to **EJ percentile classification**—meaning **whether you're "at-risk" depends on the model ranking**, which can shift over time.

That is the exact weak point you keep hammering:

“Other states built EJ protections with either a stable statutory definition (NJ/MA), procedural safeguards (MA/NJ), or tool-as-planning/benefits (CA/NY). Maryland is using a moving percentile score as a trigger for real permit consequences—without adequate guardrails.”

And **Brandywine** is your proof case:

“Our lived burden didn't improve. But the EJ percentile ranking was reduced. If protections are triggered by percentile rank, Maryland can remove safeguards without reducing harm—creating Title VI disparate-impact exposure.”

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1. *“New Jersey pairs cumulative-impact permit denial with mandatory community hearings and a defined overburdened community standard.”*
 2. *“Massachusetts hard-codes meaningful public involvement requirements for EJ populations—translation, access, and document repositories.”*
 3. *“California uses CalEnviroScreen primarily for identifying disadvantaged communities for investment and planning obligations, while openly updating the tool—showing why Maryland must not tie civil-rights protections to a moving percentile without safeguards.”*

OTHER STATES COMPARISON INSERT

ENVIRONMENTAL JUSTICE FRAMEWORKS: STRUCTURAL SAFEGUARDS VS. PERCENTILE GATEKEEPING

CORE QUESTION FOR MARYLAND LEGISLATORS

When environmental justice protections are triggered by a percentile ranking, what safeguards ensure that communities do not lose protection due to statistical recalibration rather than real environmental relief?

Brandywine’s lived burden has not decreased. Yet its EJ percentile classification has shifted. If regulatory protection depends on that percentile, Maryland risks creating unequal safeguards.

Other states structured their laws differently.

STATE-BY-STATE STRUCTURAL COMPARISON

State	How Communities Are Defined	Permit Authority	Procedural Safeguards	Key Protection Structure
New Jersey	“Overburdened Community” defined by income, race, and language thresholds (statutory)	Explicit permit denial authority if disproportionate cumulative impacts are found	Mandatory EJ Impact Statement + public hearing in affected community	Stable statutory definition + denial power
Massachusetts	“Environmental Justice Population” defined in regulation	No automatic denial trigger	Enhanced participation requirements (translation, accessible meetings, local repositories)	Strong procedural equity safeguards
California	Disadvantaged Communities identified using CalEnviroScreen	Primarily tied to funding allocation and planning mandates	General Plan EJ Element required; investment targeting (SB 535)	Screening tool used for planning & investment, not sole permit trigger
New York	Disadvantaged Communities defined through Climate Justice Working Group criteria	State decisions must avoid disproportionate burdens	Benefit mandates (≥35% investments to DACs)	Equity mandate embedded in statewide decision standard
Maryland (2026)	“At-risk census tract” defined by ≥75th percentile EJ score + proximity triggers	Permit denial unless “compelling public interest” shown	Burden report required; percentile-based trigger	Regulatory protection tied to EJ percentile ranking

STRUCTURAL DIFFERENCE

Other states either:

- Use stable statutory definitions (NJ)
- Emphasize procedural fairness safeguards (MA)
- Tie EJ tools to funding and planning (CA)
- Embed equity mandates in decision standards (NY)

Maryland's 2026 framework uniquely:

- Makes percentile ranking a regulatory trigger
- Conditions permit scrutiny on EJ score thresholds
- Expands enforcement penalties within those tracts

When percentile rankings shift, protections may shift — even if industrial burden does not.

BRANDYWINE AS A CASE STUDY

Brandywine remains burdened by:

- Concentrated fossil fuel generation
- Coal ash contamination
- Industrial landfill proximity
- Ongoing industrial permitting

Yet its EJ percentile ranking has been reduced despite no documented environmental remediation.

Under the 2026 framework, that ranking determines whether enhanced protections apply.

This creates civil-rights exposure under Title VI if communities lose safeguards due to model recalibration rather than improved environmental conditions.

LEGISLATIVE SAFEGUARDS NEEDED

To align Maryland with best practices:

1. Independent audit of EJ scoring methodology
 2. Community petition mechanism for reclassification review
 3. Industrial-density override trigger independent of percentile ranking
 4. Public notice and legislative oversight before EJ score recalibration
 5. Title VI compliance certification prior to implementation
-

BOTTOM LINE

Environmental justice protections must be grounded in lived conditions, not moving statistical thresholds.

Maryland can lead — but only if its framework ensures that classification changes do not produce unequal protection.

THE DIFFERENCE

A powerful testimony identifies risk.
A testimony that reshapes the bill identifies:

- foreseeable federal exposure
- enforceable consequences
- structural flaws
- corrective language
- statewide implications

The following sections convert your analysis into that leverage.

I. FEDERAL COMPLIANCE CONSEQUENCES

The 2026 CHERISH framework conditions regulatory protection on percentile-based classification within the Maryland Environmental Justice Screening Tool.

Because the Maryland Department of the Environment (MDE) receives federal funding, implementation of a regulatory structure that produces diminished protection for historically overburdened communities may implicate Title VI of the Civil Rights Act of 1964.

If classification recalibration results in reduced permitting safeguards without corresponding environmental relief, Maryland risks:

- Formal investigation by EPA Office of Civil Rights (OCR)
- Required corrective action plans
- Federal oversight agreements
- Conditioning of federal environmental funding
- Public reporting requirements and compliance monitoring

Title VI enforcement does not require discriminatory intent.
Disparate impact alone is sufficient.

This risk is foreseeable when percentile reclassification directly determines regulatory protection.

Legislation must therefore incorporate safeguards before the classification system becomes operative.

II. ENFORCEMENT PATHWAYS UNDER TITLE VI

If the 2026 framework produces unequal regulatory protection, enforcement mechanisms include:

1. Administrative Complaint
Affected communities may file a Title VI complaint with EPA OCR alleging discriminatory effect in permitting practices.
2. Compliance Review
EPA may independently initiate a compliance review of MDE permitting decisions under 40 C.F.R. Part 7.

3. Voluntary Resolution Agreement
The State may be required to enter into a corrective agreement mandating changes to classification methodology or permitting procedures.
4. Fund Termination Proceedings
In extreme cases, federal funding may be suspended or conditioned.
5. Judicial Review Record Expansion
Because the 2026 bill integrates burden analysis into the permit record, flawed classification methodology may become litigable evidence in judicial review proceedings.

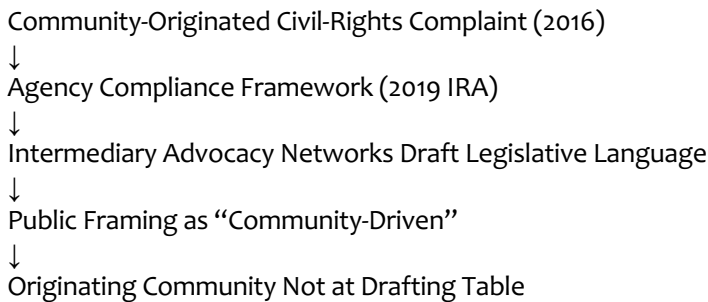
The question is not whether enforcement is likely — but whether the statutory structure makes enforcement plausible.

As currently structured, it does.

III. GOVERNANCE DISPLACEMENT PATTERN (STRUCTURAL ANALYSIS)

The governance concern is not personal. It is structural.

Observed pattern:



THIS CREATES GOVERNANCE DISPLACEMENT:

- Narrative authority shifts to intermediaries
- Drafting authority centralizes outside impacted residents
- Technical data ownership moves to academic institutions
- Legislative endorsement language may imply community support without formal authorization

When legislation rooted in Title VI compliance is developed through intermediary networks without documented resident governance participation, authorship integrity becomes a civil-rights issue.

Representation must be demonstrable, not assumed.

IV. DUAL-TRIGGER SAFEGUARD MODEL (CORRECTIVE PATHWAY)

To prevent percentile instability from determining protection, Maryland should adopt a dual-trigger structure:

Trigger A: Percentile-Based Classification ≥75th percentile activates enhanced review.

AND/OR

Trigger B: Industrial Density / Legacy Burden Override

Enhanced review automatically applies if:

- Documented concentration of heavy industrial facilities exceeds defined threshold
- Presence of coal ash disposal sites, Superfund sites, or fossil fuel generation facilities
- Documented Title VI complaint history related to environmental permitting

This ensures:

- Statistical recalibration cannot eliminate protection
- Historically burdened communities retain safeguards
- Lived industrial density is recognized independent of percentile shifts

Protection should not be lost due to model adjustment.

V. STATEWIDE PRECEDENT RISK

Brandywine is not the only community affected by percentile-based classification.

If the originating Title VI community can experience reduced EJ ranking without environmental improvement, then:

- Any majority-Black community
- Any rural industrial corridor
- Any working-class census tract
- Any community near power generation or waste infrastructure

May experience similar reclassification instability.

Once percentile ranking becomes a legal trigger, model recalibration becomes a statewide equity determinant.

The Legislature must consider:

Is Maryland comfortable allowing civil-rights-level environmental protection to fluctuate with statistical methodology updates?

If not, structural guardrails are required.

FINAL POSITIONING STATEMENT

Environmental justice legislation should deliver durable protection.

Durable protection requires:

- Stable classification standards
- Auditable methodology
- Direct community governance participation
- Clear federal compliance safeguards

Without these elements, the statute risks creating precisely the inequities it seeks to prevent.

AMENDMENT-READY STATUTORY LANGUAGE

(Draft insertions for HB1268 / SB0781 framework)

§ _____. Environmental Justice Classification Safeguards

(a) Independent Methodology Review

(1) Prior to use of the Maryland Environmental Justice Screening Tool as a regulatory trigger for permit review, denial, or enhanced enforcement, the Department shall commission an independent third-party audit of the scoring methodology.

(2) The audit shall evaluate:

- (i) Indicator weighting;
- (ii) Percentile calculation methodology;
- (iii) Geographic averaging impacts;
- (iv) Radius assumptions;
- (v) Data lag effects;
- (vi) Disparate-impact risk under Title VI of the Civil Rights Act of 1964.

(3) The audit report shall be submitted to the General Assembly and made publicly available.

(4) The Screening Tool may not function as a mandatory regulatory trigger until the audit is complete and publicly released.

(b) Dual-Trigger Protection Structure

Enhanced permit review shall apply if:

(1) A census tract meets or exceeds the 75th percentile in the Environmental Justice Screening Tool;

OR

(2) The proposed project is located within:

- (i) 2 miles of a census tract containing three or more heavy industrial facilities;
- (ii) 2 miles of a coal ash disposal site, Superfund site, or fossil fuel generation facility;
- (iii) A community that has been subject to a documented Title VI environmental complaint within the past 15 years.

Percentile classification alone shall not eliminate protection under subsection (2).

(c) Reclassification Petition Mechanism

(1) A community organization representing residents within a census tract may petition for review of EJ classification if documented cumulative burden exceeds percentile ranking.

(2) The Department shall:

- (i) Conduct a public hearing in the affected community;
 - (ii) Issue written findings within 90 days;
 - (iii) Maintain enhanced review status pending determination.
-

(d) Percentile Recalibration Transparency

(1) The Department shall provide 120 days' public notice prior to any revision of EJ scoring methodology affecting percentile classification.

(2) No regulatory protection shall be reduced solely due to methodological recalibration unless environmental burden indicators demonstrate measurable improvement.

(e) Title VI Compliance Certification

(1) Prior to implementation, the Department shall certify that the application of EJ classification thresholds does not produce discriminatory effects under Title VI.

(2) Certification shall include a disparate-impact analysis comparing affected communities by race, income, and industrial density.

That's amendment-ready. Clean. Enforceable. Auditable.

OPPOSITION- REBUTTAL

The likely counterarguments.

Likely Opposition Claim #1:

“The EJ tool is scientifically validated.”

Rebuttal:

Scientific validation does not eliminate percentile compression risk or weighting-shift instability. When a screening model becomes a legal trigger, its use must withstand civil-rights scrutiny independent of academic validation.

Likely Opposition Claim #2:

“This bill strengthens protections.”

Rebuttal:

Strengthened denial authority tied to a fluctuating percentile threshold may unintentionally reduce protection for communities whose ranking shifts absent environmental relief. Guardrails strengthen — not weaken — the bill.

Likely Opposition Claim #3:

“This was community-driven.”

Rebuttal:

Community-driven requires documented drafting participation and governance authority by directly impacted communities. Consultation after language is drafted is not shared authorship.

Likely Opposition Claim #4:

“No Title VI violation has been found.”

Rebuttal:

Title VI risk analysis is preventive. The Legislature’s responsibility is to design structures that avoid foreseeable disparate impact — not to wait for federal enforcement.

Likely Opposition Claim #5:

“This slows implementation.”

Rebuttal:

Independent audit and transparency provisions protect the bill from federal compliance risk, litigation exposure, and political reversal. Guardrails accelerate durable implementation.
