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**OPPOSED - House Bill 1128**  
**Environment—Water Quality Certifications—Requests (Water Quality Certification Improvement Act)**

Potomac Electric Power Company (Pepco) and Delmarva Power & Light Company (Delmarva Power) oppose House Bill 1128 Environment—Water Quality Certifications—Requests (Water Quality Certification Improvement Act). HB 1128 establishes a framework for Maryland’s implementation of Section 401 of the federal Clean Water Act. Section 401 is implicated in virtually any large infrastructure project, including those large projects undertaken by Pepco and Delmarva Power for reliability.

Several provisions of HB1128 are contrary to the federal Clean Water Act and would make it difficult or impossible to secure necessary federal permits for new infrastructure projects in Maryland. Pepco and Delmarva Power provide the following by way of elaboration.

HB 1128 establishes a framework for Maryland to implement Section 401. It prescribes, among other things: (1) the information a project sponsor must include in a water quality certification request to the Maryland Department of the Environment (MDE); (2) the timeline before which MDE must respond to a request; (3) the basis on which MDE can deny, approve, or approve with conditions a certification; and (4) the process through which a person can challenge an MDE certification decision in court.

Pepco and Delmarva Power oppose HB 1128 because it imposes unrealistically stringent requirements that would make it difficult or impossible for any new infrastructure project affecting water quality to obtain a federal permit. Under Section 401, any project that needs a federal permit (such as a Clean Water Act permit to dredge or fill wetlands, a Federal Energy Regulatory Commission license to operate an energy facility, a Federal Aviation Administration authorization, etc.) and “may” cause a discharge into a “water of the United States” needs a state water quality certification to proceed.

HB1128 does not permit MDE to voluntarily waive a certification. To the contrary, the bill states that MDE “shall issue a decision in accordance with the timeline for environmental review” in the federal Clean Water Act. (Section 9-354(C)). However, there may be certifications that are uncontroversial and as such, MDE should have the ability to voluntarily waive a certification.

Requiring a full certification process for every application may be unnecessary and result in higher cost to utility customers as a result of unnecessary review and approval.

HB 1128 is also overly broad and may be contrary federal law. The requirements of HB 1128 imply that MDE can consider impacts to “waters of the state” and to groundwater that are not “waters of the United States” protected under the federal Clean Water Act. This requirement exceeds the state’s authority under Section 401 and is therefore contrary to federal law. Further, the bill imposes unreasonably burdensome requirements regarding the information a project proponent must submit in support of a certification request. This will delay project development and impose unnecessary costs.

For the reasons set forth above, Pepco and Delmarva Power oppose HB 1128. While we recognize the value of establishing a clear and reasonable legal framework to govern water quality certifications under Section 401, HB 1128 is unworkable.

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