



## **Support for House Bill 596**

Dear Chairman Barve and Members of the Committee:

The Chesapeake Legal Alliance (CLA) strongly supports HB 596, a proposed amendment to the Maryland constitution that would grant the right to a healthful and sustainable environment for present and future generations. CLA firmly believes that Marylanders deserve to have a constitutional right to a healthful and sustainable environment and that this amendment will serve as the foundation of a legal framework that will be necessary to allow Maryland's environment and economy to survive as the worsening impacts of climate change accelerate in the coming decades.

Based upon our understanding of the proposed constitutional amendment and some of the concerns of those opposed to legislation to introduce a similar amendment in previous legislative sessions, we offer the following thoughts for the committee's consideration.

- ❖ HB 596 declares that the State must serve as the trustee of Maryland's natural resources, imposing a basic duty on the State to protect the resources that Marylanders rely on for recreational use and their livelihoods. The creation of this duty is especially important for communities unjustly shouldering a disproportionate environmental burden due to previous government decisions, and whose concerns about environmental injustice have historically been overlooked by government agencies.
- ❖ A constitutional amendment is critical to give future generations a powerful tool to combat the climate crisis. The state, federal, and academic experts studying the Chesapeake Bay watershed have already quantified the growing impacts of climate change on water quality in the watershed, as well as other impacts. Despite these substantial impacts, agencies' responses to date have been comparatively modest, perhaps stifled in part by a lack of focus that this constitutional amendment would undoubtedly instill. The Biden Administration has announced a "whole of government" approach to dealing with the existential issue posed by climate change; this amendment could effectively ensure such an approach is constitutionalized permanently in Maryland.
- ❖ Maryland has enacted a number of important laws to protect public health and the environment in recent decades. But history has shown how easily these laws can be ignored by the agencies charged with executing them. Moreover, because of some of the strictest standing doctrines in the nation, Marylanders have quite limited access to justice, especially in matters of

environmental protection. Additionally, unlike federal environmental laws, most of Maryland's important environmental statutes were not accompanied by rights enabling Marylanders to enforce the law. Once again, history, especially recent experience, proves that we cannot sit back and rely upon agencies to protect Marylanders and their environment in the way that the General Assembly expects them to or in a way that Marylanders deserve. As such, passing HB 596 will fill the existing gaps and knock down some of the existing obstacles that have been standing in the way of achieving our most important environmental goals and protecting our health and environment from harm.

- ❖ A favorable vote for HB 596 does not mean industrial or economic development will be hindered. In other states where an environmental rights amendment was adopted, we have not seen any discernible impact on economic activity. In fact, over the long run, it seems quite likely that implementing laws and policies consistent with a charge to focus on long-term sustainability will have the effect of guiding the state economy in a positive direction. For example, climate impacts will continue to devastate private and public property and stunt economic activity, with commensurate fiscal impacts. If government agencies are providing appropriate attention to harmonizing their policy choices with climate resilience and broader sustainability in mind, their actions will promote economic growth by minimizing exposure to future catastrophes that will otherwise inevitably devalue public and private infrastructure and assets.
- ❖ A constitutional amendment in Maryland will not have any fundamental negative impacts on our economy, but it will shape how our government agencies are held accountable for the decisions they make. For example, government agency decisions are currently held to a relatively low legal standard of being rational and not arbitrary, capricious, or directly contrary to statute. This amendment would indirectly impose a higher standard of accountability for agencies, requiring some degree of consideration of whether a decision impacting public health and environmental sustainability are contrary to the government's constitutional trustee duty. The constitutional amendment will provide a separate lens with which to examine the rationality of agency decisions. Agency actions that are hard to justify in light of a constitutional trustee duty will need to be adjusted to withstand judicial scrutiny.
- ❖ A favorable vote for HB 596 will not "open the floodgates" with frivolous litigation in Maryland courts. This has been a common refrain used by opponents of so many environmental bills over the years. Instead, we see time and again that the passage of environmental laws does not equate to any of the doomsday scenarios claimed. Floodgates of litigation have not opened here in Maryland from other past environmental legislation, nor are we aware of any states with an environmental rights amendment that saw a surge of litigation.

If we were forced to speculate as to what would happen should the constitution be amended in accordance with HB 596, assuming the courts give effect to the intent of this bill to provide a self-executing right, we believe we would see a relatively small number of cases brought under

the constitution with an offsetting decrease in litigation under various environmental statutes and other causes of action, as a small number of aggrieved parties look to the constitutional amendment rather than a separate statute; most often, we anticipate a constitutional claim being brought alongside statutory claims in the same case, which would not increase the number of cases brought. From the perspective of Maryland courts, any impact on the overall volume of litigation would likely be negligible, whereas from the perspective of individual Marylanders and the overall interest of justice, we would likely see more successful outcomes for those aggrieved by flawed or short-sighted government actions that harm our commonly held natural resources, exacerbate climate change, or otherwise make Maryland a less sustainable place to live. Moreover, the amendment would provide tools for courts to better evaluate existing and future cases based on similar claims, but would now give clear and comprehensive goals for potentially disparate environmental issues.

- ❖ HB 596 will fill the gaps created by the Maryland Environmental Policy Act (“MEPA”) and the Maryland Environmental Standing Act (“MESA”). The experience with MESA is instructive. It is a potentially potent legal tool for environmental protection (albeit quite limited in its scope) yet the floodgates of litigation under MESA never opened. To the contrary, there have been fewer than one case per decade under MESA. Like MESA, MEPA has been an under-utilized statute, in part because the lofty goals of the law were undermined by a lack of government implementation of the law. In fact, neither the Department of the Environment or Department of Natural Resources have ever even written the required regulations to implement MEPA - an issue that itself could be resolved with the constitutional right in place. Even if MEPA was given full effect and MESA was expanded to make it a more useful and relevant tool, both statutes combined would not amount to the same degree of protection afforded to Marylanders or the same value for ensuring the State remains a habitable and vibrant place to live into the next Century as would this constitutional amendment.

For these reasons, we urge a favorable report on HB 596 and stand ready to assist by answering any questions you may have about the impact that an environmental rights amendment would have. For additional information, you may contact Staff Attorney Evan Isaacson at [evan@chesapeakelegal.org](mailto:evan@chesapeakelegal.org).