

Open Work Session
Discussion on House Bill 596/Senate Bill 783
Constitutional Amendment – Environmental Rights
February 15, 2022

Ms. Holly Porter, Executive Director of Delmarva Chicken Association, came before Council and said she thinks everyone has reviewed House Bill 596 and Senate Bill 783 pertaining to the constitutional amendment for environmental rights. She explained, about two weeks ago the Delmarva Chicken Association gave a presentation to the Eastern Shore Delegation saying they had some concerns and that the Delmarva Chicken Association will be taking a position of opposition to this Bill. She clarified, she is not taking a position of opposition to every human deserving the best environment. She said she is a Maryland citizen, her children are Maryland citizens, and she would hope they are living in the best environment possible, but the concerns they have for this Bill are more of how it will be implemented and the steps that will follow. She said another concern is that it has been very publicly pointed out, specifically on the Maryland Campaign for the Environmental Human Rights website, as well as a Maryland Matters article back in December, that the chicken industry is very much a target for this Bill.

Ms. Porter said it is extremely concerning mainly because they have heard many of the proponents say that it is not a target on the chicken industry and that the public does not have a say in the environment, in clean water, in clean air, and that is absolutely the furthest from the truth. She said a good example is a farmer who decides they want to build a chicken house. She said the very first thing they have to do is make sure they are going in an area that is zoned for agriculture, and that is where Council comes into play. She explained, the County determines where those areas are, where the zoning is, what is agriculture, what is residential, what is industrial, and so forth. She said that is part of the comprehensive planning process, which is an open process that the public has a lot of input on and there are a lot of discussions, so, again, there are a lot of steps with just the zoning. She said then the farmer is going to need a stormwater permit that is vetted through a public process, and they are also going to need a general CAFO permit, which is regulatory and has a public process including an open comment period, and there are several steps just for the general permit itself. She said, again, there are already a lot of regulatory steps that have been vetted by the public that have already been put into place. She said, if a new farmer who has gone through this process and has done everything legally right, but then gets to the end and their neighbor decides they do not like the smell or the sight of those big, long buildings, what is the next step? She said the next step is litigation, and, again, she knows the proponents will say that this will not increase litigation, but they have to disagree, and they have already seen it as they saw it with the Hudson case a number of years ago.

Ms. Porter said they know specifically there is one group that recently received some funding from a foundation, and that funding was directed for the ability to litigate on their behalf for the environment in looking at the chicken industry in particular. She said, why would a farmer, any farmer, but especially chicken farmers, want to get into the business, go through all the steps that they need to, and then potentially have somebody sue them for building a farm because they feel it goes against the environment. She concluded, that is their position and their concern, and that is what they will be sharing with the House and Senate on this Bill.

Mr. Holloway said Ms. Porter brought up what a person needs to go through to start a farm. He then asked her to elaborate on what they go through after they get into the business, to which Ms. Porter responded, as part of the permit process they have to complete annual implementation reports every year. She said, for any manure that is generated on the farm, they need to know exactly where it is and

where it is going. She said, in addition, every five years the general permit will come up for renewal, so they have to go through the process again every five years, which includes a letter of intent and a permitting process. She said farms that have been around for 15 years would have gone through the process at least three different times. She said this is to make sure they are following the rules, following the regulations, and that they are implementing the best management practices.

Ms. Porter said another big piece she did not mention is the financial aspect. She said, to build a six-house chicken farm right now they are looking at a couple million dollars, so that is a farmer putting out a couple million dollars, going through the process, and now, again, the potential of having litigation.

Ms. Acle asked where the Bill is coming from because the Eastern Shore is very different than Prince George's County or Montgomery County, so she did not know if it was coming from that part of the State, not necessarily considering the Eastern Shore. Ms. Porter responded, she is not sure, but there are a couple different groups that were leading the Bill, including the Sierra Club and the League of Conservation Voters, to some extent. She said the Bill was presented about a month or so ago when there was an environmental legislative preview, which was sponsored by several groups. She said it was listed with a number of Bills that may have an impact specifically to the environment and the Eastern Shore, and this is one of the Bills that was discussed during that summit. She said she does not know that it was created to specifically target the chicken industry, but what she would say is, again, when looking at their website and some of the comments that have been made in some of the reporting, she knows it is clear that some of the proponents feel that, if this Bill was in place, it would help with the fight or the pursuit that folks have against the chicken industry. She said, if this Bill was to come into place, what would be different versus the processes, the laws, the regulations that are out there currently? She said, again, the Bill specifically talks about it being up to the State to serve as the trustee, which is exactly what the Maryland Department of the Environment and the Maryland Department of Agriculture are already doing with the laws and regulations that are in place.

Mr. Holloway said the Bill appears to be very open-ended. He clarified, he might not like someone's cologne, but he has now lost his right to enjoy the environment, so he has a right to complain about it. He said that is his understanding. Ms. Porter said sometimes a complicated 40-page Bill can be scary, but a one-page bill can be just as scary as well in that sense. She said it is extremely open-ended and she thinks, again, that is the concern, not arguing that they do not have a right to a clean environment as she agrees 100 percent to have a clean environment, it is how they are going to get there. She asked, what is the intent of this Bill as it is going beyond the laws and rules that are already in place.

Mr. Cannon said he thought the same thing in that the Bill is terribly vague and it is establishing broad oversight. He said, in looking at the Bill it seems almost like a contradiction where Section A says "every person has the fundamental and inalienable right," and then Section C says "the State shall," so to him that is almost a contradiction because he is a true believer of local decisions being made on a local level and working their way up from there.

Ms. Porter said, to Planning and Zoning, they have argued that it should be at the local level, as Council knows the areas, and it knows where agriculture should be and should not be, and that it should not be on the State to determine the zoning.

Mr. Mitchell said, because the Bill says the "State shall," of course it could take it away from the locality, but the beginning when it says "each individual has his right," that is going to empower each individual to force the State to do what that individual thinks is necessary to protect the environment, so when the

State approves something, the individual has a right to appeal saying the State has not protected us like they should have. Mr. Cannon said he appreciates that perspective.

Mr. Holloway asked if Council is looking to send a letter of opposition, to which Mr. Cannon responded, there is a draft letter of opposition that Councilmembers should have. Mr. McCain said it is not in the Work Session material. Mrs. Hurley said the letter was put on the Council table this morning, so Council should have a copy of the letter. She said this particular letter is drafted to the House, but because it is cross-filed, it would also go to the Senate.

Mr. Cannon said he will give everyone a chance to read the letter. Mrs. Hurley said the letter touches on the points Ms. Porter mentioned. Mr. Cannon then asked for a consensus to send the letter, to which there was a consensus to send the letter of opposition.

There was no further discussion.



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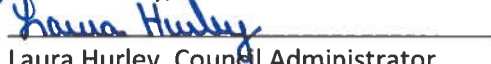
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