



Massachusetts Association of Conservation Commissions

protecting wetlands, open space and biological diversity through education and advocacy

November 13, 2013

The Honorable Katherine M. Clark
Joint Committee on the Judiciary
State House
Boston, MA 02133

The Honorable Eugene L. O'Flaherty
Joint Committee on the Judiciary
State House
Boston, MA 02133

Re: S.773, An Act allowing local wetlands bylaws decisions to be appealed to land court

Dear Chairwoman Clark and Chairman O'Flaherty:

I am writing on behalf of the Massachusetts Association of Conservation Commissions (MACC) in opposition to S.773, An Act allowing local wetlands bylaws decisions to be appealed to land court. We believe the act's proposed amendment to section 4 of chapter 249 is unnecessary and unwise and would be detrimental to cities and towns. We urge you to report the bill unfavorably.

MACC is the professional association of Massachusetts conservation commissions. We represent more than 2,100 conservation commissioners throughout Massachusetts who are responsible for protecting the natural resources of their communities under the Conservation Act (G.L. c.40, § 8c) and for administering and enforcing the Wetlands Protection Act (G.L. c.131, § 40) and municipal wetlands laws and regulations. We protect wetlands, open space, and biological diversity across Massachusetts through education and advocacy and support of conservation commissions. We advocate for strong science-based laws, regulations, and policies, and laws that function well. MACC has been doing that work for fifty-two years.

MACC opposes S.773. It is unnecessary, would lead to forum-shopping, and would disadvantage conservation commissions and municipalities. Currently, the Superior Court hears appeals of final administrative decisions made under the Wetlands Protection Act and local wetlands by-laws, ordinances, and regulations. There is no good reason to extend the jurisdiction for local wetlands by-laws, ordinances, and regulations to the Land Court -- but good reason not to do so. The Superior Court handles such appeals competently and expeditiously. It is not overburdened. Giving the Land Court concurrent jurisdiction to hear such wetlands appeals would encourage plaintiffs to forum shop between the Superior and Land Courts. It would allow cases to be filed and heard in Land Court in Boston, not in the Superior Court for the municipality where the administrative decision originated. It would favor litigants with counsel in Boston and disfavor municipalities that are not geographically close to Boston by increasing their costs of travel and time to litigate wetlands cases. It would disadvantage conservation commissioners, all of whom are volunteers, who might want to be in court for hearings on their orders but cannot take the time or afford the expense to travel to Land Court for the hearing.

The proposed amendment to section 4 of chapter 249 is also confusing. That section of the general laws provides for civil actions in the nature of certiorari for proceedings that are not otherwise reviewable by motion or on appeal. S.773 would add the Wetlands Protection Act to the section even though proceedings under the Wetlands Protection Act are reviewable under chapter 30A. Adding the Wetlands

Protection Act to section 4 of chapter 249 would create an anomaly in section 4. It would add the first reviewable proceeding to section 4 even though section 4 was enacted to provide a means to appeal proceedings that are otherwise unreviewable. Civil actions in the nature of certiorari are not intended for otherwise reviewable proceedings. Yet S.773 would confuse certiorari with other avenues of appeal by amending section 4 to include a reviewable proceeding in its terms.

The proposed amendment to section 4 of chapter 249 is also overbroad because local wetlands by-laws, ordinances, and regulations are currently subject to actions in the nature of certiorari under section 4 of chapter 249. Further, since 2006, section 3A of chapter 185 has provided the Land Court concurrent jurisdiction with the Superior Court for chapter 30A appeals of state Wetlands Protection Act decisions, thus making the proposed amendment to add the Wetlands Protection Act to section 4 of chapter 249 redundant and confusing.

S.773 would effect one change in current procedure: it would give the Land Court concurrent jurisdiction with the Superior Court to hear appeals of decisions based on local wetlands by-laws, ordinances, and regulations. As we explained above, the Superior Court competently hears those cases now and there are good reasons to keep sole jurisdiction with the Superior Court. Everything else S.773 would do is already in law. Further, as we explained above, the amendment S.773 proposes to section 4 of chapter 249 is fraught with problems.

We urge you to report the bill unfavorably. The amendment it proposes is unnecessary and unwise.

Thank you for the opportunity to provide this perspective and information.

Please contact me for further information and to follow up.

Sincerely,

A handwritten signature in black ink, appearing to read "Eugene B. Benson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Eugene B. Benson
Executive Director
Email: eugene.benson@maccweb.org