



Massachusetts Association of Conservation Commissions

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

Testimony Opposing S.881

An Act allowing local wetland bylaw decisions to be appealed to the land court.

Joint Committee on The Judiciary

May 12, 2015

Thank you Senate Chair Brownsberger and House Chair Fernandes and members of The Joint Committee on The Judiciary for this opportunity to testify in opposition to S.881, *An Act allowing local wetland bylaw decisions to be appealed to the land court.*

My name is Eugene Benson. I am the Executive Director of the Massachusetts Association of Conservation Commissions (MACC) and I speak on behalf of MACC.

MACC represents 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 local wetlands bylaws and ordinances. We work to protect wetlands, open space, and biological diversity across Massachusetts through education and advocacy and support of local conservation commissions. We advocate for strong science-based laws, regulations, and policies. We have been doing this work for more than fifty-three years.

MACC opposes the passage of S.881. 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 of Department of Environmental Protection (DEP) decisions made under the Wetlands Protection Act (WPA) and local conservation commission decisions made under local wetlands by-laws and ordinances. The Land Court has concurrent jurisdiction in its permit session to hear appeals of DEP decisions under the WPA and local conservation commission decisions under local wetlands bylaws and ordinances "only if the underlying project or development involves either 25 or more dwelling units or the construction or alteration of 25,000 square feet or more of gross floor area or both." G.L. c.185, § 3A.

There is no good reason to extend the jurisdiction of the Land Court to small wetlands matters - and 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. Yet, S.881 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. S.881 confuses certiorari with other avenues of appeal by amending section 4 to include a reviewable proceeding in its terms.

We urge you to report the bill unfavorably, as this committee has done for identical bills in previous sessions. The amendment it proposes is unnecessary and unwise.

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