

John E. Childe
Attorney for Petitioner
I.D. No. 19221
1847 Center Street
Camp Hill, Pa. 17011
717-743-9811
childeje@aol.com

February 19, 2014

**To the Members of the Pennsylvania General Assembly:
(Hand Delivered)**

RE: Notice of Potential
Violation of Article I, Section 27
Constitution of Pennsylvania:
HB 1576 and SB 1047

I represent the Pennsylvania Environmental Defense Foundation. On behalf of its members and the people of Pennsylvania, I have reviewed HB 1576 and SB 1047 and found these bills, if passed will violate the General Assembly's constitutional mandate to conserve and maintain our natural environment under Article I, Section 27. These bills weaken protection of threatened and endangered fish, wildlife and native plants by requiring consideration of political and economic factors, rather than scientific analysis.

Pennsylvania's fish, wildlife and native plants and the habitat that supports them are a vital part of our natural environment. The people of Pennsylvania, by voting in overwhelming support of Article I, Section 27 of our constitution, declared that our government cannot infringe upon our rights to the natural values of our environment. Further the Amendment declared that the Commonwealth, of which the General Assembly is a part, has a fiduciary duty to conserve and maintain public natural resources, which include Pennsylvania's rare and endangered fish, wildlife and native plants.

The PFBC and the PGC have coordinated rigorous scientific study and examination of the health and viability of our fish, wildlife. They have enacted regulations through public processes already mandated by the

Commonwealth Documents Law to identify species that scientific experts agree are threatened and endangered within Pennsylvania.

Now the General Assembly, through the introduction of HB 1576 and SB 1047, seeks to subject PFBC and PGC listing decisions to the Regulatory Review Act, a statute that gives the General Assembly the right to additional review and control over administrative agency regulations. These Bills are contrary to the constitutional mandates of Article I, Section 27 in at least the following ways:

- These bills interject political and economic factors into the scientific analysis of the health of our natural environment to delay regulations listing threatened and endangered species.

- These bills impose arbitrary and unscientific conditions on the listing of fish, wildlife and native plant species as threatened and endangered and on the designation of wild trout streams.

- These bills impose arbitrary limitations on the use of available scientific information by State and local agencies in reviewing applications for permits, approvals and taking other actions to protect Pennsylvania's natural environment.

- These bills force administrative agencies to release information identifying the specific location of endangered and threatened species without regard to the potential harm to these species that could result.

- These bills impose arbitrary and unscientific conditions on the listing of fish, wildlife and native plant species and the designation of wild trout streams. For example,

 - The listing of threatened and endangered species and identification of critical habitat are restricted to designations under the federal Endangered Species Act of 1973.

 - Critical habitat is limited to areas actually occupied by a listed species. Listings require "acceptable data" defined in HB 1576 as "empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research."

 - Endangered species must be in danger of extinction throughout all or a significant portion of its range within Pennsylvania.

 - Threatened species must be likely to become a Pennsylvania endangered species within the foreseeable future.

Given the limited funding available to inventory and study Pennsylvania's fish, wildlife and native plants, these restrictive conditions will force administrative agencies to forego listing when their experts believe species

are threatened or endangered because of the uncertainty inherent in these decisions.

Rather than erring on the side of caution as required to fulfill their constitutional duty to conserve and maintain these natural resources under Article I, Section 27, the limitations imposed by these bills will force administrative agencies to delay listings and risk potential extinction of species in violation of their constitutional duties.

Given the fundamental flaws in HB 1576 and SB 1047 and the existence of a statutory framework that already provides for appropriate coordination and public input in the listing of threatened and endangered species and the designation of wild trout streams, the Pennsylvania Environmental Defense Foundation respectfully requests that the General Assembly take no further action on these bills.

Sincerely,

John E. Childe