

SENATE BILL 653

M3, M1

4r1885
CF HB 1101

By: ~~Senator Augustine~~ **Senators Augustine, Elfreth, Smith, and M. Washington**

Introduced and read first time: January 29, 2024

Assigned to: Education, Energy, and the Environment

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 16, 2024

CHAPTER _____

1 AN ACT concerning

2 **Standing – Environmental and Natural Resources Protection Proceedings**
3 **(Clean Water Justice Act of 2024)**

4 FOR the purpose of providing certain persons ~~and associations~~ standing in certain
5 environmental and natural resources protection proceedings, ~~including proceedings~~
6 ~~arising under provisions of law relating to water quality and water resources~~
7 ~~protection, subject to certain conditions~~; authorizing certain persons that meet
8 certain standing requirements to bring certain civil actions under certain
9 circumstances; requiring a plaintiff, under certain circumstances, to give certain
10 notice and provide certain documentation to the Department of the Environment and
11 the Attorney General in a certain manner and to file a certain affidavit; authorizing
12 a court to grant certain relief, award certain costs of litigation, and impose certain
13 civil penalties in certain civil actions under certain circumstances; authorizing
14 certain persons that meet certain standing requirements to intervene in certain
15 proceedings under certain circumstances; and generally relating to standing in
16 certain environmental and natural resources protection proceedings.

17 BY adding to

18 Article – Environment

19 Section 1-901 through ~~1-905~~ 1-904 to be under the new subtitle “Subtitle 9. Clean
20 Water Justice Act”

21 Annotated Code of Maryland

22 (2013 Replacement Volume and 2023 Supplement)

23 BY repealing

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article – Environment
 2 Section 9–344.1
 3 Annotated Code of Maryland
 4 (2014 Replacement Volume and 2023 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 6 That the Laws of Maryland read as follows:

7 **Article – Environment**

8 **SUBTITLE 9. CLEAN WATER JUSTICE ACT.**

9 **1–901.**

10 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
 11 INDICATED.

12 ~~(B) “ASSOCIATION” MEANS AN ASSOCIATION, A CORPORATION, OR ANY~~
 13 ~~OTHER ORGANIZATION THAT CONSISTS OF TWO OR MORE MEMBERS JOINED BY~~
 14 ~~MUTUAL CONSENT FOR A COMMON PURPOSE.~~

15 ~~(C) (B) “COSTS OF LITIGATION” INCLUDES REASONABLE ATTORNEY’S~~
 16 ~~FEES, COURT COSTS, AND EXPERT WITNESS FEES, AND DOCUMENTED COSTS~~
 17 ~~INCURRED IN INVESTIGATING ALLEGED VIOLATIONS.~~

18 ~~(D) (1) “INJURY IN FACT” MEANS AN INVASION OF A LEGALLY~~
 19 ~~PROTECTED INTEREST THAT IS:~~

20 ~~(I) CONCRETE AND PARTICULARIZED;~~

21 ~~(II) ACTUAL OR IMMINENT; AND~~

22 ~~(III) NOT CONJECTURAL OR HYPOTHETICAL.~~

23 ~~(2) “INJURY IN FACT” INCLUDES:~~

24 ~~(I) A PROPERTY RIGHT OR PERSONAL INTEREST THAT IS~~
 25 ~~DISTINCT FROM, OR SPECIFICALLY AFFECTED IN A WAY THAT IS DISTINCT FROM, A~~
 26 ~~PROPERTY RIGHT OR PERSONAL INTEREST OF THE GENERAL PUBLIC; AND~~

27 ~~(II) A NEGATIVE IMPACT, OR THE THREAT OF A NEGATIVE~~
 28 ~~IMPACT, TO A PERSON’S HEALTH OR TO THE USE AND ENJOYMENT OF A NATURAL~~
 29 ~~RESOURCE OR ENVIRONMENT, INCLUDING A NEGATIVE IMPACT TO AESTHETIC,~~
 30 ~~RECREATIONAL, CONSERVATIONAL, AND ECONOMIC INTERESTS THAT MAY BE~~
 31 ~~SHARED AMONG COMMUNITY MEMBERS.~~

1 (C) “EPHEMERAL STREAM” MEANS A BODY OF WATER WITH:

2 (1) A STREAM BED LOCATED ABOVE THE WATER TABLE YEAR-ROUND;

3 (2) A STREAM FLOW PRIMARILY SOURCED FROM RAINFALL RUNOFF;

4 AND

5 (3) FLOWING WATER ONLY DURING, AND FOR A SHORT DURATION
6 AFTER, PRECIPITATION EVENTS IN A TYPICAL YEAR.

7 (D) “INTERMITTENT STREAM” MEANS A BODY OF WATER WITH:

8 (1) FLOWING WATER DURING CERTAIN TIMES OF THE YEAR, WHEN
9 GROUNDWATER PROVIDES WATER FOR STREAM FLOW; AND

10 (2) A STREAM FLOW SUPPLEMENTED BY RUNOFF FROM RAINFALL.

11 (E) “PERSON” MEANS AN INDIVIDUAL, RECEIVER, TRUSTEE, GUARDIAN,
12 PERSONAL REPRESENTATIVE, FIDUCIARY, OR REPRESENTATIVE OF ANY KIND AND
13 ANY PARTNERSHIP, FIRM, ASSOCIATION, CORPORATION, OR OTHER
14 NONGOVERNMENTAL ENTITY.

15 (F) “POLITICAL SUBDIVISION” MEANS:

16 (1) A COUNTY;

17 (2) THE CITY OF BALTIMORE;

18 (3) A MULTICOUNTY AGENCY;

19 (4) A MUNICIPAL CORPORATION;

20 (5) A SINGLE-PURPOSE DISTRICT; OR

21 (6) ~~A SOIL CONSERVATION OR SANITARY DISTRICT.~~

22 ~~(F) “SECRETARY” MEANS THE SECRETARY OF ANY STATE AGENCY,~~
23 ~~APPOINTED BY THE GOVERNOR.~~

24 (G) “STANDARD” MEANS ANY REQUIREMENT, PROHIBITION, LIMITATION,
25 OR CONDITION ESTABLISHED BY STATUTE, REGULATION, PERMIT, ORDER, OR
26 LICENSE ISSUED BY ~~A SECRETARY~~ THE SECRETARY OR ANY OTHER OFFICE OR
27 AGENCY OF THE STATE, A LOCAL GOVERNMENT, OR A POLITICAL SUBDIVISION IN
28 ACCORDANCE WITH:

1 (1) ~~TITLE 4~~, TITLE 5, SUBTITLE 9 OF THIS ARTICLE, IF THE
2 REQUIREMENT, PROHIBITION, LIMITATION, OR CONDITION IS RELATED TO
3 NONTIDAL WETLANDS THAT DO NOT HAVE A CONTINUOUS SURFACE CONNECTION TO
4 SURFACE WATER; OR

5 (2) TITLE 9, SUBTITLE 3 ~~OR TITLE 16~~ OF THIS ARTICLE, IF THE
6 REQUIREMENT, PROHIBITION, LIMITATION, OR CONDITION IS RELATED TO:

7 (I) AN EPHEMERAL STREAM; OR

8 (II) AN INTERMITTENT STREAM.

9 1-902.

10 ~~(A) (1) SUBJECT TO PARAGRAPH (2) OF~~ EXCEPT AS PROVIDED IN THIS
11 ~~SUBSECTION~~ SUBTITLE, A PERSON THAT MEETS THE THRESHOLD STANDING
12 REQUIREMENTS UNDER FEDERAL LAW HAS STANDING IN CIVIL CLAIMS ARISING
13 UNDER ANY STANDARD ~~TITLE 4, TITLE 5, TITLE 9, OR TITLE 16 OF THIS ARTICLE OR~~
14 ~~TITLE 1, SUBTITLE 3, TITLE 5, SUBTITLE 16, OR TITLE 8, SUBTITLE 18 OF THE~~
15 ~~NATURAL RESOURCES ARTICLE IF THE PERSON SUFFERS AN INJURY IN FACT THAT:~~

16 ~~(I) IS FAIRLY TRACEABLE TO THE CHALLENGED ACTION OR~~
17 ~~CONDUCT OF THE DEFENDANT; AND~~

18 ~~(II) IS LIKELY TO BE REDRESSED BY THE REQUESTED RELIEF~~
19 ~~OR A FAVORABLE JUDICIAL DECISION.~~

20 ~~(2) AN INTEREST OR INJURY ASSERTED UNDER THIS SECTION SHALL~~
21 ~~FALL WITHIN THE ZONE OF INTERESTS SOUGHT TO BE PROTECTED BY TITLE 4,~~
22 ~~TITLE 5, TITLE 9, OR TITLE 16 OF THIS ARTICLE AND TITLE 1, SUBTITLE 3, TITLE~~
23 ~~5, SUBTITLE 16, OR TITLE 8, SUBTITLE 18 OF THE NATURAL RESOURCES ARTICLE.~~

24 ~~(B) IN ADDITION TO SUBSECTION (A) OF THIS SECTION, AN ASSOCIATION~~
25 ~~HAS STANDING IN CLAIMS ARISING UNDER TITLE 4, TITLE 5, TITLE 9, OR TITLE 16~~
26 ~~OF THIS ARTICLE OR TITLE 1, SUBTITLE 3, TITLE 5, SUBTITLE 16, OR TITLE 8,~~
27 ~~SUBTITLE 18 OF THE NATURAL RESOURCES ARTICLE IF:~~

28 ~~(1) ONE OR MORE MEMBERS OF THE ASSOCIATION HAVE STANDING~~
29 ~~UNDER SUBSECTION (A) OF THIS SECTION;~~

30 ~~(2) THE INTERESTS THAT THE ASSOCIATION SEEKS TO PROTECT ARE~~
31 ~~GERMANE TO ITS PURPOSES; AND~~

1 ~~(3) NEITHER THE CLAIM ASSERTED NOR THE RELIEF REQUESTED~~
2 ~~REQUIRES THE PARTICIPATION OF THE MEMBER.~~

3 1-903.

4 (A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, A PERSON THAT HAS
5 STANDING UNDER § 1-902 OF THIS SUBTITLE MAY BRING A CIVIL ACTION ON THE
6 PERSON'S OWN BEHALF AGAINST ANY PERSON OR ~~GOVERNMENTAL ENTITY~~
7 POLITICAL SUBDIVISION THAT IS ALLEGED TO ~~HAVE VIOLATED OR TO~~ BE IN
8 VIOLATION OF ANY STANDARD.

9 (B) (1) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, AN ACTION
10 MAY NOT BE BROUGHT UNDER SUBSECTION (A) OF THIS SECTION ~~AT LEAST 60 DAYS~~
11 ~~AFTER THE PLAINTIFF HAS GIVEN~~ UNLESS THE PLAINTIFF FIRST GIVES 60 DAYS'
12 NOTICE OF THE ALLEGED VIOLATION.

13 (2) NOTICE UNDER THIS SUBSECTION SHALL BE:

14 (I) 1. BY CERTIFIED MAIL; OR

15 2. PERSONAL SERVICE; AND

16 (II) PROVIDED TO:

17 1. ~~THE APPROPRIATE SECRETARY~~ SECRETARY;

18 2. THE ATTORNEY GENERAL;

19 3. ANY LOCAL JURISDICTION IN WHICH THE ~~ALLEGED~~
20 VIOLATION ~~HAS OCCURRED~~ IS ALLEGED TO OCCUR; AND

21 4. AN ALLEGED VIOLATOR OF THE STANDARD.

22 (3) (I) AN ACTION MAY NOT BE BROUGHT UNDER SUBSECTION (A)
23 OF THIS SECTION IF THE ~~SECRETARY~~ SECRETARY HAS COMMENCED AND IS
24 DILIGENTLY PROSECUTING A CIVIL ~~OR CRIMINAL~~ ACTION ~~IN A COURT OF THE STATE~~
25 OR A CONSENT ORDER IS ENTERED TO REQUIRE COMPLIANCE FROM THE ALLEGED
26 VIOLATOR ~~WITHOUT UNDUE DELAY OR UNREASONABLE SCHEDULES FOR~~
27 RETURNING TO COMPLIANCE.

28 (II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS
29 PARAGRAPH, A PERSON THAT ~~HAS STANDING UNDER § 1-902 OF THIS SUBTITLE~~
30 MEETS THE THRESHOLD STANDING REQUIREMENTS UNDER FEDERAL LAW MAY

1 INTERVENE IN ~~THE~~ A CIVIL ACTION BROUGHT BY THE ~~SECRETARY~~ SECRETARY, AS
 2 PROVIDED IN § 1-904 OF THIS SUBTITLE.

3 (4) NOTICE UNDER THIS SUBSECTION SHALL IDENTIFY:

4 (I) A STANDARD VIOLATED;

5 (II) AN ACTIVITY CONSTITUTING THE VIOLATION;

6 (III) A PERSON SUSPECTED OF BEING RESPONSIBLE FOR THE
 7 VIOLATION;

8 (IV) THE LOCATION OF THE VIOLATION;

9 (V) THE DATES OF VIOLATIONS IF KNOWN; AND

10 (VI) THE NAME AND ADDRESS OF THE PERSON GIVING NOTICE.

11 (C) AN ACTION BROUGHT IN ACCORDANCE WITH THIS SECTION SHALL BE
 12 BROUGHT IN ANY CIRCUIT COURT OF A COUNTY WHERE THE ~~ALLEGED~~ CONDITION,
 13 ACTIVITY, OR FAILURE ~~IS OCCURRING, HAS OCCURRED, OR IS LIKELY TO OCCUR~~ IS
 14 ALLEGED TO BE A VIOLATION OF A STANDARD.

15 (D) BEFORE THE ENTERING OF ANY CONSENT JUDGMENT TO WHICH THE
 16 DEPARTMENT IS NOT A PARTY OR BEFORE THE DISMISSAL OF ANY CASE FILED IN
 17 ACCORDANCE WITH THIS SUBTITLE SUBJECT TO A SETTLEMENT AGREEMENT, THE
 18 PLAINTIFF SHALL:

19 (1) GIVE NOTICE AND PROVIDE A COMPLETE AND UNREDACTED COPY
 20 OF THE PROPOSED CONSENT JUDGMENT OR SETTLEMENT AGREEMENT TO THE
 21 DEPARTMENT AND THE ATTORNEY GENERAL BY PERSONAL SERVICE OR CERTIFIED
 22 MAIL AT LEAST 45 DAYS BEFORE THE DATE THAT THE PROPOSED CONSENT
 23 JUDGMENT OR SETTLEMENT AGREEMENT IS FILED WITH THE COURT; AND

24 (2) FILE AN AFFIDAVIT WITH THE COURT UNDER PENALTY OF
 25 PERJURY INDICATING COMPLIANCE WITH THE REQUIREMENT UNDER ITEM (1) OF
 26 THIS SUBSECTION.

27 (E) A COURT MAY:

28 (1) ORDER THE ENFORCEMENT OF A STANDARD ~~CHALLENGED~~
 29 ~~UNDER THIS SECTION;~~ AND

30 (2) GRANT:

1 (I) TEMPORARY OR PERMANENT EQUITABLE RELIEF; OR

2 (II) ~~ANY EXCEPT AS OTHERWISE PROVIDED BY THIS SUBTITLE,~~
3 ~~ANY OTHER RELIEF PROVIDED UNDER A STATUTE CHALLENGED UNDER THIS~~
4 ~~SECTION STANDARD; AND~~

5 ~~(3) IMPOSE CONDITIONS ON A DEFENDANT TO REQUIRE THE~~
6 ~~PROTECTION OF LAND, AIR, WATER, AND OTHER NATURAL RESOURCES OR PUBLIC~~
7 ~~HEALTH FROM POLLUTION, IMPAIRMENT, OR DESTRUCTION.~~

8 ~~(E)~~ ~~(4)~~ (F) IN AN ACTION UNDER THIS SECTION, THE COURT MAY
9 AWARD THE COSTS OF LITIGATION TO:

10 ~~(H)~~ (1) A PREVAILING PLAINTIFF; OR

11 ~~(H)~~ (2) A SUBSTANTIALLY PREVAILING PLAINTIFF; OR

12 (3) A SUBSTANTIALLY PREVAILING DEFENDANT IF THE PLAINTIFF'S
13 CLAIM WAS FRIVOLOUS, UNREASONABLE, OR GROUNDLESS IF THE PLAINTIFF HAS:

14 1. PARTICIPATED IN AN ACTION TO ENFORCE A
15 VIOLATION FOLLOWING THE ISSUANCE OF NOTICE UNDER SUBSECTION (B) OF THIS
16 SECTION; AND

17 2. A. SUCCESSFULLY ESTABLISHED THE LIABILITY
18 OF A DEFENDANT IN FEWER THAN ALL OF THE ASSERTED CLAIMS; OR

19 B. OTHERWISE ADVANCED THE PURPOSE OF THE
20 RELEVANT STATUTES THROUGH THE OUTCOME OF THE ACTION BY IMPROVING
21 ENVIRONMENTAL QUALITY, PROTECTING PUBLIC HEALTH, OR REDUCING
22 POLLUTION.

23 ~~(2) IF A PARTY TO AN ACTION UNDER THIS SECTION ACTS IN BAD~~
24 ~~FAITH OR WITHOUT SUBSTANTIAL JUSTIFICATION IN MAINTAINING OR DEFENDING~~
25 ~~THE ACTION, THE COURT MAY AWARD TO THE ADVERSE PARTY THE COSTS OF~~
26 ~~LITIGATION.~~

27 ~~(F)~~ (G) (1) (I) A EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS
28 SUBSECTION, A COURT MAY IMPOSE A CIVIL PENALTY AUTHORIZED IN ACCORDANCE
29 WITH THE STATUTE UNDER WHICH AN ACTION IS BROUGHT UNDER THIS SECTION.

30 (II) ~~INSTEAD OF IMPOSING A CIVIL PENALTY UNDER~~
31 ~~SUBPARAGRAPH (I) OF THIS PARAGRAPH, A A COURT MAY ORDER APPROVE A~~

1 CONSENT JUDGMENT OR SETTLEMENT AGREEMENT BETWEEN THE PARTIES THAT
 2 INCLUDES A SUPPLEMENTAL ENVIRONMENTAL PROJECT.

3 ~~(2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A~~ A CIVIL
 4 PENALTY COLLECTED UNDER THIS SUBSECTION SHALL BE DEPOSITED IN A MANNER
 5 SPECIFIED BY THE STATUTE.

6 ~~(3) IF THE ENFORCEMENT OF A STATUTORY DUTY HAS BEEN~~
 7 ~~DELEGATED TO A LOCAL GOVERNMENT, UP TO 50% OF A CIVIL PENALTY COLLECTED~~
 8 ~~UNDER THIS SUBSECTION MAY BE AWARDED TO THE LOCAL GOVERNMENT~~ THE
 9 STATE MAY NOT BE HELD LIABLE FOR CIVIL PENALTIES IN ANY ACTION UNDER THIS
 10 SUBTITLE.

11 1-904.

12 ~~(A) (1) THIS SECTION DOES NOT APPLY TO § 1-903(B)(3) OF THIS~~
 13 ~~SUBTITLE.~~

14 ~~(B) A PERSON THAT HAS STANDING UNDER § 1-902 OF THIS SUBTITLE MAY~~
 15 SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A PERSON THAT MEETS THE
 16 THRESHOLD STANDING REQUIREMENTS UNDER FEDERAL LAW HAS THE
 17 UNCONDITIONAL RIGHT AND AUTHORITY TO INTERVENE AS A MATTER OF RIGHT IN
 18 AN A CIVIL ACTION ARISING UNDER TITLE 4, TITLE 5, TITLE 9, OR TITLE 16 OF THIS
 19 ARTICLE OR TITLE 1, SUBTITLE 3, TITLE 5, SUBTITLE 16, OR TITLE 8, SUBTITLE 18
 20 OF THE NATURAL RESOURCES ARTICLE, UNLESS A DEFENDANT DEMONSTRATES
 21 THAT THE PERSON'S INTEREST IS ADEQUATELY REPRESENTED BY EXISTING
 22 PARTIES BROUGHT BY THE SECRETARY UNDER:

23 (I) TITLE 5, SUBTITLE 9 OF THIS ARTICLE; OR

24 (II) TITLE 9, SUBTITLE 3 OF THIS ARTICLE.

25 (2) A PERSON SHALL EXERCISE THE RIGHT TO INTERVENE UNDER
 26 PARAGRAPH (1) OF THIS SUBSECTION IN ACCORDANCE WITH THE APPLICABLE
 27 PRACTICES, PROCEDURES, AND LAWS IN THE STATE.

28 (3) A PERSON THAT HAS STANDING TO INTERVENE UNDER
 29 PARAGRAPH (1) OF THIS SUBSECTION HAS THE SAME RIGHTS AS AN INTERESTED
 30 PERSON OR AGGRIEVED PARTY UNDER THE FEDERAL CLEAN WATER ACT.

31 ~~(C) (B)~~ THE STATE MAY INTERVENE AS A MATTER OF RIGHT AT ANY TIME
 32 IN A ANY PROCEEDING BROUGHT UNDER THIS SUBTITLE.

~~(D) NOTWITHSTANDING § 1-903(B)(3) OF THIS SUBTITLE AND SUBSECTION
(A) OF THIS SECTION, A COURT MAY GRANT INTERVENTION ON MOTION BY ANY
PARTY.~~

~~1-905.~~

~~THE PROVISIONS OF THIS SUBTITLE SUPERSEDE ANY INCONSISTENT
PROVISION OF ANY STATE, COUNTY, OR MUNICIPAL LAW, ORDINANCE, OR
REGULATION AND ANY JUDICIAL INTERPRETATION TO THE EXTENT OF THE
INCONSISTENCY.~~

[9-344.1.

(a) Subject to subsection (b) of this section, a person who meets the threshold
standing requirements under the federal Clean Water Act has an unconditional right and
the authority to intervene in a civil action that the State initiates in State court to require
compliance with:

(1) This subtitle;

(2) Regulations adopted by the Department in accordance with this
subtitle; or

(3) Any discharge permit, effluent limitation, or order issued by the
Department in accordance with this subtitle.

(b) A person shall exercise the right to intervene under subsection (a) of this
section in accordance with the applicable practices, procedures, and laws in the State.

(c) A person who meets the requirements to intervene under subsection (a) of this
section has the same rights as an interested person or aggrieved party under the federal
Clean Water Act, including the right to apply for judicial appeal.]

SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or
the application thereof to any person or circumstance is held invalid for any reason in a
court of competent jurisdiction, the invalidity does not affect other provisions or any other
application of this Act that can be given effect without the invalid provision or application,
and for this purpose the provisions of this Act are declared severable.

SECTION 3. AND BE IT FURTHER ENACTED, That it is the intent of the General
Assembly that this Act:

(1) provide certain remedies to abate the pollution, destruction, or
substantial or unreasonable impairment to the public health, water quality, or any other
natural resource of the State;

1 (2) may not abridge or alter any right of action or remedies that exist under
2 law; and

3 (3) may not be construed as stopping or limiting the State or any person in
4 the exercise of the right to:

5 (i) protect the natural resources of the State;

6 (ii) suppress nuisances; or

7 (iii) abate pollution.

8 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2024.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.