

SB0653/223428/1

BY: Education, Energy, and the Environment Committee

AMENDMENTS TO SENATE BILL 653
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “**Senator Augustine**” and substitute “**Senators Augustine, Elfreth, Smith, and M. Washington**”; in line 4, strike “and associations”; strike beginning with the comma in line 5 down through “conditions” in line 7; in line 9, after “circumstances;” insert “requiring a plaintiff, under certain circumstances, to give certain notice and provide certain documentation to the Department of the Environment and the Attorney General in a certain manner and to file a certain affidavit;”; in line 17, strike “1-905” and substitute “1-904”; and after line 20, insert:

“BY repealing

Article - Environment

Section 9-344.1

Annotated Code of Maryland

(2014 Replacement Volume and 2023 Supplement)”.

AMENDMENT NO. 2

On page 2, strike in their entirety lines 3 through 5, inclusive; in line 6, strike “(C)” and substitute “(B)”; in line 7, after “COSTS,” insert “AND”; strike beginning with the second comma in line 7 down through “VIOLATIONS” in line 8; strike in their entirety lines 9 through 22, inclusive; after line 22, insert:

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

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

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

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

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

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

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

and in line 23, after “(E)” insert **“PERSON” MEANS AN INDIVIDUAL, RECEIVER, TRUSTEE, GUARDIAN, PERSONAL REPRESENTATIVE, FIDUCIARY, OR REPRESENTATIVE OF ANY KIND AND ANY PARTNERSHIP, FIRM, ASSOCIATION, CORPORATION, OR OTHER NONGOVERNMENTAL ENTITY.**

(F)”.

On page 3, in line 2, strike “SOIL CONSERVATION OR”; strike in their entirety lines 3 and 4; in line 7, strike “A SECRETARY” and substitute **“THE SECRETARY”**; in lines 7 and 8, strike “OR ANY OTHER OFFICE OR AGENCY OF THE STATE, A LOCAL GOVERNMENT, OR A POLITICAL SUBDIVISION”; in line 8, after “WITH” insert “:

(1)”;

in lines 8 and 9, strike **“TITLE 4,”**; in line 9, after “5,” insert **“SUBTITLE 9 OF THIS ARTICLE, IF THE REQUIREMENT, PROHIBITION, LIMITATION, OR CONDITION IS**

RELATED TO NONTIDAL WETLANDS THAT DO NOT HAVE A CONTINUOUS SURFACE CONNECTION TO SURFACE WATER; OR

(2);

in the same line, after “9,” insert “**SUBTITLE 3**”; in the same line, strike “**OR TITLE 16**”; in the same line, after “**ARTICLE**” insert “**, IF THE REQUIREMENT, PROHIBITION, LIMITATION, OR CONDITION IS RELATED TO:**

(I) AN EPHEMERAL STREAM; OR

(II) AN INTERMITTENT STREAM;

in line 11, strike “**(A) (1) SUBJECT TO PARAGRAPH (2) OF**” and substitute “**EXCEPT AS PROVIDED IN**”; in the same line, strike “**SUBSECTION**” and substitute “**SUBTITLE**”; in the same line, after “**PERSON**” insert “**THAT MEETS THE THRESHOLD STANDING REQUIREMENTS UNDER FEDERAL LAW**”; in line 12, after “**IN**” insert “**CIVIL**”; and in the same line, after “**UNDER**” insert “**ANY STANDARD**”.

On pages 3 and 4, strike beginning with the first “**TITLE**” in line 12 on page 3 down through “**MEMBER**” in line 2 on page 4.

On page 4, in line 6, strike “**GOVERNMENTAL ENTITY**” and substitute “**POLITICAL SUBDIVISION**”; in line 7, strike “**HAVE VIOLATED OR TO**”; in line 9, after “**MAY**” insert “**NOT**”; strike beginning with “**AT**” in line 9 down through “**GIVEN**” in line 10 and substitute “**UNLESS THE PLAINTIFF FIRST GIVES 60 DAYS**”; in line 15, strike “**APPROPRIATE SECRETARY**” and substitute “**SECRETARY**”; in line 17, strike “**ALLEGED**”; in line 18, strike “**HAS OCCURRED**” and substitute “**IS ALLEGED TO OCCUR**”; in line 21, strike “**SECRETARY**” and substitute “**SECRETARY**”; in line 22, strike “**OR CRIMINAL**”; in the same line, strike “**IN A COURT OF THE STATE**” and

(Over)

**SB0653/223428/01 Education, Energy, and the Environment Committee
Amendments to SB 653
Page 4 of 7**

substitute “OR A CONSENT ORDER IS ENTERED”; in lines 23 and 24, strike “WITHOUT UNDUE DELAY OR UNREASONABLE SCHEDULES FOR RETURNING TO COMPLIANCE”; in line 26, strike “HAS STANDING UNDER § 1-902 OF THIS SUBTITLE” and substitute “MEETS THE THRESHOLD STANDING REQUIREMENTS UNDER FEDERAL LAW”; in line 27, strike the first “THE” and substitute “A CIVIL”; and in the same line, strike “SECRETARY” and substitute “SECRETARY, AS PROVIDED IN § 1-904 OF THIS SUBTITLE”.

On page 5, in line 9, strike “ALLEGED”; in line 10, strike “IS OCCURRING, HAS OCCURRED, OR IS LIKELY TO OCCUR” and substitute “IS ALLEGED TO BE A VIOLATION OF A STANDARD”; in line 11, after “(D)” insert “BEFORE THE ENTERING OF ANY CONSENT JUDGMENT TO WHICH THE DEPARTMENT IS NOT A PARTY OR BEFORE THE DISMISSAL OF ANY CASE FILED IN ACCORDANCE WITH THIS SUBTITLE SUBJECT TO A SETTLEMENT AGREEMENT, THE PLAINTIFF SHALL:

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

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

(E)”;

in lines 12 and 13, strike “CHALLENGED UNDER THIS SECTION;” and substitute “AND”; in line 16, strike “ANY” and substitute “EXCEPT AS OTHERWISE PROVIDED BY

**SB0653/223428/01 Education, Energy, and the Environment Committee
Amendments to SB 653
Page 5 of 7**

THIS SUBTITLE, ANY"; in lines 16 and 17, strike "STATUTE CHALLENGED UNDER THIS SECTION" and substitute "**STANDARD**"; strike beginning with the semicolon in line 17 down through "DESTRUCTION" in line 20; in line 21, strike "(E) (1)" and substitute "**(F)**"; in lines 23 and 24, strike "(I)" and "(II)", respectively, and substitute "**(1)**" and "**(2)**", respectively; and in line 24, after "PLAINTIFF" insert "**; OR**

(3) A SUBSTANTIALLY PREVAILING DEFENDANT IF THE PLAINTIFF'S CLAIM WAS FRIVOLOUS, UNREASONABLE, OR GROUNDESS".

On pages 5 and 6, strike beginning with "IF" in line 24 on page 5 down through "POLLUTION" in line 9 on page 6.

On page 6, strike in their entirety lines 10 through 13, inclusive; in line 14, strike "(F)" and substitute "**(G)**"; in the same line, strike "A" and substitute "**EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, A**"; in lines 17 and 18, strike "INSTEAD OF IMPOSING A CIVIL PENALTY UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, A" and substitute "**A**"; in line 18, strike "ORDER" and substitute "**APPROVE A CONSENT JUDGMENT OR SETTLEMENT AGREEMENT BETWEEN THE PARTIES THAT INCLUDES**"; in line 20, strike "SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A" and substitute "**A**"; strike beginning with "IF" in line 23 down through "GOVERNMENT" in line 25 and substitute "**THE STATE MAY NOT BE HELD LIABLE FOR CIVIL PENALTIES IN ANY ACTION UNDER THIS SUBTITLE**"; in line 27, after "(A)" insert "**(1)**"; strike beginning with "THIS" in line 27 down through "(B)" in line 28; in line 28, strike "A PERSON THAT HAS STANDING UNDER § 1-902 OF THIS SUBTITLE MAY" and substitute "**SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A PERSON THAT MEETS THE THRESHOLD STANDING REQUIREMENTS UNDER FEDERAL LAW HAS THE UNCONDITIONAL RIGHT AND AUTHORITY TO**"; in line 29, strike "AS A MATTER OF RIGHT"; in the same line, strike "AN" and substitute "**A CIVIL**"; strike beginning with "ARISING" in line 29 down through "PARTIES" in line 33 and substitute "**BROUGHT BY THE SECRETARY UNDER:**

(Over)

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

(II) TITLE 9, SUBTITLE 3 OF THIS ARTICLE”;

and after line 33, insert:

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

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

On page 7, in line 1, strike “(C)” and substitute “(B)”; in the same line, strike the second “A” and substitute “ANY”; strike in their entirety lines 3 through 10, inclusive; and after line 10, insert:

“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

SB0653/223428/01 Education, Energy, and the Environment Committee
Amendments to SB 653
Page 7 of 7

(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.].