

HOUSE BILL 615

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M3

1999 Regular Session  
9r1580  
CF 9r1771

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By: **Delegates Cryor, Barkley, Boutin, Brinkley, Cadden, Conroy, Dembrow, Dypski, Frush, Goldwater, Hecht, Heller, Hubbard, Klausmeier, La Vay, Leopold, Marriott, Montague, Petzold, Pitkin, Riley, Rosso, Shriver, Stocksdale, Bronrott, and Kagan**

Introduced and read first time: February 11, 1999  
Assigned to: Environmental Matters

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Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: March 30, 1999

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Potomac River Protection Act**

3 FOR the purpose of requiring the Secretary of the Environment to conduct a certain  
4 study of a certain portion of the Potomac River Basin to examine certain issues;  
5 requiring the Secretary to make certain ~~determinations, assessments,~~  
6 assessments and recommendations; authorizing the Secretary to coordinate a  
7 certain study with other federal and state units; establishing certain deadlines  
8 for a certain study; establishing certain reporting requirements; prohibiting a  
9 ~~person from constructing or blasting in the Potomac River under certain~~  
10 ~~circumstances~~ the Secretary from issuing a waterway construction permit to  
11 construct a water intake pipe in the Potomac River for a certain period of time  
12 unless certain circumstances exist; clarifying the construction of certain  
13 provisions; making provisions of this Act severable; providing for the legislative  
14 intent of this Act; defining certain terms; providing for the termination of this  
15 Act; and generally relating to the protection of the Potomac River.

16 BY adding to  
17 Article - Environment  
18 Section 5-12A-01 through ~~5-12A-05~~ 5-12A-04, inclusive, to be under the new  
19 subtitle "Subtitle 12A. Potomac River Study"  
20 Annotated Code of Maryland  
21 (1996 Replacement Volume and 1998 Supplement)

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

1 **Article - Environment**

## 2 SUBTITLE 12A. POTOMAC RIVER STUDY.

3 5-12A-01.

4 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
5 INDICATED.

6 (B) "MGD" MEANS MILLION OF GALLONS OF WATER PER DAY.

7 (C) "MINIMUM FLOWBY" MEANS THE MINIMUM DAILY FLOW REMAINING IN  
8 THE POTOMAC RIVER AT LITTLE FALLS AFTER ALL WATER WITHDRAWALS.

9 5-12A-02.

10 THE PURPOSE OF THIS SUBTITLE IS TO:

11 (1) ASSIST THE PEOPLE OF MARYLAND IN OBTAINING THE PROTECTION  
12 AND ENHANCEMENT OF THE POTOMAC RIVER IN ACCORDANCE WITH THE  
13 OBJECTIVES OF ITS AMERICAN HERITAGE RIVER DESIGNATION;14 (2) FOSTER AN ADDITIONAL UNDERSTANDING OF THREATS TO WATER  
15 QUALITY AND WATER QUANTITY IN THE POTOMAC RIVER FOR THE BETTER  
16 MANAGEMENT OF RESOURCES; AND

17 (3) PRESERVE THE POTOMAC RIVER FOR FUTURE GENERATIONS.

18 5-12A-03.

19 (A) THE SECRETARY SHALL CONDUCT A STUDY OF THE NONTIDAL PORTION  
20 OF THE POTOMAC RIVER BASIN TO:21 ~~(I)~~ (1) PROVIDE A COMPREHENSIVE ASSESSMENT OF FUTURE WATER  
22 SUPPLIES AND DEMANDS FOR THE POTOMAC BASIN, INCLUDING:23 ~~(I)~~ (1) A COMPARISON OF THE SUPPLY AND DEMAND FROM NOW  
24 THROUGH THE YEAR ~~2035~~ 2030;25 ~~(II)~~ (2) THE SOURCES OF DEMAND, INCLUDING MAJOR AND  
26 MINOR WATER SUPPLIERS AND THEIR CUSTOMERS;27 ~~(III)~~ (3) A DETERMINATION OF VARIATIONS IN DEMAND,  
28 INCLUDING ~~THE NEED TO MEET PEAK DEMAND DURING CONDITIONS COMPARABLE~~  
29 ~~TO THE MOST SEVERE DROUGHT AND THE LONGEST DROUGHT OF RECORD~~;30 ~~(IV)~~ (4) ~~THE IMPACT OF DEMAND FROM OUTLYING AREAS ON WATER~~  
31 ~~SUPPLY SOURCES PRIMARILY FOR THE METROPOLITAN WASHINGTON AREA~~;32 (4) THE FREQUENCY AND DURATION OF LOW FLOW OCCURRENCES IN  
33 THE RIVER AND THEIR IMPACT ON WATER AVAILABILITY; AND

1                   ~~(V)~~    ~~(5)~~    THE AVAILABILITY OF RESERVOIRS TO AUGMENT RIVER  
2 FLOW ONLY TO THE EXTENT THAT RESERVOIR WATER WILL NOT ADVERSELY IMPACT  
3 THE TEMPERATURE, PH, SALINITY, NUTRIENT, OR CHEMICAL CONTENT OF THE  
4 POTOMAC RIVER;

5                   ~~(VI)~~    AN ACCOUNTING FOR COMPLIANCE WITH CURRENT AND  
6 ANTICIPATED NATIONAL PRIMARY AND SECONDARY DRINKING WATER STANDARDS,  
7 INCLUDING STANDARDS FOR ORGANIC CHEMICALS, RADIOACTIVITY,  
8 MICROBIOLOGICAL CONTAMINATION, TASTE, AND ODOR; AND

9                   ~~(VII)~~    AN ACCOUNTING FOR WATER QUALITY TRENDS, INCLUDING  
10 POTENTIAL WATER QUALITY DETERIORATION DUE TO POPULATION GROWTH,  
11 INCREASED INDUSTRIAL, COMMERCIAL, AND RESIDENTIAL DEVELOPMENT,  
12 CHANGES IN AGRICULTURAL PRACTICES, INCLUDING GROWTH IN THE NUMBER AND  
13 SIZE OF INTENSIVE ANIMAL PRODUCTION FACILITIES, AND CONTAMINATED  
14 SEDIMENT;

15                  ~~(2)~~    ANALYZE THE EXTENT OF EXISTING OR POTENTIAL THREATS TO  
16 HEALTH AND THE WATER QUALITY OF THE POTOMAC RIVER BY CRYPTOSPORIDIUM,  
17 GIARDIA, AND OTHER MICROORGANISMS;

18                  ~~(3)~~    IDENTIFY THE POLLUTANTS OF CONCERN IN THE POTOMAC RIVER;  
19 AND

20                  ~~(4)~~    ASSESS EXISTING OR POTENTIAL THREATS TO THE ESTHETIC,  
21 RECREATIONAL, AND ECOLOGICAL VALUES OF THE RIVER BY CONSTRUCTION THAT  
22 OCCURS ON THE RIVERBED.

23        (B)        IN THE STUDY, THE SECRETARY SHALL:

24                  ~~(1)~~    DETERMINE A MINIMUM FLOWBY REQUIREMENT WHICH IS  
25 ADEQUATE TO ENSURE:

26                  ~~(I)~~    THE CHEMICAL, PHYSICAL, AND BIOLOGICAL INTEGRITY OF  
27 THE RIVER;

28                  ~~(II)~~   THE RESTORATION AND PROTECTION OF THE TIDAL ESTUARY,  
29 INCLUDING APPROPRIATE DISSOLVED OXYGEN AND SALINITY LEVELS;

30                  ~~(III)~~   COMPLIANCE WITH EXISTING AND ANTICIPATED WATER  
31 QUALITY STANDARDS;

32                  ~~(IV)~~   COMPLIANCE WITH EXISTING AND ANTICIPATED NATIONAL  
33 PRIMARY AND SECONDARY DRINKING WATER STANDARDS, INCLUDING STANDARDS  
34 FOR ORGANIC CHEMICALS, RADIOACTIVITY, MICROBIOLOGICAL CONTAMINATION,  
35 TASTE, AND ODOR;

36                  ~~(V)~~    HABITAT REQUIREMENTS, INCLUDING QUANTITY AND  
37 QUALITY HABITAT, TO ENSURE PROTECTION AND PROPAGATION OF A BALANCED,  
38 INDIGENOUS POPULATION OF FISH, SHELLFISH, AND WILDLIFE; AND

1 ~~(VI) PROTECTION OF THE RIVER'S AQUATIC, TERRESTRIAL,~~  
2 ~~RECREATIONAL, AND ESTHETIC RESOURCES;~~

3 ~~(2) INCORPORATE THE FOLLOWING ASSESSMENTS:~~

4 ~~(H) (1) THAT CONSERVATION WILL REDUCE DEMAND ONLY TO~~  
5 ~~THE EXTENT THAT CONSERVATION MEASURES ARE ADDRESSED BY AN ADEQUATE~~  
6 ~~ENFORCEMENT PROGRAM HAVE BEEN SHOWN TO BE EFFECTIVE IN THE PAST; AND~~

7 ~~(H) (2) THAT ALTERNATE WATER SUPPLIES ARE AVAILABLE~~  
8 ~~ONLY TO THE EXTENT THAT SUCH SUPPLIES CAN BE READILY AVAILABLE WITHIN~~  
9 ~~THE STUDY TIMETABLE, ARE ECONOMICALLY AND TECHNICALLY FEASIBLE, AND~~  
10 ~~WILL NOT HAVE SIGNIFICANT ADVERSE HEALTH OR ENVIRONMENTAL IMPACTS;~~

11 ~~(3) RECOMMEND MEANS FOR MINIMIZING OR ELIMINATING THE~~  
12 ~~POTENTIAL THREAT TO HEALTH AND THE WATER QUALITY POSED BY~~  
13 ~~CRYPTOSPORIDIUM, GIARDIA, AND OTHER MICROORGANISMS;~~

14 ~~(4) RECOMMEND RESTRICTIONS OR PROHIBITIONS ON CONSTRUCTION~~  
15 ~~IN THE POTOMAC RIVER TO PROTECT THE ESTHETIC, RECREATIONAL, AND~~  
16 ~~ECOLOGICAL VALUES OF THE RIVER; AND~~

17 ~~(5) IDENTIFY AREAS OF SCIENTIFIC UNCERTAINTY AND AREAS THAT~~  
18 ~~REQUIRE FURTHER RESEARCH.~~

19 (C) THE SECRETARY MAY COORDINATE THE STUDY OF THE POTOMAC RIVER  
20 WITH OTHER FEDERAL AND STATE UNITS, INCLUDING THE INTERSTATE  
21 COMMISSION ON THE POTOMAC RIVER BASIN.

22 (D) (1) THE SECRETARY SHALL BEGIN THE STUDY ON OR BEFORE JULY 1,  
23 1999.

24 (2) ON OR BEFORE DECEMBER 1, 2000, THE SECRETARY SHALL PUBLISH  
25 A NOTICE OF THE AVAILABILITY OF A DRAFT OF THE POTOMAC RIVER STUDY IN THE  
26 MARYLAND REGISTER AND SHALL ALLOW AT LEAST A 60-DAY COMMENT PERIOD.  
27 THE SECRETARY SHALL RESPOND TO THE PUBLIC COMMENTS AND SHALL INCLUDE  
28 A SUMMARY OF THE COMMENTS AND THE SECRETARY'S RESPONSE AS PART OF THE  
29 POTOMAC RIVER STUDY.

30 (3) ON OR BEFORE JUNE 1, 2001, THE SECRETARY SHALL PUBLISH A  
31 NOTICE OF PUBLIC AVAILABILITY OF THE FINAL POTOMAC RIVER STUDY IN THE  
32 MARYLAND REGISTER.

33 (4) (I) THE SECRETARY SHALL SUBMIT TO THE GENERAL ASSEMBLY  
34 THE FINAL REPORT OF THE STUDY BY JUNE 1, 2001.

35 (II) THE REPORT SHALL INCLUDE A SUMMARY OF ONGOING WATER  
36 QUALITY STUDIES PERTAINING TO THE POTOMAC RIVER BASIN AND THEIR STATUS.

1 5-12A-04.

2 (A) (1) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE APPLICATION  
3 OF LAW OR REGULATION THAT IMPOSES MORE STRINGENT OR ADDITIONAL  
4 STANDARDS OR REQUIREMENTS.

5 (2) THIS SECTION DOES NOT PRECLUDE OR DENY ANY RIGHT OF THE  
6 STATE, ITS UNITS, OR POLITICAL SUBDIVISIONS FROM ADOPTING OR ENFORCING  
7 MORE STRINGENT OR ADDITIONAL STANDARDS OR REQUIREMENTS.

8 ~~(B) A PERSON MAY NOT:~~

9 ~~(1) CONSTRUCT A WATER INTAKE STRUCTURE IN THE POTOMAC RIVER~~  
10 ~~WITH THE CAPACITY TO WITHDRAW MORE THAN 50 MGD;~~

11 ~~(2) BLAST THE POTOMAC RIVERBED FOR A WATER INTAKE STRUCTURE;~~  
12 ~~OR~~

13 ~~(3) CONSTRUCT AN INTAKE STRUCTURE UNLESS THE WATER INTAKE~~  
14 ~~STRUCTURE IS AT LEAST 3 FEET BELOW THE WATER SURFACE AT THE RIVER'S~~  
15 ~~HISTORIC LOW FLOW.~~

16 5-12A-05.

17 ~~THE PROVISIONS OF THIS SUBTITLE SHALL REMAIN EFFECTIVE UNTIL JUNE 1,~~  
18 ~~2002 AND WITH NO FURTHER ACTION REQUIRED BY THE GENERAL ASSEMBLY THIS~~  
19 ~~SUBTITLE SHALL BE ABROGATED AND OF NO FURTHER FORCE AND EFFECT.~~

20 (B) THE SECRETARY MAY NOT, PRIOR TO 6 MONTHS AFTER THE SECRETARY  
21 HAS SUBMITTED TO THE GENERAL ASSEMBLY THE STUDY REQUIRED UNDER THIS  
22 SUBTITLE, GRANT A WATERWAY CONSTRUCTION PERMIT TO ANY PERSON TO  
23 CONSTRUCT A WATER INTAKE PIPE IN THE POTOMAC RIVER UNLESS:

24 (1) THE PIPE WILL BE USED AS A REPLACEMENT FOR A PIPE ALREADY IN  
25 USE;

26 (2) THE PIPE CANNOT BE USED CONCURRENTLY WITH THE PIPE  
27 ALREADY IN USE;

28 (3) THE PIPE DOES NOT HAVE THE PHYSICAL CAPACITY TO WITHDRAW  
29 FROM THE POTOMAC RIVER AN AMOUNT OF WATER THAT EXCEEDS THE AMOUNT OF  
30 WATER THE PERSON IS AUTHORIZED TO WITHDRAW UNDER THE WATER  
31 APPROPRIATION PERMIT BY MORE THAN 5 MGD; AND

32 (4) THE PIPE IS PLACED NOT LESS THAN 30 INCHES BELOW THE WATER  
33 SURFACE AT THE RIVER'S HISTORIC LOW FLOW.

34 (C) SUBSECTION (B) OF THIS SECTION ONLY APPLIES TO A PERMIT  
35 WATERWAY CONSTRUCTION PERMIT PENDING ON OR BEFORE APRIL 15, 1999.

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

7 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
8 June 1, 1999.