

SENATE BILL 582

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1999 Regular Session
9r1771
CF 9r1580

By: **Senators Van Hollen, Frosh, Roesser, Sfikas, Hogan, Forehand, McCabe,
and Pinsky**

Introduced and read first time: February 5, 1999
Assigned to: Economic and Environmental Affairs

A BILL ENTITLED

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 the Potomac River to examine certain issues; requiring the Secretary to
5 make certain determinations, assessments, and recommendations; authorizing
6 the Secretary to coordinate a certain study with other federal and state units;
7 establishing certain deadlines for a certain study; establishing certain reporting
8 requirements; prohibiting a person from constructing or blasting in the Potomac
9 River under certain circumstances; clarifying the construction of certain
10 provisions; making provisions of this Act severable; providing for the legislative
11 intent of this Act; defining certain terms; providing for the termination of this
12 Act; and generally relating to the protection of the Potomac River.

13 BY adding to

14 Article - Environment

15 Section 5-12A-01 through 5-12A-05, inclusive, to be under the new subtitle
16 "Subtitle 12A. Potomac River Study"

17 Annotated Code of Maryland

18 (1996 Replacement Volume and 1998 Supplement)

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

21 **Article - Environment**

22 **SUBTITLE 12A. POTOMAC RIVER STUDY.**

23 5-12A-01.

24 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
25 INDICATED.

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

1 (C) "MINIMUM FLOWBY" MEANS THE MINIMUM DAILY FLOW REMAINING IN
2 THE POTOMAC RIVER AFTER ALL WATER WITHDRAWALS.

3 5-12A-02.

4 THE PURPOSE OF THIS SUBTITLE IS TO:

5 (1) ASSIST THE PEOPLE OF MARYLAND IN OBTAINING THE PROTECTION
6 AND ENHANCEMENT OF THE POTOMAC RIVER IN ACCORDANCE WITH THE
7 OBJECTIVES OF ITS AMERICAN HERITAGE RIVER DESIGNATION;

8 (2) FOSTER AN ADDITIONAL UNDERSTANDING OF THREATS TO WATER
9 QUALITY AND WATER QUANTITY IN THE POTOMAC RIVER FOR THE BETTER
10 MANAGEMENT OF RESOURCES; AND

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

12 5-12A-03.

13 (A) THE SECRETARY SHALL CONDUCT A STUDY OF THE POTOMAC RIVER TO:

14 (1) PROVIDE A COMPREHENSIVE ASSESSMENT OF FUTURE WATER
15 SUPPLIES AND DEMANDS FOR THE POTOMAC BASIN, INCLUDING:

16 (I) A COMPARISON OF THE SUPPLY AND DEMAND FROM 1999
17 THROUGH THE YEAR 2035;

18 (II) THE SOURCES OF DEMAND, INCLUDING MAJOR AND MINOR
19 WATER SUPPLIERS AND THEIR CUSTOMERS;

20 (III) A DETERMINATION OF VARIATIONS IN DEMAND, INCLUDING
21 THE NEED TO MEET PEAK DEMAND DURING CONDITIONS COMPARABLE TO THE
22 MOST SEVERE DROUGHT AND THE LONGEST DROUGHT OF RECORD;

23 (IV) THE IMPACT OF DEMAND FROM OUTLYING AREAS ON WATER
24 SUPPLY SOURCES PRIMARILY FOR THE METROPOLITAN WASHINGTON AREA;

25 (V) THE AVAILABILITY OF RESERVOIRS TO AUGMENT RIVER FLOW
26 ONLY TO THE EXTENT THAT RESERVOIR WATER WILL NOT ADVERSELY IMPACT THE
27 TEMPERATURE, PH, SALINITY, NUTRIENT, OR CHEMICAL CONTENT OF THE POTOMAC
28 RIVER;

29 (VI) AN ACCOUNTING FOR COMPLIANCE WITH CURRENT AND
30 ANTICIPATED NATIONAL PRIMARY AND SECONDARY DRINKING WATER STANDARDS,
31 INCLUDING STANDARDS FOR ORGANIC CHEMICALS, RADIOACTIVITY,
32 MICROBIOLOGICAL CONTAMINATION, TASTE, AND ODOR; AND

33 (VII) AN ACCOUNTING FOR WATER QUALITY TRENDS, INCLUDING
34 POTENTIAL WATER QUALITY DETERIORATION DUE TO POPULATION GROWTH,
35 INCREASED INDUSTRIAL, COMMERCIAL, AND RESIDENTIAL DEVELOPMENT,
36 CHANGES IN AGRICULTURAL PRACTICES, INCLUDING GROWTH IN THE NUMBER AND

1 SIZE OF INTENSIVE ANIMAL PRODUCTION FACILITIES, AND CONTAMINATED
2 SEDIMENT;

3 (2) ANALYZE THE EXTENT OF EXISTING OR POTENTIAL THREATS TO
4 HEALTH AND THE WATER QUALITY OF THE POTOMAC RIVER BY CRYPTOSPORIDIUM,
5 GIARDIA, AND OTHER MICROORGANISMS;

6 (3) IDENTIFY THE POLLUTANTS OF CONCERN IN THE POTOMAC RIVER,
7 INCLUDING THOSE LISTED IN THE AMENDMENTS TO THE SAFE DRINKING WATER
8 ACT AMENDMENTS OF 1996, THE MARYLAND SOURCE WATER ASSESSMENT PROGRAM,
9 AND MARYLAND TOXIC SUBSTANCES CRITERIA FOR AMBIENT SURFACE WATERS; AND

10 (4) ASSESS EXISTING OR POTENTIAL THREATS TO THE ESTHETIC,
11 RECREATIONAL, AND ECOLOGICAL VALUES OF THE RIVER BY CONSTRUCTION THAT
12 OCCURS ON THE RIVERBED.

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

14 (1) DETERMINE A MINIMUM FLOWBY REQUIREMENT WHICH IS
15 ADEQUATE TO ENSURE:

16 (I) THE CHEMICAL, PHYSICAL, AND BIOLOGICAL INTEGRITY OF
17 THE RIVER;

18 (II) THE RESTORATION AND PROTECTION OF THE TIDAL ESTUARY,
19 INCLUDING APPROPRIATE DISSOLVED OXYGEN AND SALINITY LEVELS;

20 (III) COMPLIANCE WITH EXISTING AND ANTICIPATED WATER
21 QUALITY STANDARDS;

22 (IV) COMPLIANCE WITH EXISTING AND ANTICIPATED NATIONAL
23 PRIMARY AND SECONDARY DRINKING WATER STANDARDS, INCLUDING STANDARDS
24 FOR ORGANIC CHEMICALS, RADIOACTIVITY, MICROBIOLOGICAL CONTAMINATION,
25 TASTE, AND ODOR;

26 (V) HABITAT REQUIREMENTS, INCLUDING QUANTITY AND
27 QUALITY HABITAT, TO ENSURE PROTECTION AND PROPAGATION OF A BALANCED,
28 INDIGENOUS POPULATION OF FISH, SHELLFISH, AND WILDLIFE; AND

29 (VI) PROTECTION OF THE RIVER'S AQUATIC, TERRESTRIAL,
30 RECREATIONAL, AND ESTHETIC RESOURCES;

31 (2) INCORPORATE THE FOLLOWING ASSESSMENTS:

32 (I) THAT CONSERVATION WILL REDUCE DEMAND ONLY TO THE
33 EXTENT THAT CONSERVATION MEASURES ARE ADDRESSED BY AN ADEQUATE
34 ENFORCEMENT PROGRAM; AND

35 (II) THAT ALTERNATE WATER SUPPLIES ARE AVAILABLE ONLY TO
36 THE EXTENT THAT SUCH SUPPLIES CAN BE READILY AVAILABLE WITHIN THE STUDY

1 TIMETABLE, ARE ECONOMICALLY AND TECHNICALLY FEASIBLE, AND WILL NOT
2 HAVE SIGNIFICANT ADVERSE HEALTH OR ENVIRONMENTAL IMPACTS;

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

6 (4) RECOMMEND RESTRICTIONS OR PROHIBITIONS ON CONSTRUCTION
7 IN THE POTOMAC RIVER TO PROTECT THE ESTHETIC, RECREATIONAL, AND
8 ECOLOGICAL VALUES OF THE RIVER;

9 (5) IDENTIFY AREAS OF SCIENTIFIC UNCERTAINTY AND AREAS THAT
10 REQUIRE FURTHER RESEARCH;

11 (6) ANALYZE THE EXTENT TO WHICH THE WITHDRAWAL OF WATER
12 FROM INTAKE PIPES EXTENDING FROM THE SHORELINE MAY AFFECT THE WATER
13 QUALITY OF THE POTOMAC RIVER; AND

14 (7) ANALYZE THE IMPACT OF CURRENT AND FUTURE BUILDING AND
15 DEVELOPMENT IN THE MARYLAND PORTION OF THE POTOMAC RIVER WATERSHED
16 ON THE WATER QUALITY OF THE POTOMAC RIVER AND RECOMMEND STEPS THAT
17 CAN BE TAKEN TO AVOID, MINIMIZE, AND MITIGATE ANY IMPACT THAT MAY RESULT.

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

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

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

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

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

34 5-12A-04.

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

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

4 (B) A PERSON MAY NOT, PRIOR TO 6 MONTHS AFTER THE SECRETARY HAS
5 SUBMITTED TO THE GENERAL ASSEMBLY THE STUDY REQUIRED PURSUANT TO THIS
6 SUBTITLE:

7 (1) CONSTRUCT A WATER INTAKE STRUCTURE IN THE POTOMAC RIVER
8 THAT EXTENDS MORE THAN 50 FEET FROM THE RIVER BANK;

9 (2) BLAST THE POTOMAC RIVERBED FOR A WATER INTAKE STRUCTURE;
10 OR

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

14 5-12A-05.

15 THE PROVISIONS OF THIS SUBTITLE SHALL REMAIN EFFECTIVE UNTIL JUNE 1,
16 2002 AND WITH NO FURTHER ACTION REQUIRED BY THE GENERAL ASSEMBLY THIS
17 SUBTITLE SHALL BE ABROGATED AND OF NO FURTHER FORCE AND EFFECT.

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

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