

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

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 25, 1999

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 and recommendations; authorizing the Secretary to coordinate
7 a 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)~~ ~~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 1999
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)~~ ~~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 INCLUDING THOSE LISTED IN THE AMENDMENTS TO THE SAFE DRINKING WATER
20 ACT AMENDMENTS OF 1996, THE MARYLAND SOURCE WATER ASSESSMENT PROGRAM,
21 AND MARYLAND TOXIC SUBSTANCES CRITERIA FOR AMBIENT SURFACE WATERS; AND

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

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

26 (1) DETERMINE A MINIMUM FLOWBY REQUIREMENT WHICH IS
27 ADEQUATE TO ENSURE:

28 (I) THE CHEMICAL, PHYSICAL, AND BIOLOGICAL INTEGRITY OF
29 THE RIVER;

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

32 (III) COMPLIANCE WITH EXISTING AND ANTICIPATED WATER
33 QUALITY STANDARDS;

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

1 (V) HABITAT REQUIREMENTS, INCLUDING QUANTITY AND
2 QUALITY HABITAT, TO ENSURE PROTECTION AND PROPAGATION OF A BALANCED,
3 INDIGENOUS POPULATION OF FISH, SHELLFISH, AND WILDLIFE; AND

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

6 (2) INCORPORATE THE FOLLOWING ASSESSMENTS:

7 (1) THAT CONSERVATION WILL REDUCE DEMAND ONLY TO
8 THE EXTENT THAT CONSERVATION MEASURES ARE ADDRESSED BY AN ADEQUATE
9 ENFORCEMENT PROGRAM HAVE BEEN SHOWN TO BE EFFECTIVE IN THE PAST; AND

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

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

17 (4) RECOMMEND RESTRICTIONS OR PROHIBITIONS ON CONSTRUCTION
18 IN THE POTOMAC RIVER TO PROTECT THE ESTHETIC, RECREATIONAL, AND
19 ECOLOGICAL VALUES OF THE RIVER;

20 (5) IDENTIFY AREAS OF SCIENTIFIC UNCERTAINTY AND AREAS THAT
21 REQUIRE FURTHER RESEARCH;

22 (6) ANALYZE THE EXTENT TO WHICH THE WITHDRAWAL OF WATER
23 FROM INTAKE PIPES EXTENDING FROM THE SHORELINE MAY AFFECT THE WATER
24 QUALITY OF THE POTOMAC RIVER; AND

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

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

32 (D) (1) THE SECRETARY SHALL BEGIN THE STUDY ON OR BEFORE JULY 1,
33 1999.

34 (2) ON OR BEFORE DECEMBER 1, 2000, THE SECRETARY SHALL PUBLISH
35 A NOTICE OF THE AVAILABILITY OF A DRAFT OF THE POTOMAC RIVER STUDY IN THE
36 MARYLAND REGISTER AND SHALL ALLOW AT LEAST A 60-DAY COMMENT PERIOD.
37 THE SECRETARY SHALL RESPOND TO THE PUBLIC COMMENTS AND SHALL INCLUDE

1 A SUMMARY OF THE COMMENTS AND THE SECRETARY'S RESPONSE AS PART OF THE
2 POTOMAC RIVER STUDY.

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

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

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

10 5-12A-04.

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

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

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

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

22 (2) ~~BLAST THE POTOMAC RIVERBED FOR A WATER INTAKE STRUCTURE;~~
23 ~~OR~~

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

27 ~~5-12A-05.~~

28 ~~THE PROVISIONS OF THIS SUBTITLE SHALL REMAIN EFFECTIVE UNTIL JUNE 1,~~
29 ~~2002 AND WITH NO FURTHER ACTION REQUIRED BY THE GENERAL ASSEMBLY THIS~~
30 ~~SUBTITLE SHALL BE ABROGATED AND OF NO FURTHER FORCE AND EFFECT.~~

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

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

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

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

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

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

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