

**Department of Legislative Services**  
Maryland General Assembly  
2024 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 653 (Senator Augustine)  
Education, Energy, and the Environment

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

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This bill establishes standing, under specified circumstances, for persons and associations in claims arising under specified environmental and natural resources laws. The bill also authorizes a person that has standing pursuant to the bill to bring a civil action against any person or governmental entity that is alleged to have violated or to be in violation of any standard under specified environmental laws.

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**Fiscal Summary**

**State Effect:** State (multiple fund types) expenditures and revenues may be significantly affected depending on the scope and volume of any litigation under the bill, whether the State is a defendant in any action, and what relief is awarded by the courts, as discussed below. At a minimum, general fund expenditures for the Maryland Department of the Environment (MDE) increase by at least \$86,400 in FY 2025, increasing to at least \$117,900 by FY 2029.

**Local Effect:** Local government finances may also be significantly affected, as discussed below.

**Small Business Effect:** Potential meaningful.

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**Analysis**

**Bill Summary:** The bill makes changes to State law to provide standing and certain remedies, to person and associations, with respect to claims arising under specified laws under the Environment and Natural Resources Articles:

- ***Environment Article*** – Titles 4, 5, 9, and 16, which cover a wide range of laws related to, among other things, the management and protection of the State’s waters, water resources, and wetlands; and
- ***Natural Resources Article*** – (1) the Maryland Environmental Policy Act; (2) the Forest Conservation Act; and (3) the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program.

The bill makes the following changes:

- ***Standing*** – The bill establishes that a person has standing in claims arising under the specified laws if the person suffers an injury in fact that (1) is fairly traceable to the challenged action or conduct of the defendant and (2) is likely to be redressed by the requested relief or a favorable judicial decision. An injury or interest asserted must fall within the zone of interests sought to be protected by the law. An association has standing in claims arising under the specified laws if (1) one or more members of the association have standing as specified above; (2) the interests that the association seeks to protect are germane to its purposes; and (3) neither the claim asserted nor the relief requested requires the participation of the member.
- ***Authorization of Civil Action*** – The bill establishes that a person that has standing (as described above) may bring a civil action on the person’s own behalf against any person or governmental entity that is alleged to have violated or to be in violation of any standard under the specified laws (above) under the Environment Article. However, specified notice must be provided at least 60 days before bringing an action, to the appropriate secretary of the State agency, the Attorney General, any local jurisdiction in which the alleged violation has occurred, and an alleged violator of the standard. A person may not bring an action if the secretary has commenced and is diligently prosecuting a civil or criminal action to require compliance; however, a person may intervene in the action brought by the secretary. An action must be brought in any circuit court of a county where the alleged condition, activity or failure is occurring, has occurred, or is likely to occur.
- ***Authorized Relief*** – The bill authorizes a court to (1) order the enforcement of a specified standard; (2) grant temporary or permanent equitable relief, or other relief provided under the applicable statute; and (3) impose conditions on a defendant to require the protection of land, air, water, and other natural resources or public health from pollution, impairment, or destruction.
- ***Civil Penalties and Supplemental Environmental Projects*** – The bill authorizes a court to impose a civil penalty authorized under the applicable statute (and deposited

in accordance with existing statute) or instead order a supplemental environmental project. If the enforcement of a statutory duty has been delegated to a local government, up to 50% of a civil penalty may be awarded to the local government.

- ***Costs of Litigation*** – The bill authorizes the court, in an action pursuant to the bill, to award costs of litigation to a prevailing plaintiff or a specified substantially prevailing plaintiff. Costs may be awarded to an adverse party if a party acts in bad faith or without substantial justification in maintaining or defending the action.
- ***Authorization to Intervene*** – A person that has standing pursuant to the bill may intervene in an action under the specified laws unless a defendant demonstrates that the person’s interest is adequately represented by existing parties. A court may grant intervention on motion by any party. The State may intervene in a proceeding brought pursuant to the bill at any time.

Pursuant to existing law, under the Environment Article, “person” means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.

The bill’s provisions supersede any inconsistent provision of any State, county, or municipal law, ordinance, or regulation and any judicial interpretation to the extent of the inconsistency.

The bill establishes the General Assembly’s intent that the bill:

- provide certain remedies to abate the pollution, destruction, or substantial or unreasonable impairment to the public health, water quality, or any other natural resources of the State;
- may not abridge or alter any right of action or remedies that exist under law; and
- may not be construed as stopping or limiting the State or any person in the exercise of the right to (1) protect the natural resources of the State; (2) suppress nuisances; or (3) abate pollution.

Finally, the bill includes a severability provision.

## **Current Law:**

### *Enforcement under the Environment and Natural Resources Articles*

The Secretary of the Environment is required to carry out and enforce the provisions of the Environment Article and rules and regulations adopted under the article. The Secretary is also authorized to delegate duties, powers, and functions under the article to a health officer for a county or to another county official authorized to administer and enforce environmental laws. Similarly, the Secretary of Natural Resources is responsible for the enforcement of all natural resource laws of the State, including any rules and regulations adopted pursuant to the Natural Resources Article. In addition, the Forest Conservation Act and the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program delegate specified authority to local governments to administer and enforce those laws through local programs.

In general, persons who violate provisions of the Environment and Natural Resources Articles can be subject to varying enforcement authority of MDE, the Department of Natural Resources (DNR), or a local government, and administrative, civil, and/or criminal penalties, depending on the specific provision/law.

### *Certain Authorizations/Standing Related to Environment/Natural Resources Enforcement*

#### *Environmental Standing Act*

The Environmental Standing Act, under the Natural Resources Article, includes a finding by the General Assembly that the State's courts are an appropriate forum for seeking the protection of the environment and that an unreasonably strict procedural definition of "standing to sue" in environmental matters is not in the public interest.

The Act authorizes the Attorney General, a political subdivision of the State, and any other person – regardless of whether the person possesses a special interest different from that possessed generally by the residents of the State, or whether the person is under threat of substantial personal or property damage – to bring and maintain an action for *mandamus* or equitable relief against any officer or agency of the State or a political subdivision for (1) failure to perform a nondiscretionary ministerial duty or (2) failure to enforce an applicable environmental quality standard for the protection of the air, water, or other natural resources of the State.

The Act's authorization is subject to specified limitations, including that in order for an individual to bring an action the individual must either reside in the county or Baltimore City where the action is brought or must demonstrate that the alleged condition, activity, or failure complained of affects the environment where the individual resides.

### *Specified Environmental Permits/Licenses and Critical Area Variances*

Chapters 650 and 651 of 2009 establish the following authorizations for a person to request judicial review of specified permits/licenses under the Environment Article or to participate in an administrative proceeding regarding a specified variance for development activity (and petition for judicial review) under the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program under the Natural Resources Article:

- *Specified Permits/Licenses under the Environment Article* – A final determination/decision on the issuance, denial, renewal, or revision of specified permits/licenses (including certain permits/licenses issued under Titles 5, 9, and 16, such as a permit to discharge pollutants to waters of the State) is subject to judicial review at the request of any person that meets the threshold standing requirements under federal law and (1) is the applicant or (2) participated in a public participation process through the submission of written or oral comments, unless an opportunity for public participation was not provided.
- *Variances under the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program* – A person who meets the threshold standing requirements under federal law is authorized to participate as a party in specified administrative proceedings involving a specified variance for development activity and to petition for judicial review.

Chapters 650 and 651 establish the General Assembly’s intent, in uncoded language, that the references to “threshold standing requirements under federal law” be construed, among other things (1) in the context of the entire body of federal case law regarding standing, as that case law existed when Chapters 650 and 651 took effect and as it evolved/evolves in subsequent rulings and (2) in accordance with the ruling in *Hunt v Washington State Apple Advertising Commission*, 432 U.S. 333 (1977).

Under federal law, the constitutional minimum of standing requires that (1) the plaintiff suffered an injury in fact (an actual or imminent concrete and particularized invasion of a legally protected interest); (2) the injury must be fairly traceable to the challenged action of the defendant; and (3) it must be likely that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992).

In *Hunt v. Washington State Apple Advertising Commission*, the U.S. Supreme Court stated that “an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Hunt* at 343.

### *Right to Intervene in Civil Actions Involving Water Pollution Control*

Pursuant to Chapters 618 and 619 of 2021, 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) Title 9, Subtitle 3 (Water Pollution Control) of the Environment Article; (2) regulations adopted in accordance with Subtitle 3; or (3) any discharge permit, effluent limitation, or order issued in accordance with Subtitle 3.

**State/Local Fiscal Effect:** State (multiple fund types) and local government expenditures and revenues may be significantly affected depending on the scope and volume of any litigation under the bill, whether the State or local governments are defendants in any actions, and what relief is awarded by the courts. Potential effects are as follows:

- ***MDE Legal Staff*** – General fund expenditures increase for MDE by *at least* \$86,397 in fiscal 2025, which accounts for the bill’s October 1, 2024 effective date, increasing to \$117,872 by fiscal 2029, to hire a minimum of one assistant Attorney General to manage the department’s defense in civil actions brought pursuant to the bill in which the department is a defendant, and presumably also the department’s intervention in any other actions needed. (Similar staff for DNR is not reflected in this analysis because the bill appears to only authorize an original civil action under the specified laws under the Environment Article because of the bill’s definition of “standard” only applying to laws under the Environment Article.)
- ***Other Potential Expenditures of State Agencies and Local Governments as Enforcement Authorities or Regulated Entities*** – Beyond MDE’s *minimum* personnel costs above, other State agencies, including the Maryland Department of Transportation, and local governments may incur increased costs or require additional personnel associated with litigation resulting from the bill, whether as enforcement authorities (local governments) or as regulated entities. Expenditures may include those related to potential payment of costs of opposing parties and any costs of relief paid for by State agencies or local governments as defendants.
- ***Judiciary Training*** – The Judiciary indicates that costs may be incurred for training for circuit court judges relating to providing equitable relief and ordering supplemental environmental projects in environmental actions brought pursuant to the bill.
- ***Civil Penalty Revenues*** – State and local government revenues may increase as a result of any increased civil penalties collected as a result of civil actions brought pursuant to the bill. Under the bill, any civil penalties are deposited pursuant to

existing statute and up to 50% may be awarded to a local government with delegated enforcement authority.

- ***Filing Fee and Related Revenues*** – To the extent that additional civil actions are initiated under the authority of the bill, State and local fee revenues associated with court filings increase minimally.

**Small Business Effect:** Small businesses that are regulated entities under the specified laws under the Environmental Article may be meaningfully affected by litigation costs and any penalties, costs of supplemental environmental projects, or costs associated with relief granted or ordered under a civil action brought pursuant to the bill.

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** HB 1101 (Delegate Love, *et al.*) - Environment and Transportation.

**Information Source(s):** Maryland Environmental Service; Harford County; Maryland Association of Counties; Maryland-National Capital Park and Planning Commission; City of Frostburg; Maryland Municipal League; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland Department of Agriculture; Maryland Department of the Environment; Department of Natural Resources; Maryland Department of Transportation; *Standing Last in Line: The Hurdles to Bringing Environmental Accountability Lawsuits in Maryland*, Isaacson, Evan, Chesapeake Legal Alliance, Nicholas, Betsy, Waterkeepers Chesapeake, Schmitt, Katlyn, Center for Progressive Reform (December 2022); Department of Legislative Services

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