

**HB1101 - Clean Water Justice Act - Sponsor Amendment**  
**March 26, 2023**

In the amendment process on HB 1101, “government entity” was the term first used, and it was requested by MDE to use the defined term of “political subdivision” as it is far narrower in scope. The bill sponsors and advocates agreed to that amendment. However, in the final version “political subdivision” was removed from the bill – these amendments seek to fix that, adding it back into the bill.

For the first instance under "Standard", Political Subdivision [p.3 lines 25-26] is important in a few specific instances: 1) pre-treatment permits are almost always developed by the publicly-owned treatment works (or wastewater treatment plant) and regulate what must be removed before discharging to the POTW, e.g., PFAS, lead, PCBs, mercury, etc., and 2) stormwater permits, where local governments set the standard based on location conditions, e.g., water retention standards for a 2" inch rainfall. Since the bill otherwise limits the types of permits, this will not expand to allow challenges of local land use, zoning, or other decisions, merely to include enforcement of water pollution permits issued by the Secretary to standards for those permits that are, in some instances, established by political subdivisions.

Political subdivision is defined in the bill [p.3 line3 13-19] and in a practical sense, this definition includes quasi-governmental structures like WSSC (Washington Suburban Sanitary Commission), METCOM (St. Mary's County Metropolitan Commission) that operate wastewater treatment plants. However, the reference to Political Subdivision was *not* added where “government entity” was removed on p. 5, line 4. The largest point source of water pollution has always been municipal wastewater and stormwater facilities and Congress has always known that we must address them and never had any thought of excluding or exempting them. Instead, Congress (and MD) has always provided enormous subsidies to help them reduce pollution, while simultaneously demanding compliance, e.g., the Back River facility in Baltimore. Secondly, it sends a really bad signal to suggest that the government is above the law and that privately owned facilities and small businesses must be held to a higher standard than our own governments.

In including “political subdivision,” it is critical to understand that this will result in virtually no additional liability compared to where we were historically. The bill does *not* establish new legal requirements or prohibitions. There is no reason to believe that the law will result in any change to the overall number of enforcement actions going forward. This new state law would only be used as a backstop when a federal court is not an option. In fact, under State law, water pollution penalties are less than 15% of the federal penalty so any new enforcement actions under the new law that would have otherwise been brought under federal law will result in far less liability for the polluter. Again, the law provides recourse of last resort for Marylanders seeking to stop illegal pollution.