

HOUSE BILL 1128

M3

01r2802

By: **Delegates Gilchrist, Fraser–Hidalgo, Korman, Stein, Stewart, and Wilkins**

Introduced and read first time: February 6, 2020

Assigned to: Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 **Environment – Water Quality Certifications – Requests**
3 **(Water Quality Certification Improvement Act)**

4 FOR the purpose of requiring a person seeking a certain water quality certification to
5 submit a request to the Department of the Environment; requiring that a request for
6 a water quality certification include certain information concerning the potential
7 environmental impacts of certain projects; requiring the Department to begin
8 reviewing a request immediately on receipt of the request; requiring the Department
9 to issue a decision on a request in accordance with a certain timeline; authorizing
10 the Department to issue a water quality certification with additional conditions;
11 requiring the Department to deny a certain certification under certain
12 circumstances; authorizing a requestor to submit a subsequent request for a water
13 quality certification that has been denied by the Department; specifying the manner
14 in which a certain timeline applies to a request that has been resubmitted; requiring
15 the Department to provide a certain public comment period for a request for a water
16 quality certification; requiring the Department to review certain public comments
17 within a certain number of days after the comment period ends; requiring the
18 Department to make a draft water quality certification available under certain
19 circumstances; requiring the Department to include certain information in a draft
20 water quality certification; requiring the Department to post certain information on
21 its website in a certain manner; establishing that a certain determination by the
22 Department is subject to judicial review at the request of a certain person; requiring
23 that a petition for judicial review be filed in a certain manner, within a certain
24 amount of time, and in a certain location; requiring the Department to adopt certain
25 regulations; defining a certain term; and generally relating to water quality
26 certifications.

27 BY adding to

28 Article – Environment

29 Section 9–353 through 9–357 to be under the new part “Part VII. Water Quality
30 Certification”

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2014 Replacement Volume and 2019 Supplement)

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

5 **Article – Environment**

6 **9–351. RESERVED.**

7 **9–352. RESERVED.**

8 **PART VII. WATER QUALITY CERTIFICATION.**

9 **9–353.**

10 IN THIS PART, “WATER QUALITY CERTIFICATION” MEANS A WATER QUALITY
11 CERTIFICATION REQUESTED IN ACCORDANCE WITH § 401 OF THE FEDERAL CLEAN
12 WATER ACT.

13 **9–354.**

14 (A) A PERSON SEEKING A WATER QUALITY CERTIFICATION SHALL SUBMIT A
15 REQUEST TO THE DEPARTMENT.

16 (B) A REQUEST FOR A WATER QUALITY CERTIFICATION SHALL INCLUDE:

17 (1) A DESCRIPTION OF ALL ACTIVITIES AND INFRASTRUCTURE
18 ASSOCIATED WITH THE PROJECT;

19 (2) PROJECT BOUNDARIES;

20 (3) THE DISTANCE OF ALL PROPOSED STRUCTURES FROM THE
21 WATERS OF THE STATE;

22 (4) CONSTRUCTION ACCESS AND METHODOLOGY;

23 (5) NAMES AND ADDRESSES OF PROPERTY OWNERS WHOSE
24 PROPERTY IS ADJACENT TO THE PROJECT SITE;

25 (6) COUNTY OR STATE SETBACKS, RIGHTS-OF-WAY, OR EASEMENTS
26 THAT APPLY TO THE PROJECT SITE;

27 (7) A DESCRIPTION OF ALL POTENTIAL DIRECT OR INDIRECT

1 DISCHARGES FROM THE PROJECT INTO THE WATERS OF THE STATE;

2 (8) A CALCULATION OF THE AMOUNTS OF POLLUTION FOR EACH
3 POTENTIAL DIRECT OR INDIRECT DISCHARGE FROM THE PROJECT INTO:

4 (I) THE WATERS OF THE STATE; AND

5 (II) SOURCES OF DRINKING WATER;

6 (9) AN IDENTIFICATION OF ANY WATERS OF THE STATE THAT:

7 (I) MAY BE IMPACTED BY THE ACTIVITIES OF THE PROJECT;

8 AND

9 (II) ARE WITHIN THE BOUNDARIES OF THE PROJECT;

10 (10) A GROUNDWATER MAP IF REQUIRED BY THE DEPARTMENT;

11 (11) AN EVALUATION OF COMPLIANCE OF THE PROJECT, INCLUDING
12 DIRECT AND INDIRECT DISCHARGES ASSOCIATED WITH THE PROJECT, WITH
13 APPLICABLE STATE WATER QUALITY REQUIREMENTS, INCLUDING AN EVALUATION
14 OF:

15 (I) WHETHER A WATERWAY IMPACTED BY THE PROJECT WILL
16 STILL COMPLY WITH ANY TOTAL MAXIMUM DAILY LOAD OR OTHER APPLICABLE
17 WATER QUALITY STANDARD FOR THE WATERWAY;

18 (II) ANTIDEGRADATION ALTERNATIVES ANALYSES FOR WATERS
19 THAT:

20 1. ARE IDENTIFIED AS TIER II WATERS BY THE
21 DEPARTMENT; AND

22 2. MAY BE IMPACTED BY THE PROJECT;

23 (III) EXISTING AND DESIGNATED USES POTENTIALLY AFFECTED
24 BY THE PROJECT;

25 (IV) APPLICABLE EFFLUENT LIMITATION GUIDELINES; AND

26 (V) WHETHER THE PROJECT, INCLUDING DIRECT AND
27 INDIRECT DISCHARGES ASSOCIATED WITH THE PROJECT, IS IN A CHESAPEAKE BAY
28 RESOURCE PROTECTION AREA;

1 **(12) THE ANTICIPATED EFFECTS THAT INCREASED RAINFALL, SEA**
2 **LEVEL RISE, AND STORM SURGES WILL HAVE ON WATER QUALITY ONCE THE**
3 **PROJECT IS COMPLETE AND FOR THE DURATION OF THE PROJECT'S FEDERAL**
4 **LICENSE;**

5 **(13) A STATEMENT THAT:**

6 **(I) MEETS THE REQUIREMENTS FOR PURPOSE AND NEED**
7 **STATEMENTS IN § 401 OF THE FEDERAL CLEAN WATER ACT; AND**

8 **(II) DEMONSTRATES THAT THE PROJECT'S BENEFIT TO THE**
9 **PUBLIC OUTWEIGHS THE PROJECT'S DETRIMENT TO THE PUBLIC;**

10 **(14) COPIES OF ALL ENVIRONMENTAL INFORMATION SUBMITTED TO A**
11 **FEDERAL AGENCY FOR THE PROJECT; AND**

12 **(15) AN IDENTIFICATION OF ANY RISK MANAGEMENT OR OTHER**
13 **ACTIONS THAT THE REQUESTOR PROPOSES TO TAKE IN ORDER TO MITIGATE THE**
14 **IMPACTS THAT THE PROJECT WILL HAVE ON THE WATERS OF THE STATE.**

15 **(C) (1) ON RECEIPT OF A REQUEST THE DEPARTMENT SHALL BEGIN**
16 **REVIEWING THE REQUEST IMMEDIATELY.**

17 **(2) THE DEPARTMENT SHALL ISSUE A DECISION ON A REQUEST IN**
18 **ACCORDANCE WITH THE TIMELINE FOR ENVIRONMENTAL REVIEW PROVIDED**
19 **UNDER THE FEDERAL CLEAN WATER ACT.**

20 **(3) THE DEPARTMENT MAY ISSUE A WATER QUALITY CERTIFICATION**
21 **WITH ADDITIONAL CONDITIONS.**

22 **(4) THE DEPARTMENT SHALL DENY A REQUEST IF THE DEPARTMENT**
23 **IS UNABLE TO AFFIRM THAT THE PROJECT WILL NOT ADVERSELY IMPACT WATER**
24 **QUALITY.**

25 **(5) (I) A REQUESTOR MAY SUBMIT A SUBSEQUENT REQUEST FOR A**
26 **WATER QUALITY CERTIFICATION THAT HAS BEEN DENIED BY THE DEPARTMENT.**

27 **(II) IF A REQUESTOR SUBMITS A SUBSEQUENT REQUEST FOR A**
28 **WATER QUALITY CERTIFICATION, THE TIMELINE FOR ENVIRONMENTAL REVIEW**
29 **PROVIDED UNDER THE FEDERAL CLEAN WATER ACT SHALL BEGIN AGAIN.**

1 **(A) (1) THE DEPARTMENT SHALL PROVIDE A 45-DAY PUBLIC COMMENT**
2 **PERIOD FOR A REQUEST FOR A WATER QUALITY CERTIFICATION.**

3 **(2) THE DEPARTMENT SHALL REVIEW ALL COMMENTS MADE DURING**
4 **THE PUBLIC COMMENT PERIOD WITHIN 30 DAYS AFTER THE PUBLIC COMMENT**
5 **PERIOD ENDS.**

6 **(B) (1) THE DEPARTMENT SHALL MAKE A DRAFT WATER QUALITY**
7 **CERTIFICATION AVAILABLE TO ALL INTERESTED PARTIES ON REQUEST UNLESS**
8 **DOING SO WOULD EXCEED THE TIMELINE FOR ENVIRONMENTAL REVIEW PROVIDED**
9 **UNDER THE FEDERAL CLEAN WATER ACT.**

10 **(2) A DRAFT WATER QUALITY CERTIFICATION SHALL INCLUDE A**
11 **SUMMARY OF THE DEPARTMENT'S ANALYSIS OF ANY RISK MANAGEMENT OR OTHER**
12 **ACTIONS THAT THE REQUESTOR PROPOSES TO TAKE TO MITIGATE THE IMPACTS THE**
13 **PROJECT WILL HAVE ON WATER QUALITY.**

14 **(C) THE DEPARTMENT SHALL PERMANENTLY POST ON ITS WEBSITE:**

15 **(1) NOTICE OF RECEIPT OF A REQUEST;**

16 **(2) A DRAFT WATER QUALITY CERTIFICATION, IF AVAILABLE; AND**

17 **(3) THE ISSUANCE OF A WATER QUALITY CERTIFICATION.**

18 **9-356.**

19 **(A) A FINAL DETERMINATION BY THE DEPARTMENT ON THE ISSUANCE,**
20 **DENIAL, OR CONDITIONING OF A WATER QUALITY CERTIFICATION UNDER THIS PART**
21 **IS SUBJECT TO JUDICIAL REVIEW AT THE REQUEST OF ANY PERSON THAT:**

22 **(1) HAS LEGAL RIGHTS, DUTIES, INTERESTS, OR PRIVILEGES THAT**
23 **ARE:**

24 **(I) DIFFERENT FROM THOSE OF THE GENERAL PUBLIC; AND**

25 **(II) ADVERSELY AFFECTED BY THE DEPARTMENT'S DECISION;**

26 **(2) RESIDES IN THE STATE; OR**

27 **(3) HAS A PRINCIPAL PLACE OF BUSINESS IN THE STATE.**

1 **(6) SPECIFY, FOR A DRAFT WATER QUALITY CERTIFICATION, A**
2 **PUBLIC COMMENT PERIOD THAT ALLOWS THE DEPARTMENT TO MAKE A DECISION**
3 **ON THE REQUEST WITHIN THE TIMELINE FOR ENVIRONMENTAL REVIEW PROVIDED**
4 **UNDER THE FEDERAL CLEAN WATER ACT.**

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2020.