

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 76

(Delegate Love)

Environment and Transportation

Judicial Proceedings and Education, Health,
and Environmental Affairs

Water Pollution Control – Intervention in Civil Actions – Rights and Authority

This bill establishes that a person who meets the threshold standing requirements under the federal Clean Water Act (CWA) has an unconditional right and the authority to intervene in a civil action initiated by the State in State court to require compliance with (1) Subtitle 3 of Title 9 of the Environment Article, which governs water pollution control; (2) related regulations; or (3) any related discharge permit, effluent limitation, or order issued by the Maryland Department of the Environment (MDE). A person exercising the right to intervene pursuant to the bill must act in accordance with applicable practices, procedures, and laws in the State. A person who meets the requirements to intervene under the bill has the same rights as an interested person or aggrieved party under CWA, including the right to apply for judicial appeal.

Fiscal Summary

State Effect: Potential minimal increase in State expenditures from increased litigation beginning as early as FY 2022. Because MDE, the State agency that oversees CWA in Maryland, pursues very few enforcement actions in civil court pursuant to Subtitle 3 of Title 9 of the Environment Article, any impact is anticipated to be minimal. State revenues are not materially affected.

Local Effect: Potential minimal. The bill primarily affects MDE, and civil enforcement actions for the affected statutory provisions are rare. However, the bill may have an impact on local finances and operations to the extent that a third party intervenes in a civil enforcement case between a local government and MDE.

Small Business Effect: Minimal; civil enforcement actions relating to the affected subtitle are rare.

Analysis

Current Law:

Suits in Maryland by MDE and Political Subdivisions

MDE is authorized to bring a criminal prosecution or a suit for a civil penalty for a violation of any provision of the Environment Article or any rule, regulation, order, or permit adopted or issued under the article with a specified statute of limitations. MDE is also authorized to institute actions for administrative penalties within a specified statute of limitations.

A political subdivision of the State is authorized to bring a suit for a civil penalty for a violation of any provision of the Environment Article or any rule, regulation, order, or permit adopted or issued under the article, or for a violation under any regulatory program the political subdivision is required to adopt and enforce under the Environment Article within a specified statute of limitations.

Citizen Suits Pursuant to the Federal Clean Water Act

Generally, pursuant to CWA 33 U.S.C.A. § 1365, any citizen may commence a civil action on his/her own behalf (1) against any person, as specified, who is alleged to be in violation of either a related effluent standard or limitation or an order issued by the Administrator of the U.S. Environmental Protection Agency or a state with respect to such a standard or limitation or (2) against the administrator where there is an alleged failure of the administrator to perform any related act or duty that is not discretionary with the administrator, as specified. However, such an action cannot be initiated (1) prior to 60 days after the plaintiff has given specified notice of the alleged violation or (2) if the administrator or state has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a state to require compliance with the standard, limitation, or order, *but* in any such action in a court of the United States any citizen may intervene as a matter of right.

Standing in Maryland

Generally, a party to a civil action must be authorized to participate in the action, either by statute or by having common law “standing.” Standing means that a party has a sufficient stake in a controversy to be able to obtain judicial resolution of that controversy. Maryland law traditionally has limited standing to a person that is “aggrieved” by an action or decision. To show standing, a person generally must demonstrate that the person has experienced an adverse effect from the law or action in question and the adverse effect will

continue unless the court grants relief. Alternatively, a person may be granted standing by statute.

“Aggrievement” has been defined by court decisions to mean that the plaintiff has a specific interest or property right that has been affected by the disputed action or decision in a way that is different from the effect on the general public. With respect to cases involving challenges to specific types of permits and zoning/planning decisions, Maryland courts have defined “aggrievement” to mean the ownership of property either adjacent to or within “‘sight or sound’ range of the property that is the subject of [the plaintiff’s] complaint.”

The Court of Appeals has held that an association lacks standing to sue where it has no property interest of its own, distinct from that of its individual members. *Citizens Planning & Housing Ass’n. v. County Executive*, 273 Md. 333 (1974). In *Medical Waste Ass’n. v. Maryland Waste Coalition*, 327 Md. 596 (1992), the Court of Appeals stated that if an individual or organization is seeking to redress a public wrong, the individual or organization has no standing unless the wrong suffered is different in character and kind from that suffered by the general public.

Maryland Environmental Standing Act

Under the Environmental Standing Act, the Attorney General (acting on behalf of the State or a unit or officer of the State); a political subdivision of the State; or any other person, regardless of whether the person possesses a special interest different from the general public, may pursue legal action in an appropriate court for mandamus or equitable relief against the State or an agency for its failure to perform a nondiscretionary duty under an environmental statute, ordinance, rule, regulation, or order. However, the Act does not authorize citizen suits against private individuals or entities that violate environmental laws, nor does it authorize actions for monetary damages.

Standing under Federal Law

Federal law is broader than State law in its determination of standing. Under federal law, a party has standing if its use and enjoyment of the area is affected by the challenged action/decision or if the party has a particular interest in the property affected. Federal law also makes little distinction between individual and group standing.

Under federal case law, in order to have standing, “a plaintiff must show (1) it has suffered an ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” Federal case law requires an association to meet a

three-part test in order to have standing. Under the test, an association has standing if (1) one or more members of the association have standing as individuals; (2) the interests that the association seeks to protect in the case are germane to the association's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of the member with individual standing in the lawsuit.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 334 (Senator Carter) - Judicial Proceedings and Education, Health, and Environmental Affairs.

Information Source(s): Caroline, Howard, Montgomery, and Prince George's counties; City of Bowie; Judiciary (Administrative Office of the Courts); Maryland Department of the Environment; Maryland Department of Transportation; Office of Administrative Hearings; Department of Legislative Services

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