

Department of Legislative Services  
Maryland General Assembly  
2022 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 783 (Senator Smith, *et al.*)

Judicial Proceedings and Education, Health,  
and Environmental Affairs

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Constitutional Amendment - Environmental Rights

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This proposed constitutional amendment establishes that every person has the fundamental and inalienable right to a healthful and sustainable environment that may not be infringed. The State must (1) serve as the trustee of the State's natural resources, including the air, land, water, wildlife, and ecosystems of the State and (2) conserve, protect, and enhance the State's natural resources for the benefit of every person, including present and future generations.

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Fiscal Summary

**State Effect:** Assuming ratification by the voters, the bill may result in additional litigation. However, the magnitude of any such increase cannot be estimated at this time. To the extent that there is a significant increase in litigation, State expenditures (all fund types) increase beginning as early as FY 2023, as discussed below. State revenues are not affected.

**Local Effect:** To the extent that the bill results in additional litigation, local expenditures increase beginning as early as FY 2023. However, the magnitude of any such impact cannot be estimated at this time. Local revenues are not affected.

**Small Business Effect:** Potential meaningful.

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Analysis

**Current Law:** There is no general provision in the Maryland Constitution or the Maryland Declaration of Rights specifically granting the right to a clean and healthy environment, healthy communities, or preservation of natural resources.

The Maryland Department of the Environment (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.

### *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.

**State Expenditures:** If approved by the voters, the bill establishes inalienable rights for every person that may not be infringed and requires the State to (1) serve as a trustee of the State’s natural resources and (2) conserve, protect, and enhance the State’s natural resources, as specified. Although the magnitude of any impact on litigation in the State is unknown, the bill may increase opportunities for litigation for a person to enforce those rights or the State’s responsibilities under the bill. To the extent that there is a significant increase in litigation, expenditures (all/multiple fund types) for State agencies may increase to hire additional staff to handle the increase in workload. Although multiple agencies could be affected, the increase in litigation is most likely to affect the Office of the Attorney General and MDE (as the primary agency that enforces the State’s environmental laws). For context, the average annual cost to hire one assistant Attorney General over the next five years is approximately \$158,800.

**Local Expenditures:** As noted above, if approved by the voters, the bill may result in additional litigation to enforce the expanded environmental rights under the bill. A local government could be party to litigation brought under the bill, which could have an impact on local expenditures. However, similar to the State impact described above, a reliable

estimate of the magnitude of any such increase in litigation and subsequent local costs cannot be made at this time.

**Small Business Effect:** If approved by the voters, small businesses that provide environmental litigation services may benefit from an increase in the demand for their services. On the other hand, a small business may also be party to a suit, either as a plaintiff or a defendant, which would increase expenditures related to litigation.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** HB 596 (Delegate W. Fisher, *et al.*) - Environment and Transportation.

**Information Source(s):** Kent, Montgomery, and Worcester counties; Maryland Association of Counties; Maryland Municipal League; towns of Bel Air and Leonardtown; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland Department of the Environment; Department of Natural Resources; Maryland State Board of Elections; Department of Legislative Services

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