



EARTHWORKS

January 22, 2021

Testimony for SB 151: Constitutional Amendment- Environmental Rights

Position: Support

Senate Committees on Judicial Proceedings and
Education, Health and Environmental Affairs
Maryland General Assembly

Dear Committee Members,

Thank you for the opportunity to provide this testimony in support of SB 151, Constitutional Amendment- Environmental Rights. Please accept this testimony on behalf of Earthworks. We're a national advocacy organization dedicated to protecting communities and the environment from the impacts of mineral and energy development while furthering the just, equitable, fair, and clean energy transition.

Dedicated to protecting communities and the environment from the adverse impacts of mineral and energy development while promoting sustainable solutions.

Montana instituted a similar constitutional amendment in 1972 providing Montanans an inalienable “right to a clean and healthful environment”.ⁱ Montana’s Supreme Court did not decide their first case on this amendment until 1999, a successful challenge to a state agency permit to discharge arsenic-laden water in to the Blackfoot River .ⁱⁱ Explaining the framer’s intent, the Court opined, “Our constitution does not require that dead fish float on the surface of our state’s rivers and streams before its farsighted environmental protections can be invoked”.ⁱⁱⁱ

Montana’s courts have repeatedly reaffirmed their Constitution’s commitment to a clean and healthful environment, even as recently as November 2020.^{iv} In whole, the amendment has helped hold agencies and polluters accountable to the people while **not** resulting in a significant increase in litigation. This is in part because the courts have efficiently distinguished procedural and other agency decisions not affecting substantive environmental reviews.^v

1612 K St. NW, Suite 904
Washington, DC 20006
202.887.1872

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The legal standing SB 151 provides Marylanders better reflects rights we already enjoy under federal law. Almost every major federal environmental statute contains a specific provision granting individuals standing to challenge certain federal agency decisions.^{vi} By contrast, Marylanders usually have standing only where we own nearby property rights, or when we comment on the administrative record for a narrow subset of air, water, and waste permits.^{vii}

Preparing substantive agency comments and potential litigation requires a formidable devotion of time, resources, and technical expertise not frequently available to many Marylanders. Even charitable organizations, with full time staff, tend to do so selectively. For this reason, we do not see floods of litigation clogging Federal or Montana courts.

We ask this Committee to affirm Marylanders also deserve a Constitutional right to protect our environment. SB 151 helps preserve these opportunities for Marylanders and future generations. Thank you for your consideration. We respectfully urge a favorable report.

Sincerely,

Aaron Mintzes

Senior Policy Counsel, Earthworks

Baltimore, MD

ⁱ All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.



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Mont. Const. Art II Sec. 3

ⁱⁱ [Montana Env'tl. Info. Ctr. v. Department of Env'tl. Quality, 1999 MT 248, 296 Mont. 207, 988 P.2d 1236, 1999 Mont. LEXIS 266, 56 Mont. St. Rep. 964, 49 ERC \(BNA\) 1402](#)

ⁱⁱⁱ Ibid at 1249.

^{iv} [Mont. Env'tl. Info. Ctr. v. Mont. Dep't of Env'tl. Quality, 2020 MT 288, 402 Mont. 128, 2020 Mont. LEXIS 2497, 476 P.3d 32, 50 ELR 20253, 2020 WL 6737451](#)

^v See [Northern Plains Res. Council, Inc. v. Mont. Bd. of Land Comm'rs, 2012 MT 234, 366 Mont. 399, 288 P.3d 169, 2012 Mont. LEXIS 315](#). (No standing where agency shifts environmental reviews from the leasing to the permitting stages.) See also [Lohmeier v. Gallatin County, 2006 MT 88, 332 Mont. 39, 135 P.3d 775, 2006 Mont. LEXIS 146](#) (No standing for individuals outside water and sewer district boundaries to challenge exclusion therefrom.)

^{vi} 42 U.S.C. § 6872 (Resource Conservation and Recovery Act); 33 U.S.C. § 1365 (Clean Water Act); 42 U.S.C. § 2604 (Clean Air Act); 16 U.S.C. § 1540(g) (Endangered Species Act)

^{vii} See HB 1569 (MGA 2010 Session) <http://mgaleg.maryland.gov/2009rs/billfile/HB1569.htm>

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