

# 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.



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

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

**Article – Environment**

**9–351. RESERVED.**

**9–352. RESERVED.**

**PART VII. WATER QUALITY CERTIFICATION.**

**9–353.**

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

**9–354.**

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

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

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

(2) PROJECT BOUNDARIES;

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

(4) CONSTRUCTION ACCESS AND METHODOLOGY;

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

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

(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;

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

(13) A STATEMENT THAT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) NOTICE OF RECEIPT OF A REQUEST;

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

(3) THE ISSUANCE OF A WATER QUALITY CERTIFICATION.

**9-356.**

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

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

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

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

(2) RESIDES IN THE STATE; OR

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

**(B) A PETITION FOR JUDICIAL REVIEW SHALL BE FILED:**

**(1) IN WRITING;**

**(2) WITHIN 30 DAYS AFTER THE ISSUANCE, DENIAL, OR  
CONDITIONING OF THE WATER QUALITY CERTIFICATION; AND**

**(3) UNLESS OTHERWISE REQUIRED BY STATUTE, WITH THE CIRCUIT  
COURT FOR THE COUNTY IN WHICH THE REQUEST STATES THAT THE PROJECT WILL  
OCCUR.**

**9-357.**

**(A) THE DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT THIS  
PART.**

**(B) THE REGULATIONS SHALL:**

**(1) ESTABLISH A REQUEST PROCESS FOR A WATER QUALITY  
CERTIFICATION;**

**(2) PROVIDE FOR THE WITHDRAWAL OF A REQUEST, INCLUDING  
PROHIBITING THE WITHDRAWAL IF THE DEPARTMENT DETERMINES THAT  
WITHDRAWALS SHOULD BE PROHIBITED;**

**(3) SUBJECT TO ITEM (4) OF THIS SUBSECTION, SPECIFY THE  
CIRCUMSTANCES UNDER WHICH A REQUEST MUST INCLUDE GROUNDWATER  
MAPPING;**

**(4) REQUIRE GROUNDWATER MAPPING IF THE PROJECT IS  
EXPECTED TO:**

**(I) CONTAMINATE DRINKING WATER; OR**

**(II) LEACH POLLUTANTS INTO SURFACE WATERS;**

**(5) SPECIFY ACCEPTABLE ACTIONS FOR RISK MANAGEMENT,  
INCLUDING:**

**(I) ALTERNATIVE ANALYSES; AND**

**(II) ON-SITE MINIMIZATION; AND**

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.