

HOUSE BILL 494

Unofficial Copy
M3

2004 Regular Session
(4lr0175)

ENROLLED BILL

-- Environmental Matters/Education, Health, and Environmental Affairs --

Introduced by **Chairman, Environmental Matters Committee (By Request -
Departmental - Environment)**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER 505

1 AN ACT concerning

2 **Tidal Wetlands ~~Violations~~ - Criminal ~~and Administrative~~ and Administrative**
3 **Penalties**

4 FOR the purpose of ~~authorizing the Department of the Environment to impose certain~~
5 ~~penalties for violations of tidal wetlands provisions under certain circumstances;~~
6 ~~establishing certain criteria for consideration in the assessment of the penalties;~~
7 ~~requiring the Department of the Environment to provide a certain notice and~~
8 ~~opportunity for a certain meeting to a certain person prior to taking a certain~~
9 ~~action against the person for an alleged violation of tidal wetlands provisions;~~
10 authorizing the Department of the Environment to impose certain penalties for
11 violations of tidal wetlands provisions under certain circumstances; establishing
12 certain criteria for consideration in the assessment of the penalties ~~altering~~
13 certain criminal penalties for certain violations of certain tidal wetlands
14 requirements; renaming the Wetland Compensation Fund; requiring certain
15 money to be deposited into the Fund; and generally relating to ~~the Department~~
16 of the Environment's authority over violations of tidal wetlands ~~criminal and~~

1 ~~administrative penalties for violations of tidal wetlands provisions the protection~~
2 ~~and restoration of tidal wetlands provisions.~~

3 BY repealing

4 Article - Environment

5 Section 16-202(f)

6 Annotated Code of Maryland

7 (1996 Replacement Volume and 2003 Supplement)

8 ~~BY adding to~~

9 ~~Article - Environment~~

10 ~~Section 16-502(e)~~

11 ~~Annotated Code of Maryland~~

12 ~~(1996 Replacement Volume and 2003 Supplement)~~

13 BY repealing and reenacting, with amendments,

14 Article - Environment

15 Section 16-205

16 Annotated Code of Maryland

17 (1996 Replacement Volume and 2003 Supplement)

18 BY repealing and reenacting, without amendments,

19 Article - Environment

20 Section 16-501(a)

21 Annotated Code of Maryland

22 (1996 Replacement Volume and 2003 Supplement)

23 BY adding to

24 Article - Environment

25 Section 16-502(c)

26 Annotated Code of Maryland

27 (1996 Replacement Volume and 2003 Supplement)

28 BY repealing and reenacting, with amendments,

29 Article - Natural Resources

30 Section 8-2102(d)(1)(iii)

31 Annotated Code of Maryland

32 (2000 Replacement Volume and 2003 Supplement)

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

Article - Environment

16-202.

(f) Any person who violates any provision of this section is guilty of a misdemeanor. Upon conviction, the person is subject to a fine not exceeding \$1,000 with costs imposed in the discretion of the court.]

16-205.

(a) The Board may require as a condition to issuance of a wetlands license that compensation be made to the State, of a kind and in an amount deemed appropriate by the Board.

(b) Monetary compensation received by the State in conjunction with a wetlands license may not be applied to the State annuity bond fund account.

(c) (1) There is created a special fund, known as the TIDAL Wetlands Compensation Fund. [Any monetary compensation paid to the State in conjunction with a wetlands license shall be credited to the Wetlands Compensation Fund.]

(2) THE FOLLOWING MONEY SHALL BE DEPOSITED IN THE TIDAL WETLANDS COMPENSATION FUND:

(I) ANY MONETARY COMPENSATION PAID TO THE STATE IN CONJUNCTION WITH A WETLANDS LICENSE, INCLUDING COMPENSATION PAID BY AN APPLICANT INSTEAD OF ENGAGING IN THE CREATION, RESTORATION, OR ENHANCEMENT OF A TIDAL WETLAND; AND

(II) ANY PENALTY IMPOSED BY A COURT IN ACCORDANCE WITH THIS TITLE; AND

(III) ANY PENALTY IMPOSED BY THE DEPARTMENT UNDER THIS TITLE.

(d) Funds in the TIDAL Wetlands Compensation Fund may be appropriated only for acquisition and conservation of wetland areas by the State, including cost sharing assistance to landowners in the management and control of phragmites under Title 8, Subtitle 21 of the Natural Resources Article.

(e) Funds appropriated in the budget for wetlands acquisition and conservation under this section:

(1) Shall remain available until expended; and

(2) May not be reverted under any other provision of law.

16-501.

(a) Any person who violates any provision of this title is guilty of a misdemeanor. Unless another penalty is specifically provided elsewhere in this title,

1 the person, upon conviction, is subject to a fine not exceeding \$10,000, with costs
2 imposed in the discretion of the court.

3 ~~16-502.~~

4 ~~(C) (1) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR IN~~
5 ~~EQUITY AND AFTER AN OPPORTUNITY FOR A HEARING WHICH MAY BE WAIVED IN~~
6 ~~WRITING BY THE PERSON ACCUSED OF A VIOLATION, THE DEPARTMENT MAY~~
7 ~~IMPOSE A PENALTY FOR VIOLATION OF ANY PROVISION OF THIS TITLE OR ANY RULE,~~
8 ~~REGULATION, ORDER, OR PERMIT ADOPTED OR ISSUED UNDER THIS TITLE.~~

9 ~~(2) THE PENALTY IMPOSED ON A PERSON UNDER THIS SUBSECTION~~
10 ~~SHALL BE:~~

11 ~~(I) UP TO \$1,000 FOR EACH VIOLATION, BUT NOT EXCEEDING~~
12 ~~\$50,000 TOTAL; AND~~

13 ~~(II) ASSESSED WITH CONSIDERATION GIVEN TO:~~

14 ~~1. THE WILLFULNESS OF THE VIOLATION, THE EXTENT TO~~
15 ~~WHICH THE EXISTENCE OF THE VIOLATION WAS KNOWN TO BUT UNCORRECTED BY~~
16 ~~THE VIOLATOR, AND THE EXTENT TO WHICH THE VIOLATOR EXERCISED~~
17 ~~REASONABLE CARE;~~

18 ~~2. ANY ACTUAL HARM TO THE ENVIRONMENT OR TO HUMAN~~
19 ~~HEALTH, INCLUDING INJURY TO OR IMPAIRMENT OF ANY STATE OR PRIVATE~~
20 ~~WETLANDS, OR ANY WATERS OF THE STATE OR OTHER NATURAL RESOURCES OF THE~~
21 ~~STATE;~~

22 ~~3. THE COST OF CLEANUP AND THE COST OF RESTORATION~~
23 ~~OF NATURAL RESOURCES;~~

24 ~~4. THE NATURE AND DEGREE OF INJURY TO OR~~
25 ~~INTERFERENCE WITH GENERAL WELFARE, HEALTH, AND PROPERTY;~~

26 ~~5. THE EXTENT TO WHICH THE LOCATION OF THE~~
27 ~~VIOLATION, INCLUDING LOCATION NEAR STATE OR PRIVATE WETLANDS, OTHER~~
28 ~~WATERS OF THE STATE, OR AREAS OF HUMAN POPULATION, CREATES THE~~
29 ~~POTENTIAL FOR HARM TO THE ENVIRONMENT OR TO HUMAN HEALTH AND SAFETY;~~

30 ~~6. THE AVAILABLE TECHNOLOGY AND ECONOMIC~~
31 ~~REASONABLENESS OF CONTROLLING, REDUCING, OR ELIMINATING THE VIOLATION;~~

32 ~~7. THE DEGREE OF HAZARD POSED BY THE PARTICULAR~~
33 ~~POLLUTANT OR POLLUTANTS INVOLVED; AND~~

34 ~~8. THE EXTENT TO WHICH THE CURRENT VIOLATION IS~~
35 ~~PART OF A RECURRENT PATTERN OF THE SAME OR SIMILAR TYPE OF VIOLATION~~
36 ~~COMMITTED BY THE VIOLATOR.~~

1 (3) EACH DAY A VIOLATION OCCURS OR CONTINUES IS A SEPARATE
2 VIOLATION UNDER THIS SUBSECTION.

3 (4) ANY PENALTY COLLECTED UNDER THIS SUBSECTION IS PAYABLE TO
4 THE STATE AND COLLECTIBLE IN ANY MANNER PROVIDED AT LAW FOR THE
5 COLLECTION OF DEBTS.

6 (5) IF ANY PERSON WHO IS LIABLE TO PAY A PENALTY IMPOSED UNDER
7 THIS SUBSECTION FAILS TO PAY IT AFTER DEMAND, THE AMOUNT TOGETHER WITH
8 INTEREST AND ANY COSTS THAT MAY ACCRUE, SHALL BE:

9 (I) A LIEN IN FAVOR OF THE STATE ON ANY PROPERTY, REAL OR
10 PERSONAL, OF THE PERSON; AND

11 (II) RECORDED IN THE OFFICE OF THE CLERK OF THE COURT FOR
12 THE COUNTY IN WHICH THE PROPERTY IS LOCATED.

13 (6) ANY PENALTY COLLECTED UNDER THIS SUBSECTION SHALL BE
14 PLACED IN THE WETLANDS COMPENSATION FUND ESTABLISHED UNDER § 16-205 OF
15 THIS TITLE.

16 16-502.

17 ~~(C) (1) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR IN
18 EQUITY AND AFTER AN OPPORTUNITY FOR A HEARING WHICH MAY BE WAIVED IN
19 WRITING BY THE PERSON ACCUSED OF A VIOLATION, THE DEPARTMENT MAY
20 IMPOSE A PENALTY FOR VIOLATION OF ANY PROVISION OF THIS TITLE OR ANY RULE,
21 REGULATION, ORDER, OR PERMIT ADOPTED OR ISSUED UNDER THIS TITLE.~~

22 (2) ~~THE PENALTY IMPOSED ON A PERSON UNDER THIS SUBSECTION
23 SHALL BE:~~

24 (1) ~~UP TO \$1,000 FOR EACH VIOLATION, BUT NOT EXCEEDING
25 \$50,000 TOTAL; AND~~

26 (II) ~~ASSESSED WITH CONSIDERATION GIVEN TO:~~

27 1: ~~THE WILLFULNESS OF THE VIOLATION, THE EXTENT TO
28 WHICH THE EXISTENCE OF THE VIOLATION WAS KNOWN TO BUT UNCORRECTED BY
29 THE VIOLATOR, AND THE EXTENT TO WHICH THE VIOLATOR EXERCISED
30 REASONABLE CARE;~~

31 2: ~~ANY ACTUAL HARM TO THE ENVIRONMENT OR TO HUMAN
32 HEALTH, INCLUDING INJURY TO OR IMPAIRMENT OF ANY STATE OR PRIVATE
33 WETLANDS, OR ANY WATERS OF THE STATE OR OTHER NATURAL RESOURCES OF
34 THE STATE;~~

35 3: ~~THE COST OF CLEANUP AND THE COST OF RESTORATION
36 OF NATURAL RESOURCES;~~

- 1 ~~4. THE NATURE AND DEGREE OF INJURY TO OR~~
2 ~~INTERFERENCE WITH GENERAL WELFARE, HEALTH, AND PROPERTY;~~
- 3 ~~5. THE EXTENT TO WHICH THE LOCATION OF THE~~
4 ~~VIOLATION, INCLUDING LOCATION NEAR STATE OR PRIVATE WETLANDS, OTHER~~
5 ~~WATERS OF THE STATE, OR AREAS OF HUMAN POPULATION, CREATES THE~~
6 ~~POTENTIAL FOR HARM TO THE ENVIRONMENT OR TO HUMAN HEALTH AND SAFETY;~~
- 7 ~~6. THE AVAILABLE TECHNOLOGY AND ECONOMIC~~
8 ~~REASONABLENESS OF CONTROLLING, REDUCING, OR ELIMINATING THE VIOLATION;~~
- 9 ~~7. THE DEGREE OF HAZARD POSED BY THE PARTICULAR~~
10 ~~POLLUTANT OR POLLUTANTS INVOLVED; AND~~
- 11 ~~8. THE EXTENT TO WHICH THE CURRENT VIOLATION IS~~
12 ~~PART OF A RECURRENT PATTERN OF THE SAME OR SIMILAR TYPE OF VIOLATION~~
13 ~~COMMITTED BY THE VIOLATOR;~~
- 14 ~~(3) EACH DAY A VIOLATION OCCURS OR CONTINUES IS A SEPARATE~~
15 ~~VIOLATION UNDER THIS SUBSECTION;~~
- 16 ~~(4) ANY PENALTY COLLECTED UNDER THIS SUBSECTION IS PAYABLE TO~~
17 ~~THE STATE AND COLLECTIBLE IN ANY MANNER PROVIDED AT LAW FOR THE~~
18 ~~COLLECTION OF DEBTS;~~
- 19 ~~(5) IF ANY PERSON WHO IS LIABLE TO PAY A PENALTY IMPOSED UNDER~~
20 ~~THIS SUBSECTION FAILS TO PAY IT AFTER DEMAND, THE AMOUNT TOGETHER WITH~~
21 ~~INTEREST AND ANY COSTS THAT MAY ACCRUE, SHALL BE;~~
- 22 ~~(I) A LIEN IN FAVOR OF THE STATE ON ANY PROPERTY, REAL OR~~
23 ~~PERSONAL, OF THE PERSON; AND~~
- 24 ~~(II) RECORDED IN THE OFFICE OF THE CLERK OF THE COURT FOR~~
25 ~~THE COUNTY IN WHICH THE PROPERTY IS LOCATED;~~
- 26 ~~(6) ANY PENALTY COLLECTED UNDER THIS SUBSECTION SHALL BE~~
27 ~~PLACED IN THE TIDAL WETLANDS COMPENSATION FUND ESTABLISHED UNDER §~~
28 ~~16-205 OF THIS TITLE;~~
- 29 ~~(C) BEFORE TAKING ANY CIVIL ACTION TO RECOVER A PENALTY UNDER~~
30 ~~SUBSECTION (A) OF THIS SECTION, THE DEPARTMENT SHALL PROVIDE THE PERSON~~
31 ~~ALLEGED TO HAVE VIOLATED THIS TITLE WITH WRITTEN NOTICE OF THE PROPOSED~~
32 ~~PENALTY AND AN OPPORTUNITY FOR AN INFORMAL MEETING CONCERNING~~
33 ~~SETTLEMENT OF THE PROPOSED CIVIL ACTION.~~

1

Article - Natural Resources2 8-2102.

3 (d) (1) (iii) Moneys paid to a landowner under this section may be paid
4 from the TIDAL Wetlands Compensation Fund, the Wildlife Management and
5 Protection Fund, or federal funds. The Department shall coordinate cost sharing
6 assistance paid from the funds under this section with the Department of the
7 Environment.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2004.