

**Department of Legislative Services**  
Maryland General Assembly  
2004 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 494

(Chairman, Environmental Matters Committee)  
(By Request – Departmental – Environment)

Environmental Matters

Education, Health, and Environmental Affairs

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**Tidal Wetlands - Criminal Penalties**

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This departmental bill eliminates a statutory inconsistency pertaining to criminal penalties for violations of State and private wetlands laws. The bill also modifies the name of the Wetlands Compensation Fund within the Maryland Department of the Environment (MDE) and provides that any penalty imposed under Title 16 (Wetlands and Riparian Rights) of the Environment Article must be paid into the fund. Before taking any civil action to recover a penalty, MDE must provide the alleged violator with written notice of the proposed penalty and an opportunity for an informal meeting concerning settlement of the proposed civil action.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in special fund revenues due to the bill's enhanced criminal penalty provisions and the bill's changes regarding the payment of penalties imposed under Title 16. Potential minimal decrease in general fund revenues due to the bill's changes regarding the payment of penalties imposed under Title 16. Potential minimal increase in general fund expenditures due to the bill's enhanced criminal penalty provisions.

**Local Effect:** Potential minimal increase in expenditures due to the bill's enhanced criminal penalty provisions. Potential minimal decrease in revenues due to the bill's changes regarding the payment of penalties imposed under Title 16.

**Small Business Effect:** MDE has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

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## **Analysis**

**Bill Summary:** The bill repeals a provision of law relating to misdemeanor penalties for violations of provisions governing dredging or filling on State wetlands. By doing so, the general misdemeanor penalties applicable to wetlands violations, which are more severe, would apply to violations of those provisions.

The bill renames the Wetlands Compensation Fund as the Tidal Wetlands Compensation Fund.

**Current Law:** For a violation of any provision governing dredging or filling on State wetlands, current law provides for misdemeanor penalties of up to \$1,000, with costs imposed in the discretion of the court. Unless another penalty is specifically provided elsewhere in statute, misdemeanor penalties applicable to violations of wetlands provisions are: (1) for a first offense, up to \$10,000; and (2) for a second or subsequent offense, up to \$25,000 or imprisonment for up to one year, or both, with costs imposed in the discretion of the court. Current law also provides for the imposition of civil penalties of up to \$10,000 for violations of wetlands provisions. Penalties imposed under Title 16 are paid into the general fund (for cases heard in the District Court) or to local governments (for cases heard in the circuit courts).

**Background:** Tidal wetlands play a vital role in maintaining the health and function of the Chesapeake and Coastal Bays. The statutory goal of “no net loss” of wetland acreage is achieved through the regulatory program’s permitting and compliance activities. These programs focus on the avoidance and minimization of impacts associated with development. Over a three-year period, the Environmental Crimes Unit of MDE has taken action on six cases for violations of Title 16, resulting in \$3,000 in fines.

Chapter 444 of 2003, among other things, increased criminal penalties applicable to violations of wetlands laws where no other penalties are specified. According to MDE, because the bill did not repeal the provision of law establishing misdemeanor penalties for violations of law governing dredging/filling on State wetlands, the 2003 legislation created an inadvertent disparity between criminal penalties for illegal activities conducted in private wetlands versus those conducted in State wetlands. This bill addresses that inconsistency by repealing the criminal penalty provision specific to State wetlands.

**State Revenues:** Special fund revenues could increase minimally as a result of the bill’s enhanced criminal penalty provisions and the bill’s changes regarding the payment of penalties imposed under Title 16. Likewise, general fund revenues could decrease minimally.

**State Expenditures:** General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to increased payments to counties for reimbursement of inmate costs and more people being committed to Division of Correction (DOC) facilities. The number of people convicted of this crime is expected to be minimal.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2005 are estimated to range from \$14 to \$58 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility. Currently, the DOC average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$350 per month.

**Local Revenues:** Revenues could decrease minimally as a result of the bill's changes regarding the payment of penalties imposed under Title 16.

**Local Expenditures:** Expenditures could increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$29 to \$97 per inmate in fiscal 2005.

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### **Additional Information**

**Prior Introductions:** SB 241/HB 294 of 2002 and HB 1068 of 1998 would have established administrative penalties for violations of wetlands provisions. SB 241 received an unfavorable report by the Senate Education, Health, and Environmental Affairs Committee. Both HB 294 of 2002 and HB 1068 of 1998 received an unfavorable report by the House Environmental Matters Committee.

**Cross File:** None.

**Information Source(s):** Maryland Department of the Environment, Department of Legislative Services

**Fiscal Note History:** First Reader - February 24, 2004  
ncs/ljm Revised - House Third Reader - March 30, 2004  
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