

HOUSE BILL 1243

M3, M2

3lr2605

By: **Delegates Jacobs, Hershey, Otto, Weir, and Wood**

Introduced and read first time: February 8, 2013

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Environment – Water Pollution Control – Penalties**

3 FOR the purpose of altering certain civil and administrative penalties for certain
4 water pollution control violations; requiring the Department of the
5 Environment to distribute certain proceeds from the penalties to the Fisheries
6 Research and Development Fund for a certain use; and generally relating to
7 penalties for water pollution control violations.

8 BY repealing and reenacting, without amendments,
9 Article – Environment
10 Section 9–331.1(a)
11 Annotated Code of Maryland
12 (2007 Replacement Volume and 2012 Supplement)

13 BY repealing and reenacting, with amendments,
14 Article – Environment
15 Section 9–342
16 Annotated Code of Maryland
17 (2007 Replacement Volume and 2012 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Natural Resources
20 Section 4–209
21 Annotated Code of Maryland
22 (2012 Replacement Volume)

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

25 **Article – Environment**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 9-331.1.

2 (a) (1) The owner or operator of any sanitary sewer system, combined
3 sewer system, or wastewater treatment plant shall report to the Department any
4 sewer overflow or treatment plant bypass that results in the direct or potential
5 discharge of raw or diluted sewage into the surface waters or groundwaters of the
6 State.

7 (2) The report shall be made by telephone as soon as practicable but
8 no later than 24 hours after the time that the operator or owner became aware of the
9 event.

10 (3) Within 5 calendar days after the telephone notification of the
11 event, the owner or operator shall provide the Department with a written report
12 regarding the incident that includes any information required by the Department.

13 9-342.

14 (a) In addition to being subject to an injunctive action under this subtitle, a
15 person who violates any provision of this subtitle or of any rule, regulation, order, or
16 permit adopted or issued under this subtitle is liable to a civil penalty not exceeding
17 **[\$10,000] \$20,000**, to be collected in a civil action brought by the Department. Each
18 day a violation occurs is a separate violation under this subsection.

19 (b) (1) In addition to any other remedies available at law or in equity and
20 after an opportunity for a hearing which may be waived in writing by the person
21 accused of a violation, the Department may impose a penalty for violation of any
22 provision of this subtitle or any rule, regulation, order, or permit adopted or issued
23 under this subtitle.

24 (2) The penalty imposed on a person under this subsection shall be:

25 (i) Up to **[\$5,000] \$10,000** for each violation, but not exceeding
26 **[\$50,000] \$100,000** total; and

27 (ii) Assessed with consideration given to:

28 1. The willfulness of the violation, the extent to which
29 the existence of the violation was known to but uncorrected by the violator, and the
30 extent to which the violator exercised reasonable care;

31 2. Any actual harm to the environment or to human
32 health, including injury to or impairment of the use of the waters of this State or the
33 natural resources of this State;

34 3. The cost of cleanup and the cost of restoration of
35 natural resources;

1 4. The nature and degree of injury to or interference
2 with general welfare, health, and property;

3 5. The extent to which the location of the violation,
4 including location near waters of this State or areas of human population, creates the
5 potential for harm to the environment or to human health or safety;

6 6. The available technology and economic
7 reasonableness of controlling, reducing, or eliminating the violation;

8 7. The degree of hazard posed by the particular
9 pollutant or pollutants involved; and

10 8. The extent to which the current violation is part of a
11 recurrent pattern of the same or similar type of violation committed by the violator.

12 (3) Each day a violation occurs is a separate violation under this
13 subsection.

14 (4) Any penalty imposed under this subsection is payable to this State
15 and collectible in any manner provided at law for the collection of debts.

16 (5) If any person who is liable to pay a penalty imposed under this
17 subsection fails to pay it after demand, the amount, together with interest and any
18 costs that may accrue, shall be:

19 (i) A lien in favor of this State on any property, real or
20 personal, of the person; and

21 (ii) Recorded in the office of the clerk of court for the county in
22 which the property is located.

23 (6) [Any penalty] **THE PENALTIES** collected under this subsection
24 shall be **DISTRIBUTED AS FOLLOWS:**

25 **(I) 75% SHALL BE** placed in a special fund to be used for
26 monitoring and surveillance by the Department to assure and maintain an adequate
27 record of any violations, including discharge of waste material and other pollutants
28 into the waters of this State or into the environment; **AND**

29 **(II) 25% SHALL BE DISTRIBUTED TO THE FISHERIES**
30 **RESEARCH AND DEVELOPMENT FUND ESTABLISHED UNDER § 4-209 OF THE**
31 **NATURAL RESOURCES ARTICLE TO BE USED ONLY FOR OYSTER RESTORATION**
32 **PURPOSES.**

1 **Article – Natural Resources**

2 4–209.

3 (a) In this section, “Fund” means the Fisheries Research and Development
4 Fund.

5 (b) There is a Fisheries Research and Development Fund in the Department.

6 (c) The purpose of the Fund is to:

7 (1) Finance the replenishment of fisheries resources and related
8 research; and9 (2) Match federal funds available for research and development of
10 fisheries resources.

11 (d) The Department shall administer the Fund.

12 (e) (1) The Fund is a special, nonlapsing fund that is not subject to §
13 7–302 of the State Finance and Procurement Article.14 (2) The Treasurer shall hold the Fund separately and the Comptroller
15 shall account for the Fund.

16 (f) The Fund consists of:

17 (1) Any money received under this title for:

18 (i) Commercial licenses and permits;

19 (ii) Service fees, taxes, and royalties paid to the State for oyster
20 shells and clam shells removed from the bottom beneath the tidal waters of the State;

21 (iii) The sale of seed oysters under § 4–1103 of this title; and

22 (iv) Any fine or forfeiture collected under § 4–1202 of this title;

23 **(2) ANY PROCEEDS RECEIVED FROM CIVIL PENALTIES IMPOSED**
24 **FOR WATER POLLUTION CONTROL VIOLATIONS UNDER § 9–342 OF THE**
25 **ENVIRONMENT ARTICLE TO BE USED ONLY FOR OYSTER RESTORATION**
26 **PURPOSES;**27 **[(2)] (3)** Any investment earnings of the Fund;28 **[(3)] (4)** Money received from any other source; and

1 **[(4)] (5)** Money appropriated from the General Fund of the State in
2 accordance with subsection (j) of this section.

3 (g) Subject to §§ 4-701(o), 4-1020, 4-1028, and 4-1035 of this title, the Fund
4 may be used for:

5 (1) Replenishing fisheries resources and related research;

6 (2) Matching federal funds available for research and development of
7 fisheries resources; and

8 (3) Administrative costs calculated in accordance with § 1-103(b)(2) of
9 this article.

10 (h) (1) The Treasurer shall invest the money of the Fund in the same
11 manner as other State money may be invested.

12 (2) Any investment earnings of the Fund may not be transferred or
13 revert to the General Fund of the State, but shall remain in the Fund.

14 (i) Expenditures from the Fund may be made only in accordance with the
15 State budget.

16 (j) Beginning with fiscal year 2009 and each fiscal year thereafter, the
17 Governor may include in the budget bill an appropriation from the General Fund for
18 the Fund.

19 (k) The Governor shall include in the budget bill for each fiscal year a
20 General Fund appropriation to the Fisheries Research and Development Fund of not
21 less than \$1,794,000.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2013.