



# Real Property Section

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**To:** Environment and Transportation Committee

**From:** Legislative Committee of the Real Property Section Counsel

**Date:** February 23, 2022 [Hearing Date February 25, 2022]

**Subject:** **HB 402 – Department of the Environment - Enforcement Authority**

**Position:** **Oppose Unless Amended**

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The Real Property Section Counsel of the Maryland State Bar Association (MSBA) **opposes unless amended House Bill 402** – Department of the Environment - Enforcement Authority.

We oppose the legislation as presently drafted for the following reasons. First, it allows for the possibility of a lien on real property being created before recording a notice thereof in the land records. Second, it allows the possibility that an agency, without court approval or notice to *bona fide* purchasers for value, will seek to create a lien on real property. To address these concerns, we have prepared some proposed amendments that we hope will be adopted.

For these reasons, the Real Property Section Counsel of the MSBA **opposes HB 402 unless amended** and asks for an **unfavorable report unless amended**. Thank you for your consideration.

Senate Bill 221 and House Bill 402-- **Department of the Environment – Enforcement Authority**

Amendments – New language is highlighted and underlined; language from SB 221/HB 402 to be stricken is lined through.

page 3

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

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11 (5) IF ANY PERSON WHO IS LIABLE TO PAY A PENALTY IMPOSED  
12 UNDER THIS SUBSECTION FAILS TO PAY THE PENALTY AFTER ~~DEMAND~~ ORDER  
OF A COURT, THE  
13 AMOUNT, TOGETHER WITH INTEREST AND ANY COSTS THAT MAY ACCRUE, SHALL BE:

14 (I) A LIEN IN FAVOR OF THE STATE ON ANY PROPERTY, REAL  
15 OR PERSONAL, OF THE PERSON, ~~AND~~

~~16 (H) WHEN RECORDED IN THE OFFICE OF THE CLERK OF COURT FOR LAND~~  
RECORDS OF

17 THE COUNTY IN WHICH THE PROPERTY IS LOCATED.

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NOTES:

The same changes shown to be made to page 3 should also be made on page 7 (line 13), 10 (line 24), 15 (line 1), page 22 (line 11), and page 24 (line 28).

The same changes shown to be made to page 4 should also be made on pages 8, 16, 23, and 25-26.