

# HOUSE BILL 476

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71r1448

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By: **Delegate Costa**

Introduced and read first time: February 6, 2007

Assigned to: Environmental Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Environment – Stormwater, Flood Control, Watershed, and Sediment**  
3 **Management**

4 FOR the purpose of altering the purpose of a certain erosion and sediment control fund  
5 to allow for the award of certain grants to be used for certain purposes; altering  
6 the amount of civil, criminal, and administrative penalties that may be imposed  
7 for certain violations relating to stormwater, flood control, and watershed  
8 management; establishing the Stormwater Restoration Fund; requiring the  
9 Secretary of the Environment to administer the Fund and designate a portion of  
10 certain fines and penalties to be deposited into the Fund; specifying that the  
11 Fund is a special, nonlapsing fund; specifying that the State Treasurer shall  
12 hold the Fund separately and that the Comptroller shall account for the Fund;  
13 designating the moneys to be deposited into the Fund; providing that money in  
14 the Fund may be used only for certain purposes; authorizing counties and  
15 municipalities to apply for certain grants to be used for certain purposes;  
16 requiring the Secretary to establish certain grant application procedures; and  
17 generally relating to stormwater, flood control, watershed, and sediment  
18 management.

19 BY repealing and reenacting, with amendments,  
20 Article – Environment  
21 Section 4–116, 4–215, and 5–805  
22 Annotated Code of Maryland  
23 (1996 Replacement Volume and 2006 Supplement)

24 BY adding to

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Environment  
2 Section 4–216  
3 Annotated Code of Maryland  
4 (1996 Replacement Volume and 2006 Supplement)

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

7 **Article – Environment**

8 4–116.

9 (a) (1) Any person who violates any provision of this subtitle is guilty of a  
10 misdemeanor, and upon conviction in a court of competent jurisdiction is subject to a  
11 fine not exceeding \$10,000 or imprisonment not exceeding one year or both for each  
12 violation with costs imposed in the discretion of the court.

13 (2) The court may order the person to restore the area unlawfully  
14 disturbed.

15 (3) Each day upon which the violation occurs constitutes a separate  
16 offense.

17 (b) Any agency whose approval is required under this subtitle or any  
18 interested person may seek an injunction against any person who violates or threatens  
19 to violate any provision of this subtitle.

20 (c) (1) In addition to any other sanction under this subtitle, the  
21 appropriate State, county, or municipal agency may bring a civil action against a  
22 person for a violation of this subtitle.

23 (2) (i) The action may seek the imposition of a civil penalty up to  
24 \$10,000 for each violation.

25 (ii) In imposing a penalty under this paragraph, the court may  
26 consider the cost of restoring the area unlawfully disturbed.

27 (3) A State, county, or municipal agency that recovers penalties in  
28 accordance with this subtitle shall deposit them in a special fund, to be used solely for:

29 (i) Correcting to the extent possible the failure to implement or  
30 maintain erosion and sediment controls; [and]

1 (ii) **AWARDING GRANTS TO COUNTIES AND MUNICIPALITIES**  
2 **TO UPGRADE EXISTING EROSION AND SEDIMENT CONTROL PROJECTS; AND**

3 (iii) Administration of the sediment control program.

4 (d) If a county or municipality fails to enforce any provision of this subtitle,  
5 the Department may request the Attorney General to take appropriate legal action to  
6 correct the violation and to recover penalties or fees under this section.

7 (e) (1) In addition to any other remedies available at law or in equity and  
8 after an opportunity for a hearing which may be waived in writing by the person  
9 accused of a violation, the Department may impose a penalty on any person who  
10 violates any provision of this subtitle or any regulation or plan adopted, approved, or  
11 issued under this subtitle. Any request for a hearing on a penalty issued under this  
12 subsection must be made in writing no later than 10 working days after receipt of the  
13 notice assessing a penalty.

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

15 (i) Up to \$1,000 for each violation, but not exceeding \$20,000  
16 total for any action; and

17 (ii) Assessed with consideration given to:

18 1. The willfulness of the violation, the extent to which  
19 the existence of the violation was known to but uncorrected by the violator, and the  
20 extent to which the violator exercised reasonable care;

21 2. Any actual harm to the environment or to human  
22 health, including injury to or impairment of the use of the waters of this State or the  
23 natural resources of this State;

24 3. The cost of cleanup and the cost of restoration of  
25 natural resources;

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

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

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

3                                   7.    The degree of hazard posed by the particular  
4 pollutant or pollutants involved;

5                                   8.    The extent to which the current violation is part of a  
6 recurrent pattern of the same or similar type of violation committed by the violator;  
7 and

8                                   9.    Whether or not penalties were assessed or will be  
9 assessed under other provisions of this subtitle.

10                               (3)   Each day a violation occurs is a separate violation under this  
11 subsection.

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

14                               (5)   Any penalty collected under this subsection or for a violation of §  
15 4-413 of this title shall be placed in the special fund under paragraph (c)(3) of this  
16 section.

17 4-215.

18                               (a)   (1)   Any person who violates any provision of this subtitle or any  
19 regulation or stormwater management plan adopted or approved under this subtitle is  
20 guilty of a misdemeanor and upon conviction in a court of competent jurisdiction is  
21 subject to a fine not **LESS THAN \$1,000 AND NOT** exceeding [\$10,000] **\$25,000** or  
22 imprisonment not exceeding 1 year or both for each violation with costs imposed in the  
23 discretion of the court.

24                               (2)   The court may order the person to restore the area unlawfully  
25 disturbed.

26                               (3)   Each day upon which the violation occurs constitutes a separate  
27 offense.

28                               (b)   Any agency whose approval is required under this subtitle or any  
29 interested person may seek an injunction against any person who violates or threatens  
30 to violate any provision of this subtitle or any regulation or stormwater management  
31 plan adopted or approved under this subtitle.

1 (c) (1) In addition to any other sanction under this subtitle, the  
2 Department or the Department of Natural Resources, as appropriate, or a political  
3 subdivision may bring a civil action against any person for any violation of this  
4 subtitle or any regulation or stormwater management plan adopted or approved under  
5 this subtitle.

6 (2) The action may seek the imposition of a civil penalty of not **LESS**  
7 **THAN \$1,000 AND NOT** more than **[\$10,000] \$25,000** against the person, an  
8 injunction to prohibit the person from continuing the violation or both.

9 (d) For purposes of a civil action brought under subsection (c), each day  
10 during which a violation continues constitutes a separate offense.

11 (e) (1) **THE SECRETARY SHALL DESIGNATE A PORTION OF THE FINES**  
12 **AND PENALTIES COLLECTED UNDER THIS SECTION TO BE DEPOSITED INTO THE**  
13 **STORMWATER RESTORATION FUND ESTABLISHED UNDER § 4-216 OF THIS**  
14 **SUBTITLE.**

15 [(1)] (2) In addition to any other remedies available at law and after  
16 an opportunity for a hearing which may be waived in writing by the person accused of  
17 a violation, the Department may impose a penalty for violation of any provision of this  
18 subtitle or any regulation or plan adopted or approved under this subtitle.

19 [(2)] (3) The penalty imposed on a person under this subsection shall  
20 be:

21 (i) Up to **[\$1,000] \$5,000** for each violation, but not exceeding  
22 **[\$20,000] \$50,000** total for any action; and

23 (ii) Assessed with consideration given to:

24 1. The willfulness of the violation, the extent to which  
25 the existence of the violation was known to but uncorrected by the violator, and the  
26 extent to which the violator exercised reasonable care;

27 2. Any actual harm to the environment or to human  
28 health, including injury to or impairment of the use of the waters of this State or the  
29 natural resources of this State;

30 3. The cost of cleanup and the cost of restoration of  
31 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;

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 and

13                  9.     Whether or not penalties were assessed or will be  
14 assessed under other provisions of this subtitle.

15                  [(3)] (4)    Each day a violation occurs is a separate violation under this  
16 subsection.

17                  [(4)] (5)    Any **FINE OR** penalty imposed under this subsection **THAT**  
18 **IS NOT DEPOSITED INTO THE STORMWATER RESTORATION FUND** is payable to  
19 this State and collectible in any manner provided at law for the collection of penalties.

20                  (f)     If a county or municipality fails to enforce any provision of this subtitle,  
21 the Department may request the Attorney General to take appropriate legal action to  
22 correct the violation and to recover penalties under this section, provided that the  
23 county or municipality has been given prior written notification of the violation by the  
24 Department and has been afforded a reasonable opportunity to take enforcement  
25 action.

26 **4-216.**

27                  (A)     **IN THIS SECTION, “FUND” MEANS THE STORMWATER RESTORATION**  
28 **FUND.**

29                  (B)     **THERE IS A STORMWATER RESTORATION FUND.**

30                  (C)     **THE SECRETARY SHALL ADMINISTER THE FUND.**

1           **(D) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT**  
2 **SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.**

3           **(2) THE TREASURER SHALL HOLD THE FUND SEPARATELY, AND**  
4 **THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.**

5           **(E) THE FUND CONSISTS OF:**

6           **(1) FINES AND PENALTIES COLLECTED AND DESIGNATED FOR**  
7 **THE FUND BY THE SECRETARY IN ACCORDANCE WITH § 4-215 OF THIS**  
8 **SUBTITLE AND § 5-805 OF THIS ARTICLE;**

9           **(2) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND;**

10           **(3) EARNINGS FROM THE INVESTMENT OF MONEYS IN THE FUND;**  
11 **AND**

12           **(4) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED**  
13 **FOR THE BENEFIT OF THE FUND.**

14           **(F) THE FUND MAY BE USED ONLY FOR AWARDING GRANTS TO**  
15 **COUNTIES AND MUNICIPALITIES TO UPGRADE EXISTING STORMWATER**  
16 **CONTROL PROJECTS.**

17           **(G) COUNTIES AND MUNICIPALITIES MAY APPLY FOR GRANTS FROM**  
18 **THE FUND TO UPGRADE EXISTING STORMWATER CONTROL PROJECTS.**

19           **(H) THE TREASURER SHALL INVEST THE MONEY OF THE FUND IN THE**  
20 **SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.**

21           **(I) THE SECRETARY SHALL ESTABLISH PROCEDURES FOR COUNTIES**  
22 **AND MUNICIPALITIES TO APPLY FOR GRANTS FROM THE FUND.**

23 5-805.

24           (a) Each subdivision shall take measures to enforce the provisions of this  
25 subtitle within its jurisdiction, including the enactment of a local law prescribing a  
26 civil penalty in the form of a fine not exceeding [\$500] **\$1,000** for each day of violation  
27 of any local law the subdivision enacts to implement this subtitle. The local law shall

1 provide that each day upon which a violation occurs or continues constitutes a  
2 separate offense. The local law shall provide that the total civil penalty may not exceed  
3 ~~[\$10,000]~~ **\$25,000**.

4 (b) If a subdivision fails to enforce any provision of this subtitle, including  
5 any ordinance or local law the subdivision enacts pursuant to this subtitle, or if the  
6 subdivision does not possess the authority to correct a violation of this subtitle, the  
7 Department may request the Attorney General to take appropriate legal action to  
8 correct the violation.

9 (c) A court exercising equity jurisdiction in the county where the land or any  
10 part of the land or water covered by this subtitle is located may restrain any violation  
11 of this subtitle, or order the abatement of a condition resulting from any violation and  
12 order the restoration of lands and waters to the condition existing prior to the  
13 violation, in an action brought by a subdivision affected by the violation, by the  
14 Department, by any authorized unit or officer of the Department, or by the Attorney  
15 General.

16 (D) **THE SECRETARY SHALL DESIGNATE A PORTION OF THE FINES AND**  
17 **PENALTIES COLLECTED UNDER THIS SECTION TO BE DEPOSITED INTO THE**  
18 **STORMWATER RESTORATION FUND ESTABLISHED UNDER § 4-216 OF THIS**  
19 **ARTICLE.**

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 2007.