

HOUSE BILL 476

M3

7lr1448

By: **Delegate Costa**

Introduced and read first time: February 6, 2007

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 2007

CHAPTER _____

1 AN ACT concerning

2 ~~Environment—Stormwater, Flood Control, Watershed, and Sediment~~
3 ~~Management~~

4 Task Force on a Statewide Stormwater Management and Sediment Control
5 Initiative

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 staffing of the Task Force; requiring the Governor to designate the chair of the
 2 Task Force; authorizing the Task Force to establish certain subcommittees;
 3 requiring the Task Force to evaluate and make recommendations regarding
 4 certain issues; requiring the Task Force to submit a final report to the Governor
 5 and General Assembly regarding the recommendations by a certain date;
 6 prohibiting a member of the Task Force from receiving certain compensation,
 7 but authorizing a member of the Task Force to receive certain reimbursements;
 8 providing for the termination of this Act; and generally relating to the Task
 9 Force on a Statewide Stormwater Management and Sediment Control
 10 Initiative.

11 ~~BY repealing and reenacting, with amendments,~~
 12 ~~Article—Environment~~
 13 ~~Section 4-116, 4-215, and 5-805~~
 14 ~~Annotated Code of Maryland~~
 15 ~~(1996 Replacement Volume and 2006 Supplement)~~

16 ~~BY adding to~~
 17 ~~Article—Environment~~
 18 ~~Section 4-216~~
 19 ~~Annotated Code of Maryland~~
 20 ~~(1996 Replacement Volume and 2006 Supplement)~~

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

23 ~~**Article—Environment**~~

24 ~~4-116.~~

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

29 ~~(2) The court may order the person to restore the area unlawfully~~
 30 ~~disturbed.~~

31 ~~(3) Each day upon which the violation occurs constitutes a separate~~
 32 ~~offense.~~

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

4 ~~(e) (1) In addition to any other sanction under this subtitle, the~~
5 ~~appropriate State, county, or municipal agency may bring a civil action against a~~
6 ~~person for a violation of this subtitle.~~

7 ~~(2) (i) The action may seek the imposition of a civil penalty up to~~
8 ~~\$10,000 for each violation.~~

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

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

13 ~~(i) Correcting to the extent possible the failure to implement or~~
14 ~~maintain erosion and sediment controls; [and]~~

15 ~~(ii) **AWARDING GRANTS TO COUNTIES AND MUNICIPALITIES**~~
16 ~~**TO UPGRADE EXISTING EROSION AND SEDIMENT CONTROL PROJECTS; AND**~~

17 ~~(iii) Administration of the sediment control program.~~

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

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

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

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

1 (ii) ~~Assessed with consideration given to:~~

2 ~~1. The willfulness of the violation, the extent to which~~
3 ~~the existence of the violation was known to but uncorrected by the violator, and the~~
4 ~~extent to which the violator exercised reasonable care;~~

5 ~~2. Any actual harm to the environment or to human~~
6 ~~health, including injury to or impairment of the use of the waters of this State or the~~
7 ~~natural resources of this State;~~

8 ~~3. The cost of cleanup and the cost of restoration of~~
9 ~~natural resources;~~

10 ~~4. The nature and degree of injury to or interference~~
11 ~~with general welfare, health, and property;~~

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

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

17 ~~7. The degree of hazard posed by the particular~~
18 ~~pollutant or pollutants involved;~~

19 ~~8. The extent to which the current violation is part of a~~
20 ~~recurrent pattern of the same or similar type of violation committed by the violator;~~
21 ~~and~~

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

24 (3) ~~Each day a violation occurs is a separate violation under this~~
25 ~~subsection.~~

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

28 (5) ~~Any penalty collected under this subsection or for a violation of §~~
29 ~~4-413 of this title shall be placed in the special fund under paragraph (c)(3) of this~~
30 ~~section.~~

1 ~~4-215.~~

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

8 ~~(2) The court may order the person to restore the area unlawfully~~
9 ~~disturbed.~~

10 ~~(3) Each day upon which the violation occurs constitutes a separate~~
11 ~~offense.~~

12 ~~(b) Any agency whose approval is required under this subtitle or any~~
13 ~~interested person may seek an injunction against any person who violates or threatens~~
14 ~~to violate any provision of this subtitle or any regulation or stormwater management~~
15 ~~plan adopted or approved under this subtitle.~~

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

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

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

26 ~~(e) (1) THE SECRETARY SHALL DESIGNATE A PORTION OF THE FINES~~
27 ~~AND PENALTIES COLLECTED UNDER THIS SECTION TO BE DEPOSITED INTO THE~~
28 ~~STORMWATER RESTORATION FUND ESTABLISHED UNDER § 4-216 OF THIS~~
29 ~~SUBTITLE.~~

30 ~~[(1)] (2) In addition to any other remedies available at law and after~~
31 ~~an opportunity for a hearing which may be waived in writing by the person accused of~~
32 ~~a violation, the Department may impose a penalty for violation of any provision of this~~
33 ~~subtitle or any regulation or plan adopted or approved under this subtitle.~~

1 ~~[(2)] (3)~~ The penalty imposed on a person under this subsection shall
2 be:

3 (i) Up to ~~[\$1,000]~~ **\$5,000** for each violation, but not exceeding
4 ~~[\$20,000]~~ **\$50,000** total for any action; and

5 (ii) ~~Assessed with consideration given to:~~

6 1. ~~The willfulness of the violation, the extent to which~~
7 ~~the existence of the violation was known to but uncorrected by the violator, and the~~
8 ~~extent to which the violator exercised reasonable care;~~

9 2. ~~Any actual harm to the environment or to human~~
10 ~~health, including injury to or impairment of the use of the waters of this State or the~~
11 ~~natural resources of this State;~~

12 3. ~~The cost of cleanup and the cost of restoration of~~
13 ~~natural resources;~~

14 4. ~~The nature and degree of injury to or interference~~
15 ~~with general welfare, health, and property;~~

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

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

21 7. ~~The degree of hazard posed by the particular~~
22 ~~pollutant or pollutants involved;~~

23 8. ~~The extent to which the current violation is part of a~~
24 ~~recurrent pattern of the same or similar type of violation committed by the violator;~~
25 ~~and~~

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

28 ~~[(3)] (4)~~ Each day a violation occurs is a separate violation under this
29 subsection.

1 ~~[(4)] (5)~~ Any ~~FINE OR~~ penalty imposed under this subsection ~~THAT~~
2 ~~IS NOT DEPOSITED INTO THE STORMWATER RESTORATION FUND~~ is payable to
3 ~~this State and collectible in any manner provided at law for the collection of penalties.~~

4 ~~(f)~~ 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 under this section, provided that the~~
7 ~~county or municipality has been given prior written notification of the violation by the~~
8 ~~Department and has been afforded a reasonable opportunity to take enforcement~~
9 ~~action.~~

10 ~~4-216.~~

11 ~~(A)~~ ~~IN THIS SECTION, "FUND" MEANS THE STORMWATER RESTORATION~~
12 ~~FUND.~~

13 ~~(B)~~ ~~THERE IS A STORMWATER RESTORATION FUND.~~

14 ~~(C)~~ ~~THE SECRETARY SHALL ADMINISTER THE FUND.~~

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

17 ~~(2) THE TREASURER SHALL HOLD THE FUND SEPARATELY, AND~~
18 ~~THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.~~

19 ~~(E)~~ ~~THE FUND CONSISTS OF:~~

20 ~~(1) FINES AND PENALTIES COLLECTED AND DESIGNATED FOR~~
21 ~~THE FUND BY THE SECRETARY IN ACCORDANCE WITH § 4-215 OF THIS~~
22 ~~SUBTITLE AND § 5-805 OF THIS ARTICLE;~~

23 ~~(2) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND;~~

24 ~~(3) EARNINGS FROM THE INVESTMENT OF MONEYS IN THE FUND;~~
25 ~~AND~~

26 ~~(4) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED~~
27 ~~FOR THE BENEFIT OF THE FUND.~~

1 ~~(F) THE FUND MAY BE USED ONLY FOR AWARDING GRANTS TO~~
2 ~~COUNTIES AND MUNICIPALITIES TO UPGRADE EXISTING STORMWATER~~
3 ~~CONTROL PROJECTS.~~

4 ~~(G) COUNTIES AND MUNICIPALITIES MAY APPLY FOR GRANTS FROM~~
5 ~~THE FUND TO UPGRADE EXISTING STORMWATER CONTROL PROJECTS.~~

6 ~~(H) THE TREASURER SHALL INVEST THE MONEY OF THE FUND IN THE~~
7 ~~SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.~~

8 ~~(I) THE SECRETARY SHALL ESTABLISH PROCEDURES FOR COUNTIES~~
9 ~~AND MUNICIPALITIES TO APPLY FOR GRANTS FROM THE FUND.~~

10 ~~5-805.~~

11 ~~(a) Each subdivision shall take measures to enforce the provisions of this~~
12 ~~subtitle within its jurisdiction, including the enactment of a local law prescribing a~~
13 ~~civil penalty in the form of a fine not exceeding [\$500] \$1,000 for each day of violation~~
14 ~~of any local law the subdivision enacts to implement this subtitle. The local law shall~~
15 ~~provide that each day upon which a violation occurs or continues constitutes a~~
16 ~~separate offense. The local law shall provide that the total civil penalty may not exceed~~
17 ~~[\$10,000] \$25,000.~~

18 ~~(b) If a subdivision fails to enforce any provision of this subtitle, including~~
19 ~~any ordinance or local law the subdivision enacts pursuant to this subtitle, or if the~~
20 ~~subdivision does not possess the authority to correct a violation of this subtitle, the~~
21 ~~Department may request the Attorney General to take appropriate legal action to~~
22 ~~correct the violation.~~

23 ~~(c) A court exercising equity jurisdiction in the county where the land or any~~
24 ~~part of the land or water covered by this subtitle is located may restrain any violation~~
25 ~~of this subtitle, or order the abatement of a condition resulting from any violation and~~
26 ~~order the restoration of lands and waters to the condition existing prior to the~~
27 ~~violation, in an action brought by a subdivision affected by the violation, by the~~
28 ~~Department, by any authorized unit or officer of the Department, or by the Attorney~~
29 ~~General.~~

30 ~~(D) THE SECRETARY SHALL DESIGNATE A PORTION OF THE FINES AND~~
31 ~~PENALTIES COLLECTED UNDER THIS SECTION TO BE DEPOSITED INTO THE~~
32 ~~STORMWATER RESTORATION FUND ESTABLISHED UNDER § 4-216 OF THIS~~
33 ~~ARTICLE.~~

1 (a) There is a Task Force on a Statewide Stormwater Management and
2 Sediment Control Initiative.

3 (b) The Task Force consists of the following members:

4 (1) One member of the Senate, appointed by the President of the
5 Senate;

6 (2) One member of the House of Delegates, appointed by the Speaker
7 of the House;

8 (3) The Secretary of the Environment, or the Secretary's designee;

9 (4) The Secretary of Natural Resources, or the Secretary's designee;

10 (5) The Secretary of Planning, or the Secretary's designee;

11 (6) The Secretary of Agriculture, or the Secretary's designee;

12 (7) The Administrator of the Maryland State Highway
13 Administration, or the Administrator's designee; and

14 (8) The following members appointed by the Governor with the advice
15 and consent of the Senate and the House of Delegates:

16 (i) One representative from the Maryland Municipal League;

17 (ii) One representative from the Maryland Association of
18 Counties;

19 (iii) Three representatives from an environmental nonprofit
20 organization based in Maryland;

21 (iv) One representative from the University of Maryland's Civil
22 and Environmental Engineering Department;

23 (v) Two representatives of a local land developer or construction
24 company;

25 (vi) Two representatives from the State Soil Conservation
26 Committee or soil conservation districts;

1 (vii) One representative from the Chesapeake Bay Program's
2 scientific and technical advisory committee;

3 (viii) Three representatives from different counties or
4 municipalities who are from local agencies that oversee environmental resources,
5 watershed protection, erosion and sediment control, or stormwater management
6 programs; and

7 (ix) One representative from the University of Maryland's
8 Environmental Finance Center.

9 (c) The Governor shall designate the chair of the Task Force.

10 (d) The Task Force may establish subcommittees as it determines necessary
11 to fulfill its duties.

12 (e) The Department of the Environment shall provide staff for the Task
13 Force.

14 (f) A member of the Task Force may not receive compensation for serving on
15 the Task Force, but is entitled to reimbursement for expenses under the Standard
16 State Travel Regulations, as provided in the State budget.

17 (g) The Task Force shall:

18 (1) Evaluate and make recommendations to improve the State's
19 erosion and sediment control and stormwater management regulations and programs,
20 including:

21 (i) Considering standards based on historical weather trends,
22 current best management practices, and methods for reducing nutrient pollution levels
23 that harm the Chesapeake Bay;

24 (ii) Evaluating the effectiveness of current statutes and
25 regulations as well as local ordinances that address stormwater management and
26 sediment control and making recommendations for changes as necessary to adopt
27 statewide standards;

28 (iii) Studying and recommending innovative approaches that
29 help minimize the release of pollutants and would assist the local jurisdiction in
30 meeting statewide stormwater management standards;

1 (iv) Determining best statewide practices for stormwater
2 management and sediment control to increase the viability of restoration efforts of the
3 native Maryland oyster and other Chesapeake Bay native species, as well as to ensure
4 the health of the Bay for future generations of Maryland citizens;

5 (v) Developing methods to encourage, educate, and assist local
6 governments in using environmentally sensitive design measures and low impact
7 development techniques and developing more stringent standards than the statewide
8 standards; and

9 (vi) Evaluate and make recommendations regarding improving
10 local stormwater practices, including:

11 1. Determining ways to improve maintenance and
12 oversight of stormwater ponds;

13 2. Evaluating the effectiveness of current practices that
14 local entities, such as homeowners associations, do to maintain stormwater
15 management ponds;

16 3. Studying and recommending innovative approaches
17 that help minimize the release of pollutants and assist a local jurisdiction in meeting
18 stormwater management requirements;

19 4. Evaluating statewide and local stormwater practices
20 to determine if the roles and responsibilities of different agencies regarding
21 stormwater management are an efficient use of the agency's resources and an effective
22 method for overall stormwater management; and

23 5. Developing methods and strategies to encourage,
24 educate, and assist local governments and developers in using environmentally
25 sensitive design measures and low impact development techniques; and

26 (2) On or before July 1, 2008, submit a report of its findings and
27 recommendations to the Governor, and in accordance with § 2-1246 of the State
28 Government Article, to the General Assembly.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 ~~October~~ July 1, 2007. It shall remain effective for a period of 1 year and 1 month and,
31 at the end of July 31, 2008, with no further action required by the General Assembly,
32 this Act shall be abrogated and of no further force and effect.