

# SENATE BILL 973

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71r0127

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By: **Chair, Education, Health, and Environmental Affairs Committee (By Request – Departmental – Environment)**

Introduced and read first time: March 1, 2007

Assigned to: Rules

Re-referred to: Education, Health, and Environmental Affairs, March 2, 2007

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Committee Report: Favorable

Senate action: Adopted

Read second time: March 20, 2007

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Environment – Permissible Methods of Service**

3 FOR the purpose of altering the permissible methods of service of complaints,  
4 corrective orders, notices, or other instruments issued by the Department of the  
5 Environment to allow service in the same manner allowed by the Maryland  
6 Rules for service of a summons; and generally relating to permissible methods  
7 of service.

8 BY adding to

9 Article – Environment

10 Section 1–204

11 Annotated Code of Maryland

12 (1996 Replacement Volume and 2006 Supplement)

13 BY repealing and reenacting, with amendments,

14 Article – Environment

15 Section 4–111, 4–210, 4–412(c), 6–421, 7–260, 8–504, 9–336, 9–414, 11–313,  
16 13–311, and 16–503

17 Annotated Code of Maryland

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**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 (1996 Replacement Volume and 2006 Supplement)

2 BY repealing and reenacting, without amendments,  
3 Article – Environment  
4 Section 4–412(d)  
5 Annotated Code of Maryland  
6 (1996 Replacement Volume and 2006 Supplement)

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

9 **Article – Environment**

10 **1–204.**

11 **NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN THIS**  
12 **ARTICLE, SERVICE OF SHOW CAUSE ORDERS, COMPLAINTS, CORRECTIVE**  
13 **ORDERS, NOTICES, OR ANY OTHER INSTRUMENT ISSUED BY THE DEPARTMENT**  
14 **UNDER THIS ARTICLE FOR WHICH SERVICE IS REQUIRED MAY BE ACHIEVED BY**  
15 **ANY METHOD ALLOWED FOR SERVICE OF A SUMMONS UNDER THE MARYLAND**  
16 **RULES.**

17 4–111.

18 (a) Any complaint, order, notice, or other instrument issued by the  
19 Department under this subtitle may be served on the person to whom it is directed[:

20 (1) Personally; or

21 (2) By certified mail, return receipt requested, bearing a postmark  
22 from the United States Postal Service, to the person's last known address as shown on  
23 the Department's records] **IN ACCORDANCE WITH § 1–204 OF THIS ARTICLE.**

24 (b) If service is made by certified mail, return receipt requested, bearing a  
25 postmark from the United States Postal Service, the person who mails the document  
26 shall file with the Department verified proof of mailing.

27 (c) Any notice that requires filing of a report, attendance at a hearing, or  
28 both shall be served at least 10 days before the earlier of:

29 (1) The time set for the hearing, if any; or

1 (2) The time set for the filing of the report, if any.

2 4-210.

3 (a) Any complaint, order, notice, or other instrument issued by the  
4 Department under this subtitle may be served on the person to whom it is directed[:

5 (1) Personally; or

6 (2) By certified mail, return receipt requested, bearing a postmark  
7 from the United States Postal Service, to the person's last known address as shown on  
8 the Department's records] **IN ACCORDANCE WITH § 1-204 OF THIS ARTICLE.**

9 (b) If service is made by certified mail, return receipt requested, bearing a  
10 postmark from the United States Postal Service, the person who mails the document  
11 shall file with the Department verified proof of mailing.

12 (c) Any notice that requires filing of a report, attendance at a hearing, or  
13 both shall be served at least 10 days before the earlier of:

14 (1) The time set for the hearing, if any; or

15 (2) The time set for the filing of the report, if any.

16 4-412.

17 (c) Except as otherwise provided, any notice, order, or other instrument  
18 issued by or under authority of the Department may be served [personally] **IN**  
19 **ACCORDANCE WITH § 1-204 OF THIS ARTICLE** or by publication on any person  
20 affected. [Service may be made by mailing a copy of the notice, order, or other  
21 instrument by certified mail, return receipt requested, bearing a postmark from the  
22 United States Postal Service, to the person affected at his last known post-office  
23 address as shown by the Department's files or records. Proof] **IF SERVICE IS MADE**  
24 **BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, PROOF** of service may be  
25 made by the sworn statement or affidavit of the person who mailed the notice, order,  
26 or other instrument. The sworn statement or affidavit shall be filed with the  
27 Department.

28 (d) A verbatim record of the proceedings of hearings may be taken when  
29 necessary or advisable by the Department. A subpoenaed witness shall receive the  
30 same fees and mileage as in any civil action. If a witness refuses to obey a notice of  
31 hearing or subpoena issued under this section, any circuit court, upon the application

1 of the Department, may issue an order requiring the person to appear, testify, or  
2 produce evidence as required. The failure to obey a court order may be punished by the  
3 court as contempt.

4 6–421.

5 (a) Any complaint, corrective order, notice, or other instrument issued by the  
6 Department under this subtitle may be served on the person to whom it is directed[:

7 (1) Personally; or

8 (2) By certified mail, return receipt requested, bearing a postmark  
9 from the United States Postal Service, to the last known address as shown on the  
10 Department’s records] **IN ACCORDANCE WITH § 1–204 OF THIS ARTICLE.**

11 (b) If service is made by certified mail, return receipt requested, bearing a  
12 postmark from the United States Postal Service, the person who mails the document  
13 shall file with the Department verified proof of mailing.

14 (c) Any notice that requires filing of a report, attendance at a hearing, or  
15 both, shall be served at least 10 days before the earlier of:

16 (1) The time set for the hearing, if any; or

17 (2) The time set for the filing of the report, if any.

18 7–260.

19 (a) Any complaint, corrective order, notice, or other instrument issued by the  
20 Department under this subtitle may be served on the person to whom it is directed:

21 (1) [Personally;] **IN ACCORDANCE WITH § 1–204 OF THIS ARTICLE;**

22 **OR**

23 (2) By publication[; or

24 (3) By certified mail, return receipt requested, bearing a postmark  
25 from the United States Postal Service, to the last known address as shown on the  
26 Department’s records].

27 (b) If service is made by certified mail, return receipt requested, bearing a  
28 postmark from the United States Postal Service, the person who mails the document

1 shall file with the Department verified proof of mailing.

2 (c) Any notice that requires filing of a report, attendance at a hearing, or  
3 both shall be served at least 10 days before the earlier of:

4 (1) The time set for the hearing, if any; or

5 (2) The time set for the filing of the report, if any.

6 8–504.

7 (a) (1) Except as otherwise provided, any notice, order, or other  
8 instrument issued by or under authority of the Department under this subtitle may be  
9 served [personally or by mailing a copy of the notice, order, or other instrument by  
10 certified mail, return receipt requested, bearing a postmark from the United States  
11 Postal Service, to the person affected at the person’s last known post office address as  
12 shown by the Department’s files or records] **IN ACCORDANCE WITH § 1–204 OF THIS**  
13 **ARTICLE.**

14 (2) Proof of service may be made by the sworn statement or affidavit of  
15 the person who mailed the notice, order, or other instrument.

16 (3) The sworn statement or affidavit shall be filed with the  
17 Department.

18 (b) Any notice that requires filing of a report, attendance at a hearing, or  
19 both shall be served at least 10 days before the earlier of:

20 (1) The time set for the hearing if any; or

21 (2) The time set for the filing of the report, if any.

22 9–336.

23 (a) Any complaint, order, notice, or other instrument issued by the  
24 Department under this subtitle may be served on the person to whom it is directed:

25 (1) [Personally;] **IN ACCORDANCE WITH § 1–204 OF THIS ARTICLE;**  
26 **OR**

27 (2) By publication[]; or

1           (3) By certified mail, return receipt requested, bearing a postmark  
2 from the United States Postal Service, to the person's last known address as shown on  
3 the Department's records].

4           (b) If service is made by certified mail, return receipt requested, bearing a  
5 postmark from the United States Postal Service, the person who mails the document  
6 shall file with the Department verified proof of mailing.

7           (c) Any notice that requires filing of a report, attendance at a hearing, or  
8 both shall be served at least 10 days before the earlier of:

9           (1) The time set for the hearing, if any; or

10          (2) The time set for the filing of the report, if any.

11 9-414.

12          (a) The Department may issue an order or notice if the Department has  
13 reasonable grounds to believe that a person to whom the order or notice is directed has  
14 violated:

15          (1) This subtitle;

16          (2) Any rule or regulation adopted under this subtitle; or

17          (3) Any order or permit issued under this subtitle.

18          (b) An order or notice issued under this subtitle shall:

19          (1) Specify the provision that allegedly has been violated;

20          (2) State the alleged facts that constitute the violation;

21          (3) State the actions necessary to correct the violation and the time  
22 allowed for corrections; and

23          (4) State the procedure for requesting a hearing to respond to the  
24 violation alleged in the order.

25          (c) If the person served with an order does not request a hearing within 30  
26 days, the order becomes a final order.

27          (d) Any notice or order issued by the Department under this subtitle may be

1 served on the person to whom it is directed:

2 (1) [Personally;] **IN ACCORDANCE WITH § 1-204 OF THIS ARTICLE;**  
3 **OR**

4 [(2) By certified mail, return receipt requested, to the person's last  
5 known address as shown on the Department's records; or]

6 [(3)] (2) By publication.

7 11-313.

8 (a) (1) Except as otherwise provided in the Administrative Procedure Act,  
9 before the Board takes any action under § 11-312 of this subtitle, it shall give the  
10 individual against whom this action is contemplated an opportunity for a hearing  
11 before the Board.

12 (2) A hearing shall be held within a reasonable time not to exceed 6  
13 months after charges have been brought.

14 (b) The Board shall give notice and hold the hearing in accordance with the  
15 Administrative Procedure Act.

16 (c) At least 30 days before the hearing, the hearing notice to be given to the  
17 individual shall be[:

18 (1) Served personally on the individual; or

19 (2) Sent by certified mail, return receipt requested, bearing a  
20 postmark from the United States Postal Service, to the last known address of the  
21 individual] **SERVED IN ACCORDANCE WITH § 1-204 OF THIS ARTICLE.**

22 (d) The individual may be represented at the hearing by counsel.

23 (e) Over the signature of an officer or the administrator of the Board, the  
24 Board may issue subpoenas and administer oaths in connection with any investigation  
25 under this title and any hearings or proceedings before it.

26 (f) If, without lawful excuse, a person disobeys a subpoena from the Board or  
27 an order by the Board to take an oath or to testify or answer a question, then, on  
28 petition of the Board, a court of competent jurisdiction may punish the person as for  
29 contempt of court.

1 (g) If, after due notice, the individual against whom the action is  
2 contemplated fails or refuses to appear, the Board may hear and determine the  
3 matter.

4 13–311.

5 (a) Except as otherwise provided in the Administrative Procedure Act, before  
6 the Board takes any action under § 13–310 or § 13–506 of this title, it shall give the  
7 person against whom the action is contemplated an opportunity for a hearing before  
8 the Board.

9 (b) The Board shall give notice and hold the hearing in accordance with the  
10 Administrative Procedure Act.

11 (c) The hearing notice shall be served [personally or sent by certified mail,  
12 return receipt requested, bearing a postmark from the United States Postal Service, to  
13 the last known address of the person] **IN ACCORDANCE WITH § 1–204 OF THIS**  
14 **ARTICLE** at least 30 days before the hearing.

15 (d) The person may be represented at the hearing by counsel.

16 (e) The Board may issue subpoenas and administer oaths in connection with  
17 any proceeding under this section.

18 (f) If after due notice the person against whom the action is contemplated  
19 fails or refuses to appear, nevertheless the Board may hear and determine the matter.

20 16–503.

21 (a) Whenever the Department believes a violation of any provision of this  
22 title or any regulation has occurred, the Department shall cause a written complaint  
23 to be served upon the alleged violator. The complaint shall specify the provision of law  
24 or regulation allegedly violated and the alleged fact that constitutes the violation.  
25 Subsequent to or concurrent with service of the complaint as provided in subsection (c)  
26 of this section, the Department may issue an order requiring necessary corrective  
27 action be taken within the time prescribed in its order.

28 (b) Any person named in the order may request in writing a hearing before  
29 the Department not later than 10 days after the date the order is served, in which case  
30 a hearing shall be scheduled within 10 days from the receipt of the request. A decision  
31 shall be rendered within 30 days from the date of the hearing. Notice of a hearing



1 shall be served on the alleged violator in accordance with the provisions of subsection  
2 (c) of this section not less than 10 days before the time set for the hearing. The order  
3 shall become effective immediately according to its terms upon service.

4 (c) Except as otherwise provided, any notice, order, or other instrument  
5 issued by or under authority of the Department shall be served [personally on any  
6 person affected. Service may be made by mailing a copy of the notice, order, or other  
7 instrument by certified or registered mail to the person affected at the last known post  
8 office address as shown by the Department's files or records. Proof] **IN ACCORDANCE**  
9 **WITH § 1-204 OF THIS ARTICLE. WHERE SERVICE IS MADE BY MAILING, PROOF**  
10 of service may be made by the sworn statement or affidavit of the person who mailed  
11 the notice, order, or other instrument. The sworn statement or affidavit shall be filed  
12 with the Department.

13 (d) A verbatim record of the proceedings of hearings may be taken when  
14 necessary or advisable by the Department. A subpoenaed witness shall receive the  
15 same fees and mileage as in any civil action. If a witness refuses to obey a notice of  
16 hearing or subpoena issued under this section, any circuit court, upon the application  
17 of the Department, may issue an order requiring the person to appear, testify, or  
18 produce evidence as required. The failure to obey a court order may be punished by the  
19 court as contempt.

20 (e) (1) A person aggrieved by an order may appeal to the circuit court of  
21 the county in which the land is located.

22 (2) The court shall review the administrative record of the  
23 Department's order.

24 (3) The court shall declare the Department's order invalid if the court  
25 finds that the order:

26 (i) Is unconstitutional;

27 (ii) Exceeds the statutory authority or jurisdiction of the  
28 Department;

29 (iii) Results from an unlawful procedure;

30 (iv) Is affected by any other error of law;

31 (v) Is unsupported by competent, material, and substantial  
32 evidence in light of the entire record as submitted; or

1 (vi) Is arbitrary or capricious.

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.