

# HOUSE BILL 259

L2, M3

(91r0422)

## ENROLLED BILL

—Environmental Matters/Education, Health, and Environmental Affairs—

Introduced by **Delegates King, Love, Kipke, and Schuh**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

\_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
Speaker.

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

1 AN ACT concerning

#### 2 **Environmental Health Monitoring and Testing - Reimbursement of Costs**

3 FOR the purpose of ~~authorizing the Department of the Environment to factor in costs~~  
4 ~~incurred by a county in conducting certain environmental health monitoring or~~  
5 ~~testing related to a certain violation when assessing a certain penalty; requiring~~  
6 ~~the Department to reimburse a county from the Maryland Clean Water Fund~~  
7 ~~for certain costs incurred by the county in conducting environmental health~~  
8 ~~monitoring or testing related to a certain violation; limiting reimbursement to~~  
9 ~~certain circumstances and certain amounts; requiring the Department to use~~  
10 ~~the Maryland Clean Water Fund for the reimbursement of counties for certain~~  
11 ~~costs incurred in conducting certain environmental health monitoring or~~  
12 ~~testing; requiring certain persons to reimburse a county for certain costs that~~  
13 ~~the county incurs in conducting environmental health monitoring or testing for~~  
14 ~~a certain purpose *subject to a certain exception*; prohibiting the county from~~

#### 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.

*Italics* indicate opposite chamber committee amendments.

***Bold italics*** indicate conference committee amendments.



1 recovering the reimbursable costs under certain circumstances; authorizing the  
 2 county to recover the reimbursable costs in a civil action; authorizing the  
 3 Department of the Environment to recover the reimbursable costs on behalf of  
 4 the county under certain circumstances; authorizing the Department to adopt  
 5 certain regulations; requiring a person who discharges a pollutant into the  
 6 waters of the State in violation of certain provisions of law to reimburse the  
 7 Department for certain costs incurred by the Department in conducting  
 8 environmental health monitoring or testing for a certain purpose; authorizing  
 9 the Department to recover the reimbursable costs in a civil action; and generally  
 10 relating to reimbursement of counties and the Department of the Environment  
 11 for costs of conducting environmental health monitoring or testing.

12 BY adding to  
 13 Article – Environment  
 14 Section 1–304 and 9–342.2  
 15 Annotated Code of Maryland  
 16 (2007 Replacement Volume and 2008 Supplement)

17 ~~BY repealing and reenacting, with amendments,~~  
 18 ~~Article – Environment~~  
 19 ~~Section 9–320~~  
 20 ~~Annotated Code of Maryland~~  
 21 ~~(2007 Replacement Volume and 2008 Supplement)~~

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

24 **Article – Environment**

25 **1-304.**

26 ~~(A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE~~  
 27 ~~DEPARTMENT MAY FACTOR IN ANY COSTS INCURRED BY A COUNTY IN~~  
 28 ~~CONDUCTING ENVIRONMENTAL HEALTH MONITORING OR TESTING RELATED TO~~  
 29 ~~A VIOLATION OF THIS ARTICLE WHEN ASSESSING A PENALTY AGAINST A PERSON~~  
 30 ~~FOR A VIOLATION OF THIS ARTICLE THAT OCCURS ON A PROPERTY THAT IS~~  
 31 ~~ISSUED A LICENSE OR PERMIT UNDER THIS ARTICLE.~~

32 ~~(B) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AND~~  
 33 ~~SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE DEPARTMENT SHALL~~  
 34 ~~REIMBURSE A COUNTY FROM THE MARYLAND CLEAN WATER FUND FOR COSTS~~  
 35 ~~INCURRED BY THE COUNTY IN CONDUCTING ENVIRONMENTAL HEALTH~~  
 36 ~~MONITORING OR TESTING RELATED TO A VIOLATION OF THIS ARTICLE THAT~~  
 37 ~~OCCURS ON A PROPERTY THAT IS ISSUED A LICENSE OR PERMIT UNDER THIS~~  
 38 ~~ARTICLE.~~

1           ~~(2) A REIMBURSEMENT UNDER THIS SECTION;~~

2                     ~~(I) IS REQUIRED ONLY IF THE DEPARTMENT COLLECTS A~~  
3 ~~FINE AS A RESULT OF THE VIOLATION; AND~~

4                     ~~(II) MAY NOT EXCEED THE AMOUNT OF THE FINE.~~

5 ~~9-320.~~

6           ~~(a) There is a Maryland Clean Water Fund.~~

7           ~~(b) The following payments shall be made into the Maryland Clean Water~~  
8 ~~Fund:~~

9                     ~~(1) All application fees, permit fees, renewal fees, and funds collected~~  
10 ~~by the Department under this subtitle, including any civil or administrative penalty or~~  
11 ~~any fine imposed by a court under the provisions of this subtitle; and~~

12                     ~~(2) Any civil penalty or any fine imposed by a court under the~~  
13 ~~provisions of Title 5, Subtitle 5 of this article relating to water appropriation and use.~~

14           ~~(c) The Department shall use the Maryland Clean Water Fund for activities~~  
15 ~~that are related to:~~

16                     ~~(1) The identification, monitoring, and regulation of the proper~~  
17 ~~discharge of effluent into the waters of the State including program development of~~  
18 ~~these activities as provided by the State budget; [and]~~

19                     ~~(2) The management, conservation, protection, and preservation of the~~  
20 ~~State's groundwater and surface water including program development of these~~  
21 ~~activities as provided by the State budget; AND~~

22           ~~(3) THE REIMBURSEMENT OF COUNTIES FOR COSTS INCURRED~~  
23 ~~BY THE COUNTIES IN CONDUCTING ENVIRONMENTAL HEALTH MONITORING OR~~  
24 ~~TESTING RELATED TO A VIOLATION OF THIS ARTICLE THAT OCCURS ON A~~  
25 ~~PROPERTY THAT IS ISSUED A LICENSE OR PERMIT UNDER THIS ARTICLE.~~

26           ~~(d) In determining the use of the Maryland Clean Water Fund, priority shall~~  
27 ~~be given to activities relating to the water quality of the Chesapeake Bay and its~~  
28 ~~tributaries.~~

29           ~~(e) Notwithstanding any law to the contrary, unexpended moneys in the~~  
30 ~~Fund shall not revert to the general treasury at the end of a fiscal year.~~

31           ~~(A) (1) THE EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS~~  
32 ~~SUBSECTION, THE FOLLOWING PERSONS SHALL REIMBURSE A COUNTY FOR THE~~

1 REASONABLE COSTS INCURRED BY THE COUNTY IN CONDUCTING  
2 ENVIRONMENTAL HEALTH MONITORING OR TESTING, INCLUDING THE COST OF  
3 COLLECTING AND ANALYZING SOIL SAMPLES, SURFACE WATER SAMPLES, OR  
4 GROUNDWATER SAMPLES FOR THE PURPOSE OF ASSESSING THE EFFECT ON  
5 PUBLIC HEALTH AND THE ENVIRONMENT OF THE PERSON'S RELEASE OR  
6 ~~THREAT OF RELEASE~~ OF A HAZARDOUS SUBSTANCE, DISCHARGE OF OIL, OR  
7 DISCHARGE OF A POLLUTANT IN THE WATERS OF THE STATE:

8 ~~(1)~~ (I) A RESPONSIBLE PERSON AS DEFINED UNDER TITLE 7,  
9 SUBTITLE 2 OF THIS ARTICLE;

10 ~~(2)~~ (II) A PERSON RESPONSIBLE FOR THE DISCHARGE AS  
11 DEFINED UNDER TITLE 4, SUBTITLE 4 OF THIS ARTICLE; OR

12 ~~(3)~~ (III) A PERSON RESPONSIBLE FOR THE DISCHARGE OF A  
13 POLLUTANT INTO THE WATERS OF THE STATE IN VIOLATION OF § 9-322 OR §  
14 9-323 OF THIS ARTICLE.

15 (2) A PERSON MAY NOT BE REQUIRED TO REIMBURSE A COUNTY  
16 FOR COSTS UNDER PARAGRAPH (1) OF THIS SUBSECTION IF THE PERSON HAS  
17 ENTERED INTO A CONSENT ORDER WITH THE DEPARTMENT.

18 (B) COSTS INCURRED BY A COUNTY FOR ENVIRONMENTAL HEALTH  
19 MONITORING OR TESTING UNDER ACTIVITIES THAT ARE DUPLICATIVE OF STATE  
20 ACTIVITIES, OR ARE NOT REASONABLY NECESSARY TO PROTECT HUMAN HEALTH  
21 OR THE ENVIRONMENT, ARE NOT ELIGIBLE FOR REIMBURSEMENT UNDER  
22 SUBSECTION (A) OF THIS SECTION.

23 (C) A COUNTY MAY RECOVER COSTS THAT ARE REIMBURSABLE UNDER  
24 SUBSECTION (A) OF THIS SECTION IN A CIVIL ACTION.

25 (D) IF A COUNTY DETERMINES THAT IT WOULD BE MORE EFFICIENT TO  
26 COMBINE THE COUNTY'S CLAIM FOR REIMBURSEMENT UNDER SUBSECTION (A)  
27 OF THIS SECTION WITH A PENDING CLAIM BY THE DEPARTMENT, THE  
28 DEPARTMENT SHALL, ON REQUEST BY THE COUNTY, SEEK TO RECOVER  
29 REIMBURSABLE COSTS ON BEHALF OF THE COUNTY.

30 (E) THE DEPARTMENT MAY ADOPT REGULATIONS TO CARRY OUT THE  
31 PROVISIONS OF THIS SECTION.

32 9-342.2.

33 (A) A PERSON WHO DISCHARGES A POLLUTANT INTO THE WATERS OF  
34 THE STATE IN VIOLATION OF § 9-322 OR § 9-323 OF THIS SUBTITLE SHALL

1 REIMBURSE THE DEPARTMENT FOR THE REASONABLE COSTS INCURRED BY  
2 THE DEPARTMENT IN CONDUCTING ENVIRONMENTAL HEALTH MONITORING OR  
3 TESTING, INCLUDING THE COST OF COLLECTING AND ANALYZING SOIL  
4 SAMPLES, SURFACE WATER SAMPLES, OR GROUNDWATER SAMPLES FOR THE  
5 PURPOSE OF ASSESSING THE EFFECT ON PUBLIC HEALTH AND THE  
6 ENVIRONMENT OF THE PERSON'S DISCHARGE.

7 (B) THE DEPARTMENT MAY RECOVER COSTS THAT ARE REIMBURSABLE  
8 UNDER SUBSECTION (A) OF THIS SECTION IN A CIVIL ACTION.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
10 October 1, 2009.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.