

HOUSE BILL 259

L2, M3

9lr0422

By: **Delegates King, Love, Kipke, and Schuh**
Introduced and read first time: January 29, 2009
Assigned to: Environmental Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 18, 2009

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; prohibiting the county from recovering the reimbursable~~
15 ~~costs under certain circumstances; authorizing the county to recover the~~
16 ~~reimbursable costs in a civil action; authorizing the Department of the~~
17 ~~Environment to recover the reimbursable costs on behalf of the county under~~
18 ~~certain circumstances; authorizing the Department to adopt certain regulations;~~
19 ~~requiring a person who discharges a pollutant into the waters of the State in~~
20 ~~violation of certain provisions of law to reimburse the Department for certain~~
21 ~~costs incurred by the Department in conducting environmental health~~
22 ~~monitoring or testing for a certain purpose; authorizing the Department to~~
23 ~~recover the reimbursable costs in a civil action; and generally relating to~~
24 ~~reimbursement of counties and the Department of the Environment for costs of~~
25 ~~conducting environmental health monitoring or testing.~~

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 BY adding to
 2 Article – Environment
 3 Section 1-304 and 9-342.2
 4 Annotated Code of Maryland
 5 (2007 Replacement Volume and 2008 Supplement)

6 ~~BY repealing and reenacting, with amendments,~~
 7 ~~Article – Environment~~
 8 ~~Section 9-320~~
 9 ~~Annotated Code of Maryland~~
 10 ~~(2007 Replacement Volume and 2008 Supplement)~~

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

13 **Article – Environment**

14 **1-304.**

15 ~~(A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE~~
 16 ~~DEPARTMENT MAY FACTOR IN ANY COSTS INCURRED BY A COUNTY IN~~
 17 ~~CONDUCTING ENVIRONMENTAL HEALTH MONITORING OR TESTING RELATED TO~~
 18 ~~A VIOLATION OF THIS ARTICLE WHEN ASSESSING A PENALTY AGAINST A PERSON~~
 19 ~~FOR A VIOLATION OF THIS ARTICLE THAT OCCURS ON A PROPERTY THAT IS~~
 20 ~~ISSUED A LICENSE OR PERMIT UNDER THIS ARTICLE.~~

21 ~~(B) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AND~~
 22 ~~SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE DEPARTMENT SHALL~~
 23 ~~REIMBURSE A COUNTY FROM THE MARYLAND CLEAN WATER FUND FOR COSTS~~
 24 ~~INCURRED BY THE COUNTY IN CONDUCTING ENVIRONMENTAL HEALTH~~
 25 ~~MONITORING OR TESTING RELATED TO A VIOLATION OF THIS ARTICLE THAT~~
 26 ~~OCCURS ON A PROPERTY THAT IS ISSUED A LICENSE OR PERMIT UNDER THIS~~
 27 ~~ARTICLE.~~

28 ~~(2) A REIMBURSEMENT UNDER THIS SECTION:~~

29 ~~(i) IS REQUIRED ONLY IF THE DEPARTMENT COLLECTS A~~
 30 ~~FINE AS A RESULT OF THE VIOLATION; AND~~

31 ~~(ii) MAY NOT EXCEED THE AMOUNT OF THE FINE.~~

32 ~~9-320.~~

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

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

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

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

8 (e) ~~The Department shall use the Maryland Clean Water Fund for activities~~
9 ~~that are related to:~~

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

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

16 (3) ~~**THE REIMBURSEMENT OF COUNTIES FOR COSTS INCURRED**~~
17 ~~**BY THE COUNTIES IN CONDUCTING ENVIRONMENTAL HEALTH MONITORING OR**~~
18 ~~**TESTING RELATED TO A VIOLATION OF THIS ARTICLE THAT OCCURS ON A**~~
19 ~~**PROPERTY THAT IS ISSUED A LICENSE OR PERMIT UNDER THIS ARTICLE.**~~

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

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

25 (A) **THE FOLLOWING PERSONS SHALL REIMBURSE A COUNTY FOR THE**
26 **REASONABLE COSTS INCURRED BY THE COUNTY IN CONDUCTING**
27 **ENVIRONMENTAL HEALTH MONITORING OR TESTING, INCLUDING THE COST OF**
28 **COLLECTING AND ANALYZING SOIL SAMPLES, SURFACE WATER SAMPLES, OR**
29 **GROUNDWATER SAMPLES FOR THE PURPOSE OF ASSESSING THE EFFECT ON**
30 **PUBLIC HEALTH AND THE ENVIRONMENT OF THE PERSON'S RELEASE OR**
31 **THREAT OF RELEASE OF A HAZARDOUS SUBSTANCE, DISCHARGE OF OIL, OR**
32 **DISCHARGE OF A POLLUTANT IN THE WATERS OF THE STATE:**

33 (1) **A RESPONSIBLE PERSON AS DEFINED UNDER TITLE 7,**
34 **SUBTITLE 2 OF THIS ARTICLE;**

1 **(2) A PERSON RESPONSIBLE FOR THE DISCHARGE AS DEFINED**
2 **UNDER TITLE 4, SUBTITLE 4 OF THIS ARTICLE; OR**

3 **(3) A PERSON RESPONSIBLE FOR THE DISCHARGE OF A**
4 **POLLUTANT INTO THE WATERS OF THE STATE IN VIOLATION OF § 9-322 OR §**
5 **9-323 OF THIS ARTICLE.**

6 **(B) COSTS INCURRED BY A COUNTY FOR ENVIRONMENTAL HEALTH**
7 **MONITORING OR TESTING UNDER ACTIVITIES THAT ARE DUPLICATIVE OF STATE**
8 **ACTIVITIES ARE NOT ELIGIBLE FOR REIMBURSEMENT UNDER SUBSECTION (A)**
9 **OF THIS SECTION.**

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

12 **(D) IF A COUNTY DETERMINES THAT IT WOULD BE MORE EFFICIENT TO**
13 **COMBINE THE COUNTY'S CLAIM FOR REIMBURSEMENT UNDER SUBSECTION (A)**
14 **OF THIS SECTION WITH A PENDING CLAIM BY THE DEPARTMENT, THE**
15 **DEPARTMENT SHALL, ON REQUEST BY THE COUNTY, SEEK TO RECOVER**
16 **REIMBURSABLE COSTS ON BEHALF OF THE COUNTY.**

17 **(E) THE DEPARTMENT MAY ADOPT REGULATIONS TO CARRY OUT THE**
18 **PROVISIONS OF THIS SECTION.**

19 **9-342.2.**

20 **(A) A PERSON WHO DISCHARGES A POLLUTANT INTO THE WATERS OF**
21 **THE STATE IN VIOLATION OF § 9-322 OR § 9-323 OF THIS SUBTITLE SHALL**
22 **REIMBURSE THE DEPARTMENT FOR THE REASONABLE COSTS INCURRED BY**
23 **THE DEPARTMENT IN CONDUCTING ENVIRONMENTAL HEALTH MONITORING OR**
24 **TESTING, INCLUDING THE COST OF COLLECTING AND ANALYZING SOIL**
25 **SAMPLES, SURFACE WATER SAMPLES, OR GROUNDWATER SAMPLES FOR THE**
26 **PURPOSE OF ASSESSING THE EFFECT ON PUBLIC HEALTH AND THE**
27 **ENVIRONMENT OF THE PERSON'S DISCHARGE.**

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

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