

# SENATE BILL 876

M3, M2

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CF HB 1201

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By: ~~Senator Bailey~~ Senators Bailey and Carozza

Introduced and read first time: February 7, 2022

Assigned to: Education, Health, and Environmental Affairs

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 3, 2022

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

1 AN ACT concerning

2 **Water Pollution – Civil and Administrative Penalty Surcharge – Oyster**  
3 **Repletion Fund**

4 FOR the purpose of establishing a surcharge on civil and administrative penalties imposed  
5 for certain violations that result in the discharge of pollutants into the Chesapeake  
6 Bay or its tributaries; establishing the Oyster Repletion Fund as a special,  
7 nonlapsing fund in the Department of Natural Resources; requiring the surcharges  
8 to be deposited to the Fund and used to finance the repletion of natural oyster bars  
9 in waters impacted by water pollution violations; and generally relating to water  
10 pollution and oyster repletion.

11 BY repealing and reenacting, with amendments,  
12 Article – Environment  
13 Section 9–342  
14 Annotated Code of Maryland  
15 (2014 Replacement Volume and 2021 Supplement)

16 BY adding to  
17 Article – Natural Resources  
18 Section 4–209.1  
19 Annotated Code of Maryland  
20 (2018 Replacement Volume and 2021 Supplement)

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

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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 **Article – Environment**

2 9–342.

3 (a) **(1)** In addition to being subject to an injunctive action under this subtitle,  
4 a person who violates any provision of this subtitle or of any rule, regulation, order, or  
5 permit adopted or issued under this subtitle is liable to a civil penalty not exceeding  
6 \$10,000, to be collected in a civil action brought by the Department.

7 **(2)** Each day a violation occurs is a separate violation under this  
8 subsection.

9 (b) **(1)** In addition to any other remedies available at law or in equity and after  
10 an opportunity for a hearing which may be waived in writing by the person accused of a  
11 violation, the Department may impose a penalty for violation of any provision of this  
12 subtitle or any rule, regulation, order, or permit adopted or issued under this subtitle.

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

14 (i) Up to \$10,000 for each violation, but not exceeding \$100,000  
15 total; and

16 (ii) Assessed with consideration given to:

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

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

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

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

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

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



1           (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
2 INDICATED.

3                   (2) "COUNTY OYSTER COMMITTEE" MEANS A COMMITTEE  
4 ESTABLISHED UNDER § 4-1106(B) OF THIS TITLE.

5                   (3) "FUND" MEANS THE OYSTER REPLETION FUND.

6           (B) THERE IS AN OYSTER REPLETION FUND IN THE DEPARTMENT.

7           (C) THE PURPOSE OF THE FUND IS TO FINANCE THE REPLETION OF  
8 NATURAL OYSTER BARS IN WATERS IMPACTED BY WATER POLLUTION VIOLATIONS.

9           (D) THE DEPARTMENT SHALL ADMINISTER THE FUND.

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

12                   (2) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY  
13 AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

14           (F) THE FUND CONSISTS OF:

15                   (1) SURCHARGES ON CIVIL AND ADMINISTRATIVE PENALTIES  
16 COLLECTED UNDER § 9-342(C) OF THE ENVIRONMENT ARTICLE;

17                   (2) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND;  
18 AND

19                   (3) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR  
20 THE BENEFIT OF THE FUND.

21           (G) (1) THE FUND MAY BE USED ONLY FOR OYSTER REPLETION  
22 PROJECTS CONDUCTED IN ACCORDANCE WITH THIS SUBSECTION.

23                   (2) TO THE EXTENT PRACTICABLE, A SURCHARGE COLLECTED  
24 UNDER § 9-342(C) OF THE ENVIRONMENT ARTICLE SHALL BE USED TO FUND  
25 OYSTER REPLETION PROJECTS IN THE COUNTY WHERE THE UNDERLYING WATER  
26 POLLUTION VIOLATION OCCURRED.

27                   (3) THE DEPARTMENT SHALL WORK WITH THE COUNTY OYSTER  
28 COMMITTEE FOR THE COUNTY WHERE THE UNDERLYING WATER POLLUTION  
29 VIOLATION OCCURRED TO IDENTIFY:

1                   **(I) NATURAL OYSTER BARS WITHIN THE COUNTY FOR**  
2 **REPLETION; OR**

3                   **(II) IF NO NATURAL OYSTER BAR WITHIN THE COUNTY IS**  
4 **SUITABLE FOR REPLETION, NATURAL OYSTER BARS WITHIN AN ADJACENT COUNTY**  
5 **FOR REPLETION.**

6                   **(4) REPLETION PROJECTS CONDUCTED UNDER THIS SUBSECTION**  
7 **SHALL BE IN THE FORM OF SPAT-ON-SHELL.**

8                   **(5) (I) THE DEPARTMENT MAY CONTRACT WITH A NONPROFIT**  
9 **ORGANIZATION THAT SPECIALIZES IN OYSTER RECOVERY TO CARRY OUT OYSTER**  
10 **REPLETION PROJECTS UNDER THIS SUBSECTION.**

11                   **(II) THE FUND MAY BE USED TO COVER REASONABLE**  
12 **ADMINISTRATIVE EXPENSES INCURRED BY A NONPROFIT ORGANIZATION IN**  
13 **CARRYING OUT OYSTER REPLETION PROJECTS UNDER THIS SUBSECTION.**

14                   **(H) (1) THE STATE TREASURER SHALL INVEST THE MONEY OF THE FUND**  
15 **IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.**

16                   **(2) ANY INTEREST EARNINGS OF THE FUND SHALL BE CREDITED TO**  
17 **THE GENERAL FUND OF THE STATE.**

18                   **(I) EXPENDITURES FROM THE FUND MAY BE MADE ONLY IN ACCORDANCE**  
19 **WITH THE STATE BUDGET.**

20                   **(J) MONEY EXPENDED FROM THE FUND FOR OYSTER REPLETION**  
21 **PROJECTS IS SUPPLEMENTAL TO AND IS NOT INTENDED TO TAKE THE PLACE OF**  
22 **FUNDING THAT OTHERWISE WOULD BE APPROPRIATED FOR OYSTER REPLETION**  
23 **PROJECTS.**

24                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
25 October 1, 2022.