

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 402

(The Speaker)(By Request - Office of the Attorney
General)

Environment and Transportation

Department of the Environment - Enforcement Authority

This bill updates, standardizes, and expands authorized penalty and enforcement actions that can be taken to enforce several provisions of the Environment Article governing the appropriation or use of waters, reservoirs, and dams; nontidal wetlands; water pollution control; drinking water; water quality laboratories; waterworks and waste system operators; and wetlands and riparian rights. Generally, the bill authorizes or augments civil, administrative, and/or injunctive remedies. The bill also establishes new reporting requirements for drinking water and wastewater facilities and establishes a definition for “person” under Title 12 (Waterworks and Waste Systems Operators).

Fiscal Summary

State Effect: Special fund revenues may increase beginning as early as FY 2023 due to the bill’s penalty provisions. It is anticipated that State agencies involved in implementing the bill can do so with existing budgeted resources.

Local Effect: Assuming compliance with current law requirements, the bill is not expected to materially affect local finances. Any local wastewater works, waterworks, and industrial wastewater works facilities can comply with the bill’s reporting requirement with existing budgeted resources.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law:

Title 5 of the Environment Article – Water Resources

Subtitle 5, Appropriation of Waters, Reservoirs, or Dams: Under current law, a person who violates any provision of Title 5, Subtitle 5 (Appropriation of Waters, Reservoirs, or Dams) of the Environment Article *relating to water appropriation and use* or any rule, regulation, order, or permit adopted or issued under *any such provision* is liable for a civil penalty up to \$5,000 per violation. Each day is a separate violation. The Maryland Department of the Environment (MDE) is also authorized to seek injunctive relief. Additionally, a person who violates any provision of Title 5, Subtitle 5 of the Environment Article or fails to perform any duty imposed by a rule, regulation, order, or permit adopted or issued under the subtitle is guilty of a misdemeanor and subject to fines, imprisonment, and enjoinder, as specified under § 9-343 of the Environment Article.

Under the bill, the civil penalty provision is expanded to apply to *any provision* of Subtitle 5. The bill also establishes additional administrative penalties that may be imposed for any violation of Subtitle 5 or any regulation, order, or permit adopted or issued under the subtitle after an opportunity for a hearing (which may be waived, as specified). MDE may assess an administrative penalty of up to \$5,000 for each violation, but not exceeding \$100,000 total, with consideration given to specified factors. Each day a violation occurs is a separate violation. The bill establishes procedures that must be taken if a person fails to pay an administrative penalty.

Under current law and under the bill, any civil penalty or fine imposed by a court under these provisions must be paid into the Maryland Clean Water Fund. Under the bill, any administrative penalty imposed pursuant to these provisions must also be paid into the Maryland Clean Water Fund.

Under current law, MDE is authorized (after or concurrently with the service of a complaint) to issue orders and send notice requiring individuals to appear and engage in a hearing about complaints for violations *relating to water appropriation and use*. The bill removes the specification that MDE is authorized to take these actions for violations *relating to water appropriation and use*, and instead authorizes MDE to take these actions after or concurrently with the service of a complaint under all of Subtitle 5.

Subtitle 9, Nontidal Wetlands: Under current law, a person who violates the provisions of Title 5, Subtitle 9 (Nontidal Wetlands) or any regulation, order, or permit under Subtitle 9 may be subject to civil and criminal penalties. MDE is also authorized to revoke permits,

issue a stop work order or an injunction, and require individuals to restore the area that is unlawfully disturbed among other enforcement actions.

The bill establishes additional administrative penalties that may be imposed for any violation of Subtitle 9 after an opportunity for a hearing (which may be waived, as specified). MDE may assess an administrative penalty of up to \$5,000 for each violation, but not exceeding \$100,000 total, with consideration given to specified factors. Each day a violation occurs is a separate violation. The bill establishes procedures that must be taken if a person fails to pay an administrative penalty.

Under current law and under the bill, any civil or criminal penalty imposed by a court under these provisions must be paid into the Nontidal Wetland Compensation Fund. Pursuant to the bill, any administrative penalty imposed pursuant to these provisions must also be paid into the Nontidal Wetland Compensation Fund.

Title 9 of the Environment Article – Water, Ice, and Sanitary Facilities

Subtitle 4, Drinking Water: Under current law and under the bill, § 9-412 specifically prohibits a *supplier of water* from failing to comply with a number of statutory and regulatory provisions, including a failure to comply with the regulations adopted under § 9-407, which governs State primary drinking water regulations. The bill adds a failure to comply with the regulations adopted under § 9-404(9), a provision that authorizes the Secretary of the Environment to adopt rules and regulations that are necessary or appropriate to carry out the Secretary’s functions under Subtitle 4.

Under current law, § 9-412 also establishes several specific and broad provisions that a *person* may not violate, including a prohibition against failing to comply with any order issued by the Secretary under Subtitle 4. The bill adds a specific prohibition against a person failing to comply with the regulations adopted under § 9-404(9) and § 9-407, which are both described above.

Under current law, § 9-413 establishes that a person who *willfully* violates § 9-412(a)(4) or (5) is subject to a civil penalty of up to \$5,000 for each day on which the violation exists. Further, a person who violates § 9-412(a)(1), (2), or (3) is guilty of a misdemeanor and subject to a fine of up to \$5,000 for each day on which the violation occurs or failure to comply continues. There are also two provisions that establish separate administrative penalties for a water supplier depending on the size of the population served.

The bill makes a number of changes to § 9-413, including (1) expanding the civil penalty to include violations of any provision of or any regulation, order, or permit adopted under Subtitle 4; (2) repealing the requirement that a person “willfully” violate a provision; and (3) increasing the civil penalty for a violation by a *person* to up to \$10,000 for each day on

which the violation exists. Likewise, the criminal penalty for a person who violates § 9-412(a)(1), (2), or (3) of Subtitle 4 is also increased from \$5,000 to \$10,000 for each day on which the violation occurs or failure to comply continues. The bill also adds injunctive authority. The bill establishes new, consolidated administrative penalties that may be imposed on a water supplier (regardless of the size of the population served). A *water supplier* who violates any provision of Subtitle 4 or any order, regulation, or plan adopted or issued pursuant to Subtitle 4 is subject to an administrative penalty of up to \$5,000 per day for each violation, but not more than \$100,000 total for each violation, with consideration given to specified factors. The bill establishes the same administrative penalties for a *person* who violates these provisions.

Under current law and under the bill, all penalties collected under Subtitle 4 are paid into the Maryland Clean Water Fund.

Subtitle 10, Water Quality Laboratories: Title 9, Subtitle 10 governs water quality laboratories. Current law authorizes MDE to (1) reprimand, suspend, or revoke a water quality laboratory's certification or (2) pursue a criminal misdemeanor charge against a violator. The bill establishes new provisions and modifies existing provisions to authorize MDE to pursue injunctive relief and administrative and civil enforcement and penalties against water quality laboratories. The bill establishes related order, notice, hearing, and appeal procedures.

Under the bill, in addition to being subject to an injunctive action, a person who violates any provision of Subtitle 10 is subject to a civil penalty of up to \$10,000; each day is a separate violation. The bill also increases the maximum monetary criminal penalty that may be assessed for a violation of the subtitle (from \$1,000 to \$10,000); the incarceration penalty of up to one year is unchanged by the bill. The bill authorizes MDE to impose an administrative penalty of up to \$5,000, not exceeding \$100,000 total, for each violation of any provision of the subtitle or any regulation, order, or permit adopted or issued under the subtitle. Each day is a separate violation. MDE must give consideration to specified factors before imposing such an administrative penalty.

Under the bill, all penalties collected under Subtitle 10 are paid into the Maryland Clean Water Fund.

The bill establishes several levels of injunctive relief under new § 9-1026.1, including an authorization for the Attorney General (upon request from MDE) to institute a civil action for an immediate injunction to stop any pollution or activity that is causing imminent danger to the health or welfare of the environment.

Title 12 of the Environment Article – Waterworks and Waste System Operators

Title 12 contains the Maryland Waterworks and Waste Systems Operators Act. The bill newly defines “person,” which is used throughout Title 12 but not defined under current law.

Subtitle 5, Prohibited Acts; Penalties: Current law requires that (1) a certified superintendent or certified operator be in responsible charge of the facility operations for any waterworks, wastewater works, or industrial wastewater works and (2) all waterworks, wastewater works, and industrial operators to be appropriately certified. Beginning in 2023, the bill requires a person or municipal or private corporation that operates a waterworks, a wastewater works, or an industrial wastewater works to report to MDE (on an MDE-approved form) by July 1 each year on all certified superintendents, certified operators, and certified industrial operators who are participating in the operation of, or are currently in responsible charge of, the waterworks, wastewater works, or industrial wastewater works.

Current law establishes that a person or a municipal or private corporation that violates any provision of Title 12 or any rule or regulation adopted pursuant to Title 12 is guilty of a misdemeanor and upon conviction is subject to a fine of up to \$25 for each day of violation; each day of employment is a separate offense.

The bill establishes new §§ 12-502 and 12-503 that (1) authorize MDE to issue administrative orders and conduct hearings and (2) establish related procedures. The bill also expands § 12-504 by (1) authorizing MDE to pursue administrative and civil penalties and injunctive relief, as specified, and (2) increasing criminal penalties. Under the bill, a person who violates Title 12 is guilty of a misdemeanor and subject to a fine of up to \$10,000 and/or imprisonment for up to one year for a first offense and a fine of up to \$20,000 and/or imprisonment for up to two years for subsequent violations. Administrative penalties must be assessed with consideration given to specified factors, and there are actions that can be taken for failure to pay.

Under the bill, all penalties collected under Subtitle 12 are paid into the Maryland Clean Water Fund. Under new § 12-505, the bill establishes several levels of injunctive relief, including an authorization for the Attorney General (upon request from MDE) to institute a civil action for an immediate injunction to stop any pollution or activity that is causing imminent danger to the health or welfare of the environment.

Title 16 of the Environment Article – Wetlands and Riparian Rights

Subtitle 5, Penalties and Fines: Current law contains criminal and civil penalties for a person who violates any provision of Title 16 or any regulation, permit, license, or order

issued pursuant to Title 16. The bill establishes new administrative penalties. An administrative penalty of up to \$5,000 may be assessed for each violation, but not exceeding \$100,000 total, and must be assessed with consideration given to specified factors. There are actions that can be taken for failure to pay. The bill specifies that each day a violation occurs is a separate violation under § 16-502 (which not only applies to the new administrative penalty provisions, but also to the existing criminal and civil penalty provisions). Pursuant to current law, any penalty imposed by MDE or a court under Title 16 is paid into the Tidal Wetlands Compensation Fund.

Conforming and Clarifying Changes

The bill makes clarifying and conforming changes throughout the affected Titles and also makes changes to conform statutory language to current statutory style guidelines. For example, the bill removes several references to “rules,” which are generally now referred to as “regulations.”

State Fiscal Effect: Special fund revenues may increase beginning as early as fiscal 2023 as a result of the new and increased penalties under the bill. MDE advises that civil actions must be pursued through the Office of the Attorney General (OAG), and that large caseloads for OAG have meant that certain enforcement actions have gone past the statute of limitations. As a result, MDE has missed enforcement opportunities due to a lack of authority to pursue administrative actions. By authorizing MDE to pursue such actions, and by increasing other penalties, MDE anticipates that penalty revenue likely increases under the bill. Some of the penalties collected pursuant to the bill are paid into the Maryland Clean Water Fund, some are paid into the Nontidal Wetland Compensation Fund, and some are paid into the Tidal Wetlands Compensation Fund. The bill is not anticipated to materially affect penalties paid into the general fund.

MDE and OAG both advise that the bill can be implemented with existing resources. Likewise, the bill is not anticipated to materially affect the finances or operations of the Judiciary, the Office of Administrative Hearings, the Department of Public Safety and Correctional Services, or the Maryland State Commission on Criminal Sentencing Policy.

The Maryland Environmental Service (MES) is affected by the new reporting requirement for operators of waterworks, wastewater works, and industrial wastewater works facilities. However, MES can comply with the new reporting requirement using existing resources.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 221 (The President)(By Request - Office of the Attorney General) - Education, Health, and Environmental Affairs.

Information Source(s): Caroline, Howard, and Prince George's counties; City of Annapolis; Maryland Environmental Service; Office of the Attorney General; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland Department of the Environment; Maryland Department of Health; Department of Public Safety and Correctional Services; Board of Public Works; Office of Administrative Hearings; Department of Legislative Services

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