

SENATE BILL 876

M3, M2

2lr2943
CF 2lr2587

By: **Senator Bailey**

Introduced and read first time: February 7, 2022

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Water Pollution – Civil Penalty Surcharge – Oyster Repletion Fund**

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

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

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

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

22 **Article – Environment**

23 9–342.

24 (a) **(1)** In addition to being subject to an injunctive action under this subtitle,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 a person who violates any provision of this subtitle or of any rule, regulation, order, or
2 permit adopted or issued under this subtitle is liable to a civil penalty not exceeding
3 \$10,000, to be collected in a civil action brought by the Department.

4 **(2)** Each day a violation occurs is a separate violation under this
5 subsection.

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

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

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

13 (ii) Assessed with consideration given to:

14 1. The willfulness of the violation, the extent to which the
15 existence of the violation was known to but uncorrected by the violator, and the extent to
16 which the violator exercised reasonable care;

17 2. Any actual harm to the environment or to human health,
18 including injury to or impairment of the use of the waters of this State or the natural
19 resources of this State;

20 3. The cost of cleanup and the cost of restoration of natural
21 resources;

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

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

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

29 7. The degree of hazard posed by the particular pollutant or
30 pollutants involved; and

31 8. The extent to which the current violation is part of a
32 recurrent pattern of the same or similar type of violation committed by the violator.

33 (3) Each day a violation occurs is a separate violation under this

1 subsection.

2 (4) Any penalty imposed under this subsection is payable to this State and
3 collectible in any manner provided at law for the collection of debts.

4 (5) If any person who is liable to pay a penalty imposed under this
5 subsection fails to pay it after demand, the amount, together with interest and any costs
6 that may accrue, shall be:

7 (i) A lien in favor of this State on any property, real or personal, of
8 the person; and

9 (ii) Recorded in the office of the clerk of court for the county in which
10 the property is located.

11 (6) Any penalty collected under this subsection shall be placed in a special
12 fund to be used for monitoring and surveillance by the Department to assure and maintain
13 an adequate record of any violations, including discharge of waste material and other
14 pollutants into the waters of this State or into the environment.

15 **(C) (1) IN ADDITION TO A CIVIL PENALTY IMPOSED UNDER SUBSECTION**
16 **(A) OR (B) OF THIS SECTION, IF A VIOLATION OF ANY PROVISION OF THIS SUBTITLE**
17 **OR ANY RULE, REGULATION, ORDER, OR PERMIT ADOPTED OR ISSUED UNDER THIS**
18 **SUBTITLE, RESULTS IN THE DISCHARGE OF POLLUTANTS TO THE CHESAPEAKE BAY**
19 **OR ITS TRIBUTARIES, THE DEPARTMENT SHALL IMPOSE A SURCHARGE ON THE**
20 **PERSON RESPONSIBLE FOR THE VIOLATION.**

21 **(2) THE SURCHARGE SHALL BE EQUAL TO 25% OF THE TOTAL CIVIL**
22 **PENALTY IMPOSED UNDER SUBSECTION (A) OR (B) OF THIS SECTION.**

23 **(3) ANY SURCHARGE COLLECTED UNDER THIS SUBSECTION SHALL**
24 **BE DEPOSITED INTO THE OYSTER REPLETION FUND ESTABLISHED UNDER § 4-209.1**
25 **OF THE NATURAL RESOURCES ARTICLE.**

26 Article – Natural Resources

27 **4-209.1.**

28 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
29 **INDICATED.**

30 **(2) “COUNTY OYSTER COMMITTEE” MEANS A COMMITTEE**
31 **ESTABLISHED UNDER § 4-1106(B) OF THIS TITLE.**

32 **(3) “FUND” MEANS THE OYSTER REPLETION FUND.**

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

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

4 **(D) THE DEPARTMENT SHALL ADMINISTER THE FUND.**

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

7 **(2) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY**
8 **AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.**

9 **(F) THE FUND CONSISTS OF:**

10 **(1) SURCHARGES ON CIVIL PENALTIES COLLECTED UNDER §**
11 **9-342(C) OF THE ENVIRONMENT ARTICLE;**

12 **(2) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND;**
13 **AND**

14 **(3) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR**
15 **THE BENEFIT OF THE FUND.**

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

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

22 **(3) THE DEPARTMENT SHALL WORK WITH THE COUNTY OYSTER**
23 **COMMITTEE FOR THE COUNTY WHERE THE UNDERLYING WATER POLLUTION**
24 **VIOLATION OCCURRED TO IDENTIFY:**

25 **(I) NATURAL OYSTER BARS WITHIN THE COUNTY FOR**
26 **REPLETION; OR**

27 **(II) IF NO NATURAL OYSTER BAR WITHIN THE COUNTY IS**
28 **SUITABLE FOR REPLETION, NATURAL OYSTER BARS WITHIN AN ADJACENT COUNTY**
29 **FOR REPLETION.**

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

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

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

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

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

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

15 **(J) MONEY EXPENDED FROM THE FUND FOR OYSTER REPLETION**
16 **PROJECTS IS SUPPLEMENTAL TO AND IS NOT INTENDED TO TAKE THE PLACE OF**
17 **FUNDING THAT OTHERWISE WOULD BE APPROPRIATED FOR OYSTER REPLETION**
18 **PROJECTS.**

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