

Chapter 412

(House Bill 1201)

AN ACT concerning

**Water Pollution – ~~Civil Penalty Surcharge~~ – Oyster Repletion Fund
Supplemental Environmental Projects**

FOR the purpose of ~~establishing a surcharge on civil penalties imposed for certain violations that result in the discharge of pollutants into the Chesapeake Bay or its tributaries; establishing the Oyster Repletion Fund as a special, nonlapsing fund in the Department of Natural Resources; requiring the surcharges to be deposited to the Fund and used to finance the repletion of natural oyster bars in waters impacted by water pollution violations~~ requiring the Department of the Environment to include oyster repletion projects in a certain database; requiring the Department to prioritize a supplemental environmental project involving certain oyster repletion projects for a party who is in violation of a certain effluent limitation or unpermitted discharge; and generally relating to water pollution and oyster repletion.

~~BY repealing and reenacting, with amendments,
Article – Environment
Section 9-342
Annotated Code of Maryland
(2014 Replacement Volume and 2021 Supplement)~~

~~BY adding to
Article – Natural Resources
Section 4-209.1
Annotated Code of Maryland
(2018 Replacement Volume and 2021 Supplement)~~

BY adding to
Article – Environment
Section 1-306(b)(3)
Annotated Code of Maryland
(2013 Replacement Volume and 2021 Supplement)
(As enacted by Chapter (S.B. 90/H.B. 595) of the Acts of the General
Assembly of 2022)

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

Article – Environment

1-306.

(b) (3) THE DEPARTMENT SHALL INCLUDE OYSTER REPLETION PROJECTS IN THE DATABASE.

~~9-342.~~

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

~~(2) Each day a violation occurs is a separate violation under this subsection.~~

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

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

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

~~(ii) Assessed with consideration given to:~~

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

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

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

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

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

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

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

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

~~(3) Each day a violation occurs is a separate violation under this subsection.~~

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

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

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

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

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

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

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

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

~~Article — Natural Resources~~

~~4-209.1.~~

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

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

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

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

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

~~(D) THE DEPARTMENT SHALL ADMINISTER THE FUND.~~

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

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

~~(F) THE FUND CONSISTS OF:~~

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

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

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

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

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

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

~~(I) NATURAL OYSTER BARS WITHIN THE COUNTY FOR REPLETION; OR~~

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

~~(4) REPLETION PROJECTS CONDUCTED UNDER THIS SUBSECTION SHALL BE IN THE FORM OF SPAT ON SHELL.~~

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

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

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

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) Subject to subsection (b) of this section, the Department of the Environment shall prioritize a supplemental environmental project involving oyster repletion in natural oyster bars in the county where the underlying water pollution violation occurred with input from the county oyster committee for a party who is in violation of an effluent limitation or unpermitted discharge in the proximity of an oyster population.

(b) If there are no suitable natural oyster bars for repletion in the county where the violation occurred, the natural oyster bar repletion project shall be carried out in an adjacent county.

SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take effect October 1, 2022, contingent on the taking effect of Chapter _____ (S.B. 90/H.B. 595) of the Acts of the General Assembly of 2022, and if Chapter _____ (S.B. 90/H.B. 595) does not become effective, Section 1 of this Act, with no further action required by the General Assembly, shall be null and void.

SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That, except as provided in Section 3 of this Act, this Act shall take effect October 1, 2022.

Approved by the Governor, May 16, 2022.