

Department of Legislative Services
 Maryland General Assembly
 2026 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 108 (Chair, Education, Energy, and the Environment
 Committee)(By Request - Departmental - Environment)
 Education, Energy, and the Environment

Environment - Water Resources and Wetlands - Enforcement

This departmental bill authorizes the Maryland Department of the Environment (MDE) to impose an administrative penalty for a violation of provisions of the Environment Article relating to the appropriation or use of waters, reservoirs, and dams as well as wetlands and riparian rights. The bill also (1) expands MDE’s authorization to use administrative orders for violations related to waterway construction and dam safety; (2) standardizes related administrative notice and hearing procedures; and (3) specifies that, under existing civil penalty provisions relating to wetlands and riparian rights violations, each day is a separate violation. **The bill takes effect July 1, 2026.**

Fiscal Summary

State Effect: Special fund revenues increase by an estimated \$250,000 in FY 2027 due to the bill’s penalty provisions. The bill effectuates contingent language in the FY 2027 budget as introduced; as a result, in FY 2027, special fund expenditures increase by \$250,000, and general fund expenditures decrease correspondingly. Future years reflect ongoing but indeterminate effects. Other State agencies are not materially affected, as discussed below.

(in dollars)	FY 2027	FY 2028	FY 2029	FY 2030	FY 2031
SF Revenue	\$250,000	-	-	-	-
GF Expenditure	(\$250,000)	(-)	(-)	(-)	(-)
SF Expenditure	\$250,000	-	-	-	-
Net Effect	\$250,000	-	-	-	-

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local expenditures are not materially affected, assuming local governments comply with the affected provisions, as discussed below. Local revenues are not affected.

Small Business Effect: MDE has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services (DLS) generally concurs with this assessment, as discussed below.

Analysis

Bill Summary/Current Law:

Title 5, Subtitle 5 of the Environment Article – Appropriation or Use of Waters, Reservoirs, and Dams

Under current law, a person who violates any provision of Title 5, Subtitle 5 (Appropriation or Use of Waters, Reservoirs, and Dams) or any rule, regulation, order, or permit adopted or issued under the subtitle is liable for a civil penalty of up to \$10,000 per violation. Each day is a separate violation. MDE is also authorized to seek injunctive relief. Additionally, a person who violates any provision of Title 5, Subtitle 5 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.

In addition to any other remedies available and after an opportunity for a hearing (which may be waived), the bill authorizes MDE to impose an administrative penalty for any violation of Subtitle 5 or any regulation, order, or permit adopted or issued under the subtitle. Specifically, MDE may impose an administrative penalty of up to \$5,000 for each violation (not exceeding \$100,000 total), which must be assessed with consideration given to specified factors. Each day is a separate violation. The bill establishes provisions regarding the collection of such an administrative penalty and procedures that must be taken if a person fails to pay the penalty.

The bill makes clarifying and conforming changes to provisions governing the Maryland Clean Water Fund to specify that any administrative or civil penalties collected under Subtitle 5 (other than penalties and fines that must be paid into the Private Repair Dam Fund) must be paid into the Maryland Clean Water Fund.

Under current law, MDE is authorized (after or concurrently with the service of a complaint under Subtitle 5) to issue an order and send a notice requiring a person to take corrective action and appear and engage in a hearing regarding a complaint under the subtitle *relating to water appropriation and use*. MDE must give notice and hold any hearing related to such orders in accordance with the Administrative Procedure Act. The bill repeals the specification that MDE is authorized to take these actions regarding a complaint *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. These changes allow MDE to issue administrative orders for complaints related to waterway construction and dam safety and standardize the notice and hearing processes for complaints under Subtitle 5.

Title 16 of the Environment Article – Wetlands and Riparian Rights

Under current law, in addition to specified criminal penalties that apply to violations of Title 16, a person who violates any provision of Title 16 or any regulation, permit, license, or order issued pursuant to Title 16 is liable for a civil penalty of up to \$10,000. The bill specifies that each day a violation occurs is a separate violation. Also, in addition to any other remedies available and after an opportunity for a hearing (which may be waived), the bill authorizes MDE to impose an administrative penalty of up to \$5,000 for each violation (not exceeding \$100,000 total), which must be assessed with consideration given to specified factors. Each day is a separate violation. The bill establishes provisions regarding the collection of such an administrative penalty and procedures that must be taken if a person fails to pay the penalty. Pursuant to current law, any penalty imposed by MDE or a court under Title 16 is paid into the Tidal Wetlands Compensation Fund.

Background: MDE notes that under current law, the department does not have sufficient resources to effectively enforce violations of water appropriation or use permits, waterway and floodplain construction laws, and State tidal wetlands laws; as a result, historically, it has only pursued egregious violations. According to MDE, in general, bringing administrative enforcement actions is less resource-intensive than pursuing civil actions and criminal cases. Administrative enforcement actions are also typically concluded more quickly and give MDE more flexibility to negotiate final outcomes. As a result, the bill's changes are intended to enable MDE to bring more enforcement actions, which MDE anticipates will improve compliance with affected statutory and regulatory provisions.

MDE notes that in the last three years, there were 186 sites identified as noncompliant with waterway and floodplain construction laws and that an estimated 40 of those sites would have warranted administrative penalties under the bill. MDE also notes that over the last three years, it identified 132 sites that were noncompliant with tidal wetlands laws. Of those sites, an estimated 75 sites would have warranted administrative penalties under the bill. Finally, MDE estimates that one-third of its current water appropriation and use permittees are in violation of applicable laws.

State/Local Fiscal Effect:

Maryland Department of the Environment

Special Fund Revenues from Additional Penalties Collected: Based on information provided by MDE, which is based on violation data over the past three years, special fund revenues (for the Maryland Clean Water Fund, the Private Dam Repair Fund, and the Tidal Wetlands Compensation Fund), increase by an estimated total of \$250,000 in fiscal 2027. Based on the persistent backlog of violations that have not been pursued, MDE anticipates that special fund revenues continue to increase in the out years even as some violators presumably come into compliance with affected statutory provisions.

DLS does not have sufficient data to independently verify MDE's violation data or its penalty revenue estimate, but concurs that based on the information provided, MDE is likely to meet, if not exceed, the revenue estimate in fiscal 2027, and that special fund revenues continue to increase in the out years by an indeterminate amount.

Use of Additional Penalty Revenue and Related Budgetary Impacts: Because the fiscal 2027 budget as introduced includes a \$250,000 reduction in MDE's general fund appropriation and a corresponding \$250,000 special fund appropriation contingent on the enactment of legislation that expands MDE's civil and administrative penalty authority, special fund expenditures for MDE increase by \$250,000 in fiscal 2027, and general fund expenditures decrease correspondingly. In future years, it is assumed that MDE continues to collect additional penalties due to the bill's changes and that the additional special funds continue to be used in lieu of general funds. Any such impact in the out years has not been quantified.

Other State Agencies and Local Governments as Regulated Entities

This fiscal and policy note generally assumes that State agencies and local governments that are regulated under the affected provisions strive for compliance; to the extent State and local agencies comply with the affected provisions, the bill does not materially affect their expenditures. However, to the extent any State agencies or local governments violate the affected provisions, they may be subject to additional penalties under the bill.

MDE notes that water appropriation and use permit violations account for the largest volume of violations (approximately 2,000), and that many of these permit holders are municipal water systems and local governments. Additionally, for wetlands and waterway construction sites, MDE advises that many of the violations involve expired permits (1,300 sites), which is a category that frequently involves public-sector entities that have failed to modernize permit authorizations. However, MDE also advises that it is committed to consulting with local governments before assessing penalties.

The bill's changes are not anticipated to materially affect the finances or operations of the Office of Administrative Hearings or the Judiciary.

Small Business Effect: DLS concurs with MDE's assessment that small businesses are not affected if they comply with the affected statutory and regulatory provisions. To that end, this fiscal and policy note generally assumes that small businesses regulated under the affected provisions strive for compliance. However, to the extent that any small businesses violate the affected provisions, they may be subject to additional penalties under the bill. MDE notes that for wetlands and waterway construction sites, it anticipates that enforcement actions taken under the bill will involve private developers, some of which may be small businesses.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 250 (Chair, Environment and Transportation Committee)(By Request - Departmental - Environment) - Environment and Transportation.

Information Source(s): Maryland Department of the Environment; Department of Natural Resources; Maryland Department of Transportation; Judiciary (Administrative Office of the Courts); Office of Administrative Hearings; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services

Fiscal Note History: First Reader - January 30, 2026
jg/lgc

Analysis by: Kathleen P. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Environment - Water Resources and Wetlands - Enforcement
BILL NUMBER: SB 108
PREPARED BY: Less Knapp, Assistant Director of the Water and Science
Administration

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL
BUSINESS
OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL
BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

Small businesses will not be impacted by this new law if they abide by the current laws and regulations for water use and wetlands. When issuing penalties, MDE takes the size of a business into consideration to ensure a fair and equitable settlement.