

SENATE BILL 1079

J3, B5

2lr3346

By: **Senator Young**

Introduced and read first time: March 5, 2012

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Department of Health and Mental Hygiene – Facilities Capital Program –**
3 **State’s Right of Recovery**

4 FOR the purpose of requiring the Department of Health and Mental Hygiene, on
5 receipt of a written request from a certain recipient of funds disbursed for a
6 certain project or facility or the owner of a certain property, to prepare and send
7 to the requestor a certain written estimate that includes certain information;
8 authorizing the Department to require that a certain request include a copy of
9 an appraisal of a certain property prepared within a certain period of time;
10 authorizing the Board of Public Works, at the request of the Department, a
11 certain recipient of funds disbursed for a certain project or facility, or the owner
12 of a certain property, to waive the State’s right of recovery under certain
13 circumstances or subordinate the State’s right of recovery to a lien of a
14 mortgage or deed of trust securing a certain loan under certain circumstances;
15 and generally relating to the State’s right of recovery under the Department of
16 Health and Mental Hygiene’s Facilities Capital Program.

17 BY repealing and reenacting, without amendments,
18 Article – Health – General
19 Section 24–602
20 Annotated Code of Maryland
21 (2009 Replacement Volume and 2011 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – Health – General
24 Section 24–606
25 Annotated Code of Maryland
26 (2009 Replacement Volume and 2011 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Health – General**

2 24–602.

3 The Board of Public Works, upon recommendation of the Secretary of the
4 Department, may make grants to qualified applicants for the construction, acquisition,
5 renovation, and equipping of community mental health facilities, addiction facilities,
6 and developmental disabilities facilities, including the plans, specifications, site
7 improvements, surveys, and applicable architects' and engineers' fees.

8 24–606.

9 (a) In accordance with this section, the State:

10 (1) Shall have the right to recover funds disbursed under this subtitle;
11 and

12 (2) May not:

13 (i) Recover funds disbursed under this subtitle from the federal
14 government if the federal government is the lessor of real property on which a project
15 is constructed or a facility is operated; or16 (ii) Create a lien against real property that is leased from the
17 federal government on which a project is constructed or a facility is operated.18 (b) Subject to subsection (a)(2) of this section, in the event of failure to
19 complete a project or failure to commence operation of a facility, the State may recover
20 from the recipient of the funds disbursed for the project or facility or the owner of the
21 property an amount equal to the amount of State funds disbursed for the project,
22 together with all costs and reasonable attorneys' fees incurred by the State in the
23 recovery proceedings.24 (c) **(1)** Subject to subsection (a)(2) of this section, if, within 30 years after
25 completion of a project, a community mental health facility, addiction facility, or
26 developmental disabilities facility with respect to which funds have been paid under
27 this subtitle is sold or transferred to any person, agency, or organization that would
28 not qualify as an applicant under this subtitle, or that is not approved as a transferee
29 by the Board of Public Works, or if, within the same period, a community mental
30 health facility, addiction facility, or developmental disabilities facility ceases to be a
31 "facility" as defined in this subtitle, then the State may recover from either the
32 transferor or transferee or, in the case of a community mental health facility, addiction
33 facility, or developmental disabilities facility that has ceased to be a "facility" as
34 defined in this subtitle, from the owner, an amount bearing the same ratio to the then
35 current fair market value of so much of the property as constituted an approved
36 project as the amount of the State participation bore to the total eligible cost of the

1 approved project, together with all costs and reasonable attorneys' fees incurred by the
2 State in the recovery proceedings.

3 **(2) (I) ON RECEIPT OF A WRITTEN REQUEST FROM THE**
4 **RECIPIENT OF FUNDS DISBURSED FOR A PROJECT OR FACILITY OR THE OWNER**
5 **OF A PROPERTY THAT RECEIVED FUNDS UNDER THIS SUBTITLE, THE**
6 **DEPARTMENT SHALL PREPARE AND SEND TO THE REQUESTOR A WRITTEN**
7 **ESTIMATE OF THE AMOUNT SUBJECT TO THE STATE'S RIGHT OF RECOVERY AND**
8 **THE FORMULA USED BY THE DEPARTMENT TO CALCULATE THE ESTIMATED**
9 **AMOUNT.**

10 **(II) THE DEPARTMENT MAY REQUIRE THAT A REQUEST**
11 **SENT TO THE DEPARTMENT INCLUDE A COPY OF AN APPRAISAL OF THE**
12 **PROPERTY PREPARED WITHIN 6 MONTHS OF THE DATE OF THE REQUEST.**

13 (d) (1) The Department shall cause notice of the State's right of recovery
14 to be recorded in the land records of the county or Baltimore City in which the
15 property is located before the State makes any funds available for the approved
16 project.

17 (2) The recording of the notice shall not create any lien against the
18 property; however, subject to subsection (a)(2) of this section, it shall constitute notice
19 to any potential transferee, potential creditor, or other interested party of the
20 possibility that the State may obtain a lien under this subtitle.

21 (e) (1) In the event of a failure to complete the project or commence
22 operations of the facility as described in subsection (b) of this section, or in the event of
23 an alleged sale or transfer as described in subsection (c) of this section, or in the event
24 that a property is alleged to have ceased to be a "facility" as defined in this subtitle,
25 the Secretary of the Board of Public Works may authorize the Department to file, in
26 the circuit court of the county or Baltimore City in which the property is located, a
27 claim under this subtitle (styled as a civil action against the owner of the property and
28 any other interested parties, including any transferor that the State wishes to make a
29 party), together with a sworn affidavit stating facts on which the allegations of default
30 are based, as well as a detailed justification of the amount claimed.

31 (2) If the circuit court determines from the State's initial filing that
32 there is probable cause to believe that a default has occurred, the court shall authorize
33 a temporary lien on the property, in the amount of the State's claim, plus any
34 additional amount estimated to be necessary to cover the costs and reasonable
35 attorney's fees incurred by the State, or other amounts as the court determines to be
36 reasonable, pending full determination of the State's claim.

37 (3) The temporary lien takes effect on the date of the court's
38 authorization if the State records a notice of temporary lien in the land records of the
39 county or Baltimore City in which the property is located within 10 days thereafter;

1 otherwise, the temporary lien takes effect on the date a notice of temporary lien is
2 recorded. While the temporary lien is in effect, neither the owner nor any person who
3 acquired an interest in the property after the State first made funds available in
4 connection with the property under this subtitle may take any action that would affect
5 the title to the property or institute any proceedings to enforce a security interest or
6 other similar rights in the property, without the prior written consent of the State.

7 (4) The owner of the property or any other interested party may obtain
8 release of this temporary lien at any time by filing with the court a bond securing the
9 payment in full of the State's claim any additional amount necessary to cover the costs
10 and reasonable attorneys' fees incurred by the State. The owner or other interested
11 party may cause the release to be recorded in the land records.

12 (f) (1) Proceedings to determine the State's right to recover and the
13 amount of its recovery under this subtitle shall have priority over other civil
14 proceedings in the circuit courts.

15 (2) At the conclusion of full adversary proceedings on the issue of
16 default and on any disputes over the amount of the State's recovery, the circuit court
17 shall, if it finds that a default has occurred, issue a final judgment for the amount it
18 finds to be recoverable by the State. All parties involved in the default, including in
19 every case the owner of the property, shall be held jointly and severally liable to the
20 State for the amount of the judgment. This amount, if it remains unpaid after the
21 expiration of 30 days following the court's final order, shall be a lien on the property,
22 superior (except as the State may by written subordination agreement provide
23 otherwise) to the lien or other interest of any mortgagee, pledgee, purchaser, or
24 judgment creditor whose interest became perfected against third persons after the
25 State first made funds available in connection with the property under this subtitle.

26 (3) This lien takes effect on the 31st day following the court's final
27 order if the State records a notice of lien in the land records of the county or Baltimore
28 City in which the property is located on or before the 41st day following the final
29 order; otherwise, the lien takes effect on the date a notice of lien is recorded. At the
30 time this lien takes effect, any temporary lien then in effect shall be automatically and
31 fully released, and the recorded notice of this lien shall constitute notice of the release
32 of the temporary lien.

33 (4) This lien may be enforced and foreclosed in accordance with the
34 procedures prescribed in the Maryland Rules, except that neither the State nor any
35 agent appointed by the State to sell the property need file a bond.

36 (5) The owner or any other interested party may obtain release of this
37 lien at any time by paying the State the full amount of the judgment rendered by the
38 circuit court, together with interest from the date of judgment. On payment in full, the
39 State shall cause a release to be recorded in the land records.

1 (6) If the circuit court finds that there has been no default or if the full
2 amount of the court's judgment is paid to the State within 30 days after the court's
3 final order, any temporary lien then in effect shall be released immediately and the
4 State shall cause a release to be recorded in the land records.

5 (g) (1) All funds recovered as a result of the State's right of recovery shall
6 be deposited in the Annuity Bond Fund and applied to the debt service requirements
7 of the State.

8 (2) [The] **AT THE REQUEST OF THE DEPARTMENT, THE**
9 **RECIPIENT OF FUNDS DISBURSED FOR A PROJECT OR FACILITY, OR THE OWNER**
10 **OF A PROPERTY THAT RECEIVED FUNDS UNDER THIS SUBTITLE, THE** Board of
11 Public Works may [waive]:

12 **(I) WAIVE** the State's right of recovery if the Board determines
13 that there is good cause for releasing the transferor, transferee, or owner from this
14 obligation; **OR**

15 **(II) SUBORDINATE THE STATE'S RIGHT OF RECOVERY TO**
16 **THE LIEN OF A MORTGAGE OR DEED OF TRUST SECURING A LOAN MADE BY AN**
17 **INSTITUTIONAL LENDER TO THE RECIPIENT OF FUNDS DISBURSED FOR A**
18 **PROJECT OR FACILITY OR THE OWNER OF A PROPERTY THAT RECEIVED FUNDS**
19 **UNDER THIS SUBTITLE IF:**

20 **1. THE AMOUNT OF THE LOAN PLUS THE AMOUNT**
21 **SUBJECT TO THE STATE'S RIGHT OF RECOVERY DOES NOT EXCEED THE**
22 **CURRENT FAIR MARKET VALUE OF THE PROPERTY; AND**

23 **2. THE BOARD DETERMINES THAT THERE IS GOOD**
24 **CAUSE FOR THE SUBORDINATION.**

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 June 1, 2012.