

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 405

(Senators Conway and Frosh)

Education, Health, and Environmental Affairs

Environmental Matters

Natural Resources - Nonnative Oysters - Introduction

This emergency bill establishes prohibitions and conditions relating to the introduction of nonnative oysters into State waters. The bill prohibits a person from introducing a nonnative oyster into State waters unless the person has a permit issued by the Department of Natural Resources (DNR). DNR may only introduce a nonnative oyster into State waters or issue a permit for the introduction of a nonnative oyster under specified conditions. The bill establishes criminal and civil penalties for specified violations.

Fiscal Summary

State Effect: Potential significant increase in State expenditures to perform additional research on nonnative oysters; it is possible that at least a portion of the research could either be conducted by federal agencies or paid for with federal funds.

Local Effect: The civil/criminal penalty provisions of this bill are not expected to significantly affect local finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: DNR is prohibited from introducing a nonnative oyster into State waters or issuing a permit for the introduction by another person unless: (1) the recommendations set forth in a specified 2004 report by the National Research Council (NRC) have been met to the extent feasible for the State; (2) the specific research

recommendations set forth in a specified publication by the Scientific and Technical Advisory Committee (STAC) have been fully met; (3) a draft environmental impact statement has been completed; and (4) an independent oyster advisory panel has reviewed and approved specified data and assessments and identified any additional recommended research.

Before DNR may introduce a nonnative oyster into State waters or issue a permit to another person for an introduction, DNR must: (1) submit a report to the General Assembly demonstrating that the above requirements have been met; (2) conduct public hearings; (3) receive written public comments on its decision; and (4) issue and publish a final decision. Introduction may not occur until at least 60 days after issuance of a final decision.

In addition to any other penalty provided, a person who introduces a nonnative oyster into State waters without a permit issued by DNR is guilty of a misdemeanor and on conviction is subject to imprisonment for up to two years or a fine of up to \$25,000 or both, with costs imposed in the discretion of the court. Such a person is also liable for a civil penalty of up to \$25,000 and, in the discretion of the court, the actual costs associated with remediation of the introduction.

Current Law: Chapter 508 of 2002 required DNR to authorize the study of the Suminoe oyster and other nonnative species by both private and public research institutions with expertise in the field. The study was to be consistent with the findings of the National Academy of Science (NAS) review of the Suminoe oyster.

Background: To both revive the oyster industry and replace the bay's natural filters, the State is studying the introduction of the nonnative Suminoe or Asian oyster, among other options. The Suminoe oyster has shown disease resistance and grows quickly. A small population of a strain of the Suminoe oyster has been maintained in aquacultures off the coast of Oregon for about 30 years. Despite the existing data, however, the Suminoe's survival near Oregon does not answer questions about its possible survival in, and possible impact on, the bay.

A number of organizations have studied or begun to study the possible effects of the introduction of the Suminoe oyster into east coast waterways. NRC (part of NAS), in a 2004 report on the Suminoe oyster, conceded that the oyster seems more disease-resistant than the native oyster but stressed that the results were preliminary. NRC suggested that longer-term studies of the nonnative oyster, up to five years, were needed before a determination could be made as to the likely effects of a nonnative oyster program. STAC (part of the Chesapeake Bay Program), in a 2004 report resulting from a workshop

of research scientists, outlined priority research needs to be clarified prior to a final decision on the introduction of nonnative oysters to the bay.

Maryland, Virginia, and the U.S. Army Corps of Engineers are voluntarily preparing an environmental impact statement (EIS) on the possible introduction of the Suminoe oyster to the Chesapeake Bay. The EIS will consider eight different options regarding oysters ranging from continuing the current native oyster restoration program to introducing and propagating a nonnative oyster species while ending native oyster restoration efforts. DNR anticipates the EIS process to be completed in 2005. The information in the EIS will lead to a decision on whether or not to introduce the nonnative oyster. DNR advises that the research will be reviewed by an independent oyster advisory panel.

State Fiscal Effect: Because the extent to which DNR would introduce a nonnative oyster into State waters in the absence of the bill is unknown, any fiscal impact associated with the bill would be speculative. If DNR should choose not to move forward with the introduction of a nonnative species after completing the EIS process, the bill would have no impact. However, to the extent DNR should choose to move forward with the introduction, under this bill, additional research would need to be conducted before DNR could do so.

DNR advises that the research called for in the bill would take several years and cost an estimated \$8 million. Legislative Services notes that several federal agencies estimate the costs to conduct the essential and high-priority biological research at \$2 million per year over the next few years, but they note that the research could take longer and costs could be higher. Additional costs would be incurred to perform the recommended economic and socio-cultural research. While total costs could be significant, at this point it is unclear who would bear those costs. Legislative Services advises that, while DNR has funded some of the research on nonnative oysters to date, so has the federal government. Accordingly, while the bill could result in a significant increase in State expenditures, it is possible that federal agencies could perform some of this research and/or provide federal funds to the State to conduct some of the research.

DNR already issues aquaculture permits, so the bill's permitting provisions would not materially affect State operations or finances. It is assumed that DNR could handle the bill's other requirements with existing budgeted resources. The civil/criminal penalty provisions of this bill are not expected to significantly affect State finances.

Small Business Effect: This bill could delay, and possibly prevent, the introduction of a nonnative species to State waters. Because the economic impact of such an introduction is unknown, however, the bill's impact on small businesses cannot be reliably estimated at this time.

According to DNR, restoring a self-sustaining oyster population is expected to have a significant economic benefit. Maryland's oyster harvest in 2003-2004 was 26,500 bushels, a significant drop from the previous record low of 53,000 bushels in 2002-2003 and the average of 2.5 million bushels per year during the 1970s. The dockside value of Maryland's oyster harvest was in excess of \$40 million in 1975 (2001 dollars), and was approximately \$625,000 in 2003-2004. Although the 2004-2005 catch to date has already exceeded last year's total catch, according to DNR, the bay's oyster industry is economically extinct; oysters are now being imported from the Gulf and West coasts to meet local market demand, and the Chesapeake is no longer considered a viable source for oysters for the national market.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Natural Resources, Chesapeake Bay Foundation, U.S. Environmental Protection Agency, National Oceanic and Atmospheric Administration, U.S. Fish and Wildlife Service, Department of Legislative Services

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