

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 271 (The President, *et al.*) (By Request - Administration)
 Education, Health, and Environmental Affairs Environmental Matters

Aquaculture - Shellfish - Leasing

This Administration bill makes several changes to the State’s shellfish leasing program. In general, it amends and repeals provisions of the submerged land lease program; establishes Aquaculture Enterprise Zones; authorizes shellfish aquaculture, submerged land, and demonstration leasing programs in specified waters; requires the Department of Natural Resources (DNR) and Maryland Department of the Environment (MDE) to adopt regulations; expresses intent that the State become a leading producer of aquaculture-grown shellfish for commercial purposes; and makes provisions severable.

The bill takes effect June 1, 2009.

Fiscal Summary

State Effect: To the extent individuals participate in the new leasing program, the bill may result in a significant increase in DNR Fisheries Research and Development Fund special fund revenues and expenditures, a moderate increase in MDE Wetland and Waterways Program Fund revenues, and an increase in Maryland Department of Agriculture (MDA) special fund revenues. DNR expenditures increase by \$130,600 in FY 2010 to staff the leasing program; future year estimates reflect annualization and inflation.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
SF Revenue	-	-	-	-	-
SF Expenditure	\$130,600	\$130,300	\$136,400	\$142,900	\$149,600
Net Effect	(\$130,600)	(\$130,300)	(\$136,400)	(\$142,900)	(\$149,600)

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

Local Effect: The bill does not directly affect local operations or finances.

Small Business Effect: The Administration has determined that this bill has a meaningful impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: The bill's major changes are described below.

Existing Shellfish Propagation and Leasing Programs

The bill makes several changes to existing shellfish laws, including repealing provisions:

- governing the closure and reopening of natural oyster bars;
- limiting oyster bar seed areas;
- requiring specified seed oyster planting on natural oyster bars;
- limiting State sales of seed oysters;
- restricting the size of State aquaculture seed areas;
- requiring specified Fisheries Research and Development Fund funds to be used for the public oyster fishery; and
- placing prohibitions on aquaculture seed areas and/or leasing within Dorchester, Kent, Queen Anne's, Somerset, Talbot and Worcester counties, and specified areas of Charles County.

The bill also narrows the definition of "natural oyster bars" to exclude specified oyster bar areas, authorizes DNR to sell or remove diseased seed oysters, and repeals a requirement that limits DNR sales of seed oysters to State residents.

The bill repeals existing submerged land leasing laws and establishes revised requirements for leases existing upon enactment of the bill in uncodified language.

The bill repeals provisions authorizing leases for public high schools, 4-H Clubs, colleges, and nonprofit organizations. Instead, the bill authorizes DNR to issue demonstration leases, for up to five acres of submerged land, to educational and nonprofit entities for education, conservation, or ecological purposes. The bill specifies the application process, where a demonstration lease may be located, and the terms of the demonstration lease. Shellfish in demonstration lease areas may not be harvested for commercial or consumption purposes.

Aquaculture Enterprise Zones

The bill requires DNR to create Aquaculture Enterprise Zones (AEZs) in the Chesapeake Bay by regulation. “AEZs” are areas of the bay approved for the leasing of submerged land or the water column. DNR is required to consult with MDE and the Wetlands Administrator of the Board of Public Works (BPW) on the establishment of AEZs. The bill specifies areas where an AEZ may not be located as well as the regulatory process required to establish a zone. DNR is required to consider how an AEZ may conflict with other uses and hold public hearings in specified areas before adopting regulations. The bill exempts aquaculture activities in AEZs from MDE wetlands licenses and temporarily sets aside 25% of each AEZ for specified tidal fish licensees.

Aquaculture and Submerged Land Leases

DNR is authorized to issue aquaculture leases only in AEZs. Aquaculture leases are leases of any submerged land and occasionally the water column, in an AEZ, for cultivating oysters or other shellfish for commercial purposes. Individuals with aquaculture leases are limited to engaging in specified shellfish cultivation practices.

DNR is also authorized to issue submerged land leases in the Atlantic Coastal Bays and in non-AEZ areas of the Chesapeake Bay. A “submerged land lease” is any land lying beneath the waters of the State leased by the State to any person for cultivating oysters and other shellfish for commercial purposes. These leases are subject to water quality requirements approved by MDE. The bill specifies areas where a submerged land lease may not be established as well as allowable shellfish cultivation practices. In the Atlantic Coastal Bays, DNR is authorized to establish submerged land areas that are preapproved, not approved, or may be approved for leasing, with consideration being given to potential conflicts with other uses. Setbacks from the Assateague Island National Seashore are required.

Aquaculture and submerged land leases are limited to a term of 20 years, for any size area as long as it is actively used (excluding demonstration leases), and at an annual rental rate and with an aquaculture development surcharge determined by DNR. DNR must transfer aquaculture development surcharge funds to MDA for development of, and training and grants for, shellfish aquaculture. The bill establishes duties and prohibitions for leaseholders and authorizes DNR to waive specified requirements. Furthermore, leaseholders are required to submit an annual report to DNR on the use of their lease by January 1 or risk termination of the lease.

Lease Application Process

Individuals must submit specified application information and a nonrefundable application fee to DNR for aquaculture and submerged land leases. For specified leases including the water column, individuals must submit a tidal wetland license application and fee to MDE.

The process for issuing aquaculture and submerged land leases varies. DNR may issue aquaculture leases in areas established as AEZs in regulation. DNR may issue submerged land leases in non-AEZ areas of the Chesapeake Bay, in areas preapproved for leasing in the Atlantic Coastal Bays, or in other areas of the Atlantic Coastal Bays after specified application and review by DNR. Before granting a lease, DNR must implement a specified public notification, review, and appeal process. DNR may terminate a lease after following a specified procedure.

For the aquaculture and submerged land leasing programs, DNR is required to maintain a record of all leases and credit all funds to the Fisheries Research and Development Fund.

General Shellfish Program Provisions and Requirements

DNR is required to establish a public shellfish fishery area in the Chesapeake Bay by regulation in consultation with the Oyster Advisory Commission (OAC) and in accordance with specified data.

The bill prohibits the use of hydraulic escalator dredge to harvest shellfish in the Atlantic Coastal Bays.

The bill clarifies that specified shellfish from nonstate waters may not be planted in State waters without DNR approval. Also, MDE is authorized to prohibit shellfish catching, planting, and harvesting in the shellfish public fishery area, AEZs, specified Atlantic Coastal Bays, and in aquaculture, submerged land, and demonstration lease areas. All leaseholders must comply with regulations adopted by the Department of Health and Mental Hygiene (DHMH) and MDE in accordance with the National Shellfish Sanitation Program. The current criminal penalty provisions for illegal harvest from a lease area are amended to (1) require DNR to seek assistance from the Attorney General (or the local State's Attorney as under current law) with violations; and (2) clarify that violations are dependent upon lease areas being properly marked and whether violators knew or should have known their actions were unlawful. Also, the bill clarifies the authorization to suspend all existing licenses to tidal fish licenses rather than just licenses to take or catch oysters.

DNR, in consultation with MDE and BPW, is required to adopt regulations implementing the bill and establishing an initial AEZ by October 1, 2009. MDE, in consultation with BPW, is required to adopt regulations streamlining the processing of water column leases by October 1, 2009. DNR is required to monitor submerged aquatic vegetation (SAV) in the Atlantic Coastal Bays, determine a baseline SAV level, and establish a SAV Protection Zone.

Current Law:

Natural Oyster Bars

DNR may close no more than 30% of the State's natural oyster bars annually. On natural oyster bars, DNR may prohibit or restrict the catching of oysters and take any restorative measure. Prior to closing or reopening a natural oyster bar, DNR must take specified actions.

Leasing of Submerged Lands

DNR is authorized to lease tracts or parcels of land beneath the waters of the State to residents for protecting, sowing, bedding, or cultivating oysters or other shellfish, except under specified conditions and in specified areas. Any person wishing to lease submerged lands of the State must apply to DNR and pay a nonrefundable application fee of \$300 and a \$5 recording fee. Upon receiving the application and fee, DNR is required to conduct a resource survey of the proposed lease site. Depending on the results of the survey, DNR must advertise the application. Upon completion of a specified petition/appeal process, DNR issues leases.

The term of leases is limited to 20 years and active use is required. DNR is authorized to determine lease rental rates. Under current regulations, the rental rate for submerged lands leased from the State for oyster cultivation is \$3.50 per acre per year, payable in advance. All fees are credited to DNR's Fisheries Research and Development Fund.

Current law restricts what submerged land is available for leasing, including:

- land generally within jurisdictional boundaries of Dorchester, Kent, Queen Anne's, Somerset, and Talbot counties and portions of Charles County;
- beneath creeks, coves, bays, or inlets less than 300 feet wide at its mouth at mean low tide;
- any natural oyster or clam bar and specified areas near them; and
- clam beds identified on specified charts.

Individuals with leases are required to mark the leased area. Lessees have exclusive ownership of and title to oysters in the lease area, but the leases are subject to specified restrictions.

Special Leases

4-H clubs and specified educational institutions in the State may lease or acquire submerged land, generally for education and research purposes only. A nonstock, nonprofit corporation may have two leases, each not more than 30 acres of submerged land, in Anne Arundel County for the purpose of oyster restoration, subject to specified conditions. Such a nonprofit corporation may harvest oysters in accordance with a harvesting program approved by DNR only if any revenues from harvesting are maintained by the nonprofit corporation exclusively for educational or ecological purposes and for the maintenance and preservation of leased lands.

Penalties

DNR is required to request local State's Attorney's to bring criminal action against individuals who willfully and without authority catch, destroy, or transfer oysters located on leased oyster bottoms. DNR may suspend fishing licenses for up to one year for a first conviction and two years for subsequent violations.

Background: At its peak, the bay's oyster population acted as a natural filter, removing 133 million pounds of nitrogen annually. Affected by diseases, habitat loss, and harvest pressures, the oyster stock has significantly declined. Today, the oyster population has dropped to less than 1% of its original population, and remaining oysters remove only about 250,000 pounds of nitrogen from the bay each year.

An Environmental Impact Statement (EIS) is being prepared by Maryland, Virginia, and the U.S. Army Corps of Engineers evaluating the option of introducing a nonnative oyster as a means of establishing a self-sustaining oyster population, in addition to other alternative approaches to increasing oysters in the bay. In October 2008, a draft Programmatic Environmental Impact Statement for oyster restoration in the bay was released that proposed introducing the Asian oyster and continuing efforts to restore the native oyster. The final EIS is scheduled to be published in the Federal Register in April 2009, with the Record of Decision published approximately two months later.

OAC, formed pursuant to Chapters 113 and 114 of 2007, included in the findings of its 2007 interim report that the greatest opportunity for expanding the economic production of oysters in Maryland is through privatization and aquaculture. OAC, a group of 21 scientists, watermen, anglers, businessmen, economists, environmental advocates, and elected officials, is charged with advising DNR on matters relating to oysters and

strategies for rebuilding and managing the oyster population in Maryland's portion of the Chesapeake Bay.

The Maryland Department of Agriculture, in consultation with DNR, MDE, DHMH, the Maryland Aquaculture Coordinating Council, and the University of Maryland, developed the *Maryland Shellfish Aquaculture Plan: Enhancing the Environment through Private Sector Investment* report in September of 2008. This report lists nine recommendations on how to develop a sustainable fisheries industry while creating opportunity for prospective shellfish growers to establish their businesses in Maryland waters. The bill implements several of the recommendations in the report.

State Fiscal Effect:

Department of Natural Resources

Special fund revenues to DNR's Fisheries Research and Development Fund may increase minimally in fiscal 2010 and significantly in subsequent years to the extent program participation increases. Currently, 703 submerged land leases cover approximately 6,705 acres, and six water column leases cover approximately 17 acres. DNR receives up to 15 submerged land applications annually. The bill may lead to an increase in leases starting in fiscal 2010, with significant increases in subsequent years; DNR estimates approximately 200 demonstration leases and 100 commercial lease applications annually for several years. Fisheries Research and Development Fund revenues decrease minimally due to repealing the \$5 recording fee for lease applications.

Assuming DNR applies current rates, any additional leases generate \$300 per application and \$3.50 per acre in annual rental fees. To the extent DNR increases the application and rental rates, special fund revenues increase. However, any increase in special fund revenues from application fees is offset by an increase in special fund expenditures associated with processing and surveying responsibilities. Processing responsibilities include advertising fees, resource surveys, and half-day field surveys to determine lease area size. Also, DNR may assume more law enforcement responsibility as lease acreage increases. Legislative Services advises that current application fee revenues do not fully cover such costs.

To implement the new leasing program, DNR's administrative expenditures increase by an estimated \$130,629 in fiscal 2010, which accounts for a 90-day start-up delay. This estimate reflects the cost of hiring two natural resources administrators to assist with program implementation. It includes salaries, fringe benefits, one-time start-up costs, a vehicle, fuel, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	\$99,105
Vehicle and Fuel	18,713
Equipment and Operating Expenses	<u>12,811</u>
DNR FY 2010 Administrative Expenditures	\$130,629

Future year DNR administrative expenditures reflect full salaries with 4.4% annual increases, 3% employee turnover, and 1% annual increases in ongoing operating expenses. Lease application and rental fees may generate adequate revenue to support these expenditures in future years.

Maryland Department of the Environment

For specified leases including the water column, individuals must submit a tidal wetland license application and fee to MDE. The application fees range from \$500 for a minor modification to \$7,500 per acre for a major project. All tidal wetland license applicants are required to pay a fee, with exceptions being made for specified government entities and specified agricultural, forestry, and wetland and waterway projects. All fee revenue goes into MDE's Wetland and Waterways Program Fund. Special fund revenues to MDE's Wetland and Waterways Program Fund increase to the extent applications for leases including the water column increase. MDE advises that only two or three applications are submitted annually for water column leases, and the bill is not expected to result in a significant increase in applications.

Maryland Department of Agriculture

The bill establishes an aquaculture development surcharge on specified leases that must be used by MDA for the development of, and training and grants for, shellfish aquaculture. The surcharge amount is not specified. To the extent individuals participate in DNR's aquaculture leasing program, MDA special fund revenues increase.

University of Maryland Center for Environmental Science (UMCES)

The bill authorizes the State to sell unlimited amounts of oyster seed or spat. Under current law, the State may sell no more than 50% of seed oysters in excess of 1 million bushels produced annually in seed areas. To the extent UMCES Horn Point Laboratory uses this authority to increase sales of oyster spat, special fund revenues increase.

Small Business Effect: To the extent small fishing businesses take advantage of the new lease opportunities, the bill has a significant impact. The benefits will depend on how successful the businesses are at growing, harvesting, and selling aquaculture-grown shellfish.

Additional Information

Prior Introductions: None.

Cross File: HB 312 (The Speaker, *et al.*) (By Request - Administration) - Environmental Matters.

Information Source(s): Somerset County; Department of Natural Resources; Maryland Department of the Environment; Maryland Department of Agriculture, *Maryland Shellfish Aquaculture Plan: Enhancing the Environment through Private Sector Investment*; Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2009
mcp/ljm Revised - Senate Third Reader - April 7, 2009

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Natural Resources – Aquaculture – Leasing

BILL NUMBER: Senate Bill 271

PREPARED BY: Department of Natural Resources
(Dept./Agency)

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 (please explain below in Part B.)

PART B. ECONOMIC IMPACT ANALYSIS

This proposed bill could positively promote the creation of small businesses by encouraging shellfish aquaculture leasing for commercial purposes in the Chesapeake Bay and in the Atlantic Coastal Bays.