

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 847 (The President)(By Request - Administration) and Senator
Klausmeier

Education, Health, and Environmental Affairs

Environmental Matters

Natural Resources - Aquaculture

This Administration bill transfers specified aquaculture, seafood, and related marketing functions from the Maryland Department of Agriculture (MDA), the Maryland Department of the Environment (MDE), and the Board of Public Works (BPW) to the Department of Natural Resources (DNR) and establishes DNR as the lead State agency for (1) coordinating and streamlining the process of applying for a State aquaculture permit; (2) promoting, coordinating, and marketing aquaculture and aquaculture products; and (3) enforcing laws, regulations, and rules. The bill requires the State's Aquaculture Coordinator to be employed by DNR and alters the membership of the Aquaculture Review Board, which is chaired by the Aquaculture Coordinator. DNR is authorized to issue water column leases in State waters that MDE classifies in a specified manner.

The bill takes effect July 1, 2011.

Fiscal Summary

State Effect: The bill is not expected to materially affect the State's *overall* expenditures. However, beginning in FY 2012, MDE and MDA general/special/reimbursable fund expenditures decrease and DNR general/special fund expenditures increase correspondingly due to the transfer of aquaculture and seafood marketing functions and related staff. Revenues are not materially affected.

Local Effect: The bill does not materially 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 disagrees with this assessment as discussed below. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: A “SAV Protection Zone” is an area of submerged aquatic vegetation as mapped in aerial surveys by the Virginia Institute of Marine Sciences in one or more of the five years preceding the designation of an Aquaculture Enterprise Zone (AEZ) or an application for a fish or fisheries lease. Under current law, a “SAV Protection Zone” must be an area of submerged aquatic vegetation *with a density greater than 10%* as mapped in aerial surveys in one or more of the *three* years preceding the designation of an AEZ or an application for a specified lease. A “Yates Bar” is any submerged oyster bar, reef, rock, or area represented as an oyster bar on the charts of the Oyster Survey of 1906 to 1912, not including any amendments.

The bill alters DNR’s authority to issue a submerged land lease in State waters by making it contingent upon MDE classifying the waters as (1) approved, conditionally approved, or restricted for harvest; or (2) prohibited, as long as the lease is used exclusively for the planting and gathering of seed for aquaculture and the leaseholder complies with specified requirements.

The bill specifies areas where water column leases may not be established and clarifies that individuals with water column leases may cultivate shellfish (1) on or under the surface of the water in a floating structure, subject to U.S. Army Corps of Engineers approval; or (2) in any other manner DNR authorizes. The bill requires specified water column lease applications to be completed and submitted to DNR instead of MDE and gives DNR, rather than BPW, responsibility for issuing water column leases. If an application for a submerged land or water column lease meets specified requirements, DNR must notify interested parties.

All wetlands licenses, water column leases, aquaculture leases, certifications, or other aquaculture permits issued by BPW that are in effect as of June 30, 2011, must remain in effect under DNR until completed, withdrawn, canceled, modified, or otherwise changed.

An aquaculture or water column lease, or a license, permit, or certification by BPW or MDE to use the water column for an aquaculture related project, is valid for the duration of the term for which it was issued and may be renewed in accordance with DNR renewal provisions. An individual who entered into a valid lease agreement, or was originally licensed, authorized, permitted, or certified under a provision that is repealed by the bill due to being obsolete or inconsistent, meets the requirements to the same extent as if that provision had not been repealed or to the extent required by DNR. All applications for water column leases and wetlands licenses for aquaculture projects pending before MDE or BPW when the bill takes effect are transferred to DNR for processing in accordance with its terms and procedures.

Current Law: An individual may not engage in aquaculture unless permitted by DNR. Certain aquaculture activities may also trigger the requirement to obtain a wetlands permit from MDE or a wetlands license from BPW. Permits granted for work in privately owned wetlands are issued by MDE; licenses granted for work in State-owned wetlands are issued by BPW.

Aquaculture Review Board

Chapter 405 of 2005 established the Aquaculture Coordinating Council within MDA. Among other things, the council must formulate and make proposals for advancing Maryland aquaculture; conduct applied studies of projects and products that will expand the State's aquaculture industry; and, on a regular basis, review State regulations impacting aquaculture and make recommendations to the Aquaculture Review Board. The Aquaculture Review Board is charged with, among other things, coordinating the development of statewide aquaculture policy, tracking aquaculture applications, and ensuring full and meaningful communication during the aquaculture application process. The Aquaculture Review Board is chaired by the Aquaculture Coordinator, who is MDA's representative on the board.

Seafood and Related Marketing Functions within MDA

The Seafood Marketing Program within MDA promotes the increased sale and consumption of Maryland seafood and aquaculture products through education, promotion, and advertising. The Aquaculture Development Program encourages the development of the aquaculture industry through seminars, industry support, and trade shows.

Aquaculture and Related Leases

In an effort to encourage the expansion of the aquaculture industry in the State, Chapters 173 and 174 of 2009 require DNR to establish 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 authorized to issue only aquaculture leases in AEZs. Aquaculture leases are leases of any submerged land and the water column, in an AEZ, for cultivating oysters or other shellfish for commercial purposes. Aquaculture leaseholders are limited to engaging in specified shellfish cultivation practices. A leaseholder in an AEZ is not required to obtain a tidal wetlands license from BPW.

DNR is also authorized to issue submerged land leases in the Atlantic Coastal Bays and in nonAEZ 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. 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.

Under current law, BPW issues water column leases. For specified leases involving the water column, individuals must submit a tidal wetlands license application to MDE. There is no fee.

Background: Since 1994, the Chesapeake Bay's oyster population has languished at 1% of historic levels; oyster bars have decreased 80% and the number of harvesters has dwindled from 2,000 in the mid-1980s to just over 500 annually since 2002. To help reverse this trend, DNR unveiled a new management and restoration plan for oysters and the State's oyster industry in December 2009. The plan increases the State's network of oyster sanctuaries from 9% to 24% of the bay's remaining quality oyster bars, establishes oyster aquaculture leasing opportunities, and maintains 76% of the bay's quality oyster habitat for a public oyster fishery. The plan was adjusted in response to public feedback, and implementing regulations were finalized in September 2010.

As part of its oyster restoration and management efforts, DNR is focusing on promoting oyster aquaculture opportunities and strengthening enforcement of commercial fisheries laws.

The bill gives DNR broader responsibility for issuing and coordinating aquaculture leases. DNR advises that consolidating State aquaculture activities within DNR will result in a more efficient process for granting leases and better service for aquaculture businesses. DNR further advises that consolidating these functions within DNR is consistent with the agency's responsibility for administering the Governor's Oyster Restoration and Aquaculture Development Plan.

State Fiscal Effect: The bill results in the transfer of MDE and MDA personnel and funding associated with aquaculture to DNR. DNR will incorporate activities and requirements related to the bill into its current operations and utilize the personnel and funding transferred to the department. The total number of positions and amount of funding from MDE and MDA that will transfer to DNR as a result of the bill is unknown at this time. MDA advises that it is likely that the Aquaculture Coordinator position, two seafood marketing positions, and \$382,000 in general, special, and reimbursable funds will transfer to DNR in fiscal 2012. MDE advises that it is likely that one position and an unspecified amount of general funds will transfer to DNR in fiscal 2012. DNR advises that, while funding and positions will be transferred among State agencies, the bill is not expected to materially affect the State's *overall* expenditures or the number of positions dedicated to aquaculture activities.

Small Business Effect: Streamlining State oversight and regulation of aquaculture may result in efficiencies that facilitate watermen's efforts to work with the State to comply with regulatory requirements and implement aquaculture activities. However, Legislative Services advises that the bill is not expected to have a significant impact on small fishing business revenues or expenditures.

Additional Information

Prior Introductions: None.

Cross File: HB 1053 (The Speaker)(By Request - Administration) - Environmental Matters.

Information Source(s): Maryland Department of Agriculture, Board of Public Works, Department of Natural Resources, Maryland Department of the Environment, Department of Legislative Services

Fiscal Note History: First Reader - March 3, 2011
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: **Natural Resources – Aquaculture**

BILL NUMBER: SB 847

PREPARED BY: Rich Norling 410-260-8124

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

The bill will have a meaningful beneficial economic impact on Maryland small businesses. Currently, MDA coordinates permitting for all aquaculture leases, DNR issues bottom leases for aquaculture and MDE issues water column leases. Under the bill, all coordinating and permitting functions will reside in DNR, creating one-stop shopping for aquaculture applicants. The result will be increased efficiency in the permitting process and improved service for the new and growing small businesses engaged in oyster aquaculture.