

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 306

(Delegate O'Donnell, *et al.*)

Environmental Matters

Education, Health, and Environmental Affairs

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Natural Resources - Aquaculture - Shellfish Nursery Permits

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This emergency bill requires individuals to obtain a Department of Natural Resources' (DNR) shellfish nursery permit prior to engaging in the commercial rearing of shellfish seed in areas that are *not* leased in accordance with aquaculture provisions of the Natural Resources Article. DNR is authorized to adopt implementing regulations.

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Fiscal Summary

**State Effect:** DNR special fund revenues and expenditures decrease in FY 2013 and future years to the extent shellfish nursery permits are sought rather than water column leases. Special fund revenues and expenditures increase in FY 2013 and future years to the extent land-based shellfish permits are sought and the bill prompts the creation of shellfish seed nurseries. *Overall*, the bill is expected to have a minimal impact on special fund revenues and expenditures, as discussed below.

**Local Effect:** The bill is not expected to materially affect local operations or finances.

**Small Business Effect:** Meaningful.

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Analysis

**Bill Summary:** For shellfish nurseries located on land, DNR may issue a permit only to the owner or legal tenant of the property or a person with the property owner's permission. For a shellfish nursery located in State waters outside a DNR aquaculture lease area, DNR may issue a permit only (1) to the owner of a wharf or other structure constructed on or about the water and approved by the U.S. Army Corps of Engineers, or to a person with the owner's permission, and (2) for the cultivation of shellfish seed

within 20 feet of the wharf or other structure, in an area of water that does not exceed 200 square feet.

A shellfish nursery operation located in State waters and with a permit is not required to obtain a water column or submerged land lease. Shellfish nursery products are not subject to National Shellfish Sanitation Program (NSSP) water quality classifications and restrictions.

To obtain a permit, a person must (1) complete and submit an application to DNR on a DNR form and (2) pay a nonrefundable application fee that DNR establishes in consultation with the Aquaculture Coordinating Council. The application fee may not exceed the cost of processing the permit. To protect public health, safety, and welfare, DNR may deny a permit application for a reasonable cause or include conditions in a permit.

Shellfish nursery permits must have a five-year term; however, DNR is authorized to revoke or suspend a permit at any time for noncompliance. Permit holders must allow DNR to inspect their permitted shellfish nursery operations.

**Current Law:** Chapter 411 of 2011 (SB 847) transferred specified aquaculture, seafood, and related marketing functions from the Maryland Department of Agriculture, the Maryland Department of the Environment (MDE), and the Board of Public Works to DNR and established 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.

In an effort to encourage the expansion of the aquaculture industry in the State, Chapters 173 and 174 of 2009 (SB 271/HB 312) require DNR to establish Aquaculture Enterprise Zones (AEZs) in the Chesapeake Bay by regulation. AEZs are areas of the bay preapproved for the leasing of submerged land or the water column. Aquaculture leases are leases of any submerged land and the water column in an AEZ for cultivating oysters or other shellfish for commercial purposes. A person must submit an application and pay a nonrefundable application fee to DNR for an aquaculture or submerged land lease in an AEZ. A person may also obtain a submerged land or water column lease located outside of an AEZ if MDE determines that the water quality of the area to be leased is adequate. DNR may issue a permit authorizing a person to plant and gather shellfish seed in areas where MDE prohibits leasing if the leaseholder complies with NSSP requirements.

Chapter 717 of 2012 (HB 1306) expanded DNR's aquaculture leasing authority to include charging an application fee, annual rent, and aquaculture development surcharge for water column leases.

DNR must advertise submerged land or water column lease applications on the DNR website as well as once a week for two weeks in a newspaper published in the county or counties where the proposed lease is located.

**Background:** Since 1994, the Chesapeake Bay's oyster population has languished at 1% of historic levels, suitable oyster habitat has decreased 80%, and the number of harvesters has dwindled. 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 increased the State's network of oyster sanctuaries from 9% to 24% of the bay's remaining quality oyster bars, established oyster aquaculture leasing opportunities and related financial assistance programs, and maintained 76% of the bay's remaining quality oyster habitat for a public oyster fishery.

#### *Shellfish Seed Nursery Operations*

Rapid growth in the aquaculture industry is prompting interest in and demand for shellfish seed nurseries. In accordance with current law, nurseries proposed in State waters must secure a water column lease. In addition, DNR requires nurseries proposed on land to secure a free shellfish nursery permit. Under the bill, shellfish nurseries located on land or in specified State waters are required to submit a shellfish nursery permit application and pay an application fee. DNR advises that five water column lease applications for shellfish nurseries are currently being processed and an additional 15 businesses have expressed interest in establishing shellfish nurseries in the State.

#### *National Shellfish Sanitation Program*

The U.S. Food and Drug Administration's NSSP is a cooperative federal/state effort to ensure the sanitary control of shellfish produced and sold for human consumption. The purpose of NSSP is to promote and improve the sanitation of shellfish moving in interstate commerce through federal/state cooperation and uniformity of state shellfish programs. DNR advises that in accordance with provisions in the NSSP model ordinance, shellfish seed production can take place in all water quality classifications.

#### *Aquaculture Coordinating Council*

The 17-member Aquaculture Coordinating Council is responsible for guiding the responsible development of the aquaculture industry. Among other duties, the council must (1) formulate and make proposals for advancing Maryland aquaculture and

(2) support the aquaculture industry in its efforts to implement innovative procedures and to comply with associated regulations.

**State Revenues:** The bill authorizes DNR to establish a shellfish nursery permit application fee and requires that the application fee not exceed the cost of processing the permit. DNR advises that the shellfish nursery application fee would likely be under \$100, significantly less than the \$300 water column lease application fee that such businesses are required to pay under current law.

DNR special fund revenues decrease in fiscal 2013 and future years to the extent shellfish nursery permit applications are submitted rather than water column lease applications. However, revenues cannot be reliably estimated at this time, as it will depend on the shellfish nursery application fee amounts ultimately charged. *For illustrative purposes*, assuming a \$75 shellfish nursery application fee is agreed upon and 15 shellfish nursery applications are submitted annually (rather than water column lease applications), DNR special fund revenues from application fees total \$1,125 rather than \$4,500 annually, or a decrease of \$3,375 annually.

However, DNR special fund revenues increase in fiscal 2013 and future years to the extent that (1) the bill prompts the creation of commercial shellfish seed nursery operations and (2) land-based nurseries must pay an application fee.

While DNR is authorized to levy an aquaculture development surcharge, it does not currently do so. DNR advises that, if the surcharge is activated in the future, shellfish nurseries with a permit would not be required to pay the surcharge.

**State Expenditures:** Among other things, the water column lease application process typically takes at least six months to complete and requires publishing public notice in newspapers at a cost of up to \$500 per project. DNR advises that a shellfish nursery permit would take only approximately 60 days to complete and would not require publishing public notice.

To the extent shellfish nursery permit applications are submitted rather than water column lease applications, DNR special fund expenditures for advertising decrease. *For illustrative purposes*, assuming advertising costs \$500 per water column lease application and 15 businesses seek shellfish nursery permits rather than water column leases, DNR special fund expenditures decrease by \$7,500 annually.

To the extent individuals submit shellfish nursery permit applications in fiscal 2013 and future years that would not have submitted applications to DNR otherwise, DNR special fund expenditures increase to process the applications.

**Small Business Effect:** The bill has a meaningful impact on small fishing businesses to the extent they are interested in the commercial rearing of shellfish seed and submit a shellfish nursery permit rather than a water column lease application. Small shellfish nursery businesses benefit to the extent the shellfish seed permit process is less expensive and time consuming than the current process for water column leases.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 464 (Senator Klausmeier) - Education, Health, and Environmental Affairs.

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

**Fiscal Note History:** First Reader - February 11, 2013  
mlm/lgc Revised - House Third Reader - March 18, 2013

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