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Aruna Miller, Lt. Governor
Josh Kurtz, Secretary
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February 21, 2024

BILL NUMBER: House Bill 725 – First Reader

SHORT TITLE: Oysters, Striped Bass, and Crabs – Commercial Authorizations – Suspensions and Revocations

DEPARTMENT’S POSITION: OPPOSE

EXPLANATION OF DEPARTMENT’S POSITION

Currently, the Department revokes licenses and authorizations under the definition of revocation as described in COMAR 08.02.13.01. “Revocation” means the act of the department permanently rescinding a fishing license, authorization, or entitlement and thereby permanently prohibiting a person from engaging in a fishing activity or activities under any circumstances. The department defines “Suspension” as the act of the department temporarily rescinding a fishing license, authorization, or entitlement and thereby temporarily prohibiting a person from engaging in a fishing activity or activities under any circumstances.

Under its current authority, when a citation is issued for one of the enumerated offenses the Department assesses the circumstances and makes a decision whether to move forward with pursuing a revocation action against the individual or not. If the Department initiates a revocation action against the individual, the Department must prove its case in front of the Office of Administrative Hearings. If the Department is successful, the individual is permanently revoked from the commercial oyster fishery, subject to appeals to Circuit Court and beyond. The outcome of the criminal case in District Court has no bearing on the case in front of the Office of Administrative Hearings because they have different evidentiary standards, one being a criminal matter (District Court) and one being a civil administrative matter (Office of Administrative Hearings). If the Department chooses to not initiate a revocation action against the individual, and the individual is convicted in District Court (subject to appeals, etc.), the Department may elect to initiate an administrative action in accordance with COMAR 08.02.13.02 and .03, which were promulgated under the authority of Natural Resources Article, §4-701, Annotated Code of Maryland. If the individual receives any disposition other than guilty or nolo contendere, the Department is not able to take any administrative action against the individual.

The current authority requires the Department to hold a hearing on a revocation action under Natural Resources Article, §4-1210, Annotated Code of Maryland within 90 days of the date of the offense. In practice that time period may be waived by the accused in order to better prepare their defense. Under the proposed legislation, the Department would first hold a hearing to suspend a license or authorization. That hearing would have to be within 90 days of the offense, just as the current revocation hearing. There are many times that the criminal case is heard before the administrative case. Under current authority, the criminal case has no bearing on the administrative case. Under the proposed legislation, depending on the outcome of that criminal case – which is held under a different evidentiary

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standard than the administrative case – the Department would either schedule a second hearing (to convert the suspension to a revocation if the disposition is guilty and the initial suspension hearing has been completed), attempt to modify the agency action from a suspension to a revocation (if the disposition is guilty or nolo contendere and the suspension hearing has not been held), or withdraw the action (if the disposition is an acquittal, dismissal, not guilty, or entry of nolle prosequi). It is possible, based on timing and other circumstances, that the Department would not be able to modify the agency action from a suspension to a revocation. In those cases, the Department would first have to hold the hearing to suspend the individual, then hold a second hearing to revoke the individual.

The proposed legislation requires the revocation hearing to occur within 90 days of the disposition. The Department waits 30 days from the date of disposition to ensure that the appeal rights of the defendant have run out without appeal before sending a Notice of Agency Action (if the disposition is appealed, the Department waits for those appeals to be exhausted). Upon mailing a Notice of Agency Action, the Administrative Procedures Act requires the defendant to be given 30 days to request a hearing on the matter. That means in an absolute best case scenario, the Department would be attempting to schedule a hearing with the Office of Administrative Hearings on less than 30 days' notice. In practice, it would be incredibly challenging - possibly impossible - for the Department to continue to revoke individuals under this section.

There would also be additional operational impacts related to the entry of data and restrictions in the agency's licensing system and other databases, as well as the Interstate Wildlife Violator Compact. This would be handled by existing staff.

Lastly, the Department anticipates the potential for future fiscal impacts based on the clause which would allow the Department to reinstate individuals who had previously been revoked under Natural Resources Article, 4-1210, Annotated Code of Maryland. If the Department were to choose to create a program by which revoked individuals could be reinstated, or if the Department were required to create such a program based on a court order, there would be the potential for significant operational and fiscal impacts. The details of those impacts would depend heavily on the structure of the program, but if revocation were no longer permanent and a license could be reinstated, the Department would no longer be able to reissue to the waitlist the license of an individual who had been revoked.

BACKGROUND INFORMATION

There have been a number of recent bills similar to this one. Senate Bill 637 in 2021. House Bill 1310 in 2022, House Bill 856 in 2020, and House Bill 1153 in 2019 are a few of the past bills related to removing the revocation under Natural Resources Article, Section 4-1210.

BILL EXPLANATION

HB 725 removes the Department's ability to revoke an individual for certain offenses on issuance of a citation, requires the Department to go through a two-step process to achieve a revocation dependent on certain outcomes in District Court, requires the Department to end suspensions based on certain outcomes in court, and authorizes the Department to reinstate individuals whose authorizations had previously been revoked.