

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 1227

(Delegates O'Donnell and McIntosh)

Environmental Matters

Education, Health, and Environmental
Affairs

Calvert and St. Mary's Counties - Shellfish - Harvesting by Wharf Owners

This bill allows the owner of any wharf or other specified structure in Calvert and St. Mary's counties to have exclusive use of the area within 15 feet of the wharf or structure for the purpose of growing and harvesting oysters in trays, baskets, or containers that are attached to a private pier or wharf by lines or ropes that are the property of the pier or wharf owner. A person who grows and harvests shellfish in accordance with the bill may not infringe on the riparian rights of an adjacent property owner or obstruct access to a leased oyster bottom or natural oyster bar.

Fiscal Summary

State Effect: Assuming the bill's authority is used to grow and harvest oysters for personal consumption, the bill would not materially affect State operations or finances. However, if the bill results in a substantial increase in commercial aquaculture, general fund expenditures could increase by \$295,700 in FY 2005, escalating to \$694,100 by FY 2009. Revenues would not be materially affected.

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

Small Business Effect: Potential meaningful. The extent to which the bill's authority would be used for personal consumption versus aquaculture is unclear. The bill could, however, result in an increase in commercial aquaculture in affected counties.

Analysis

Current Law/Background: The owner of any wharf or other structure constructed on or about the water and approved by the U.S. Army Corps of Engineers has exclusive use, for the purpose of growing and harvesting shellfish, of the area below the owner's wharf or structure. In Calvert, Howard, St. Mary's, and Talbot counties only, exclusive use is also extended to the area within five feet of the owner's wharf or structure, for oysters grown in trays, baskets, or containers that are attached to a private pier or wharf by lines or ropes that are the property of the owner of the pier or wharf. Commercial harvest is not allowed under piers or wharfs.

If shellfish are to be harvested for other than personal use, under the National Shellfish Sanitation Program (NSSP), which is overseen by the U.S. Food and Drug Administration (FDA), waters must be sampled for bacterial indicators. The Maryland Department of the Environment (MDE), the Department of Natural Resources (DNR), and the Department of Health and Mental Hygiene (DHMH) work closely together to ensure compliance with NSSP. If MDE determines by appropriate investigation that any area of water devoted to the production or storage of shellfish is polluted so that shellfish produced or stored in the area are a hazard to public health, it must restrict the area for the catching or storing of shellfish. After establishing a restriction, MDE must test the water in the restricted area or inspect the source of pollution at least twice monthly. A person may not process, sell, or keep for sale any shellfish if it is from an unknown or uncertified source. DHMH is authorized to detain and take any necessary action on any shipment of shellfish if it is from such a source. DNR maintains the patrol component of Maryland's Shellfish Program.

A person must obtain a permit from DNR to engage in aquaculture activities. "Aquaculture" means the commercial rearing of fish or aquatic plants for sale, trade, barter, or shipment. There is no permit fee. Except for a tidal fish licensee dealing in the licensee's own catch, a person must obtain a seafood dealer's license from DNR to buy, process, pack, resell, market, or otherwise deal in fish caught in the tidal waters of the State. License fees (\$150 each) are paid into the Fisheries Research and Development Fund. In general, a person conducting any activity that disturbs wetlands must obtain a wetlands permit or license. Permits granted for work in privately-owned wetlands are issued by MDE; licenses granted for work in State-owned wetlands are issued by the Board of Public Works. A fee of up to \$500 may be assessed. DHMH licenses shellfish shippers as "food establishments;" license fees (\$150 each) are paid into the general fund.

State Expenditures: Assuming the bill's authority is used to grow and harvest oysters for personal consumption only, the bill would not materially affect State operations or finances.

According to DNR and MDE, however, a 15-foot exclusive use zone is large enough to support commercial aquaculture. If the bill results in an increase in commercial aquaculture, general fund expenditures could increase by an estimated \$295,706 in fiscal

2005 for MDE and DHMH to ensure compliance with NSSP. Future year estimates reflect an increase in the number of sites used for commercial aquaculture.

Maryland Department of the Environment

MDE advises that if it were aware of sites being used to grow oysters for commercial use, it would test and certify the sites as safe for commercial harvest. When MDE tests a site, it either approves, restricts, or conditionally approves the site. If shellfish are harvested in an area not yet certified or deemed unsafe, the shellfish are relayed to unrestricted waters and kept there for about two weeks.

MDE's general fund expenditures could increase by an estimated \$216,732 in fiscal 2005, which accounts for the bill's October 1, 2004 effective date. This estimate reflects the cost of hiring two environmental specialists (one team) to monitor commercial sites. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, including site surveys and laboratory analysis. The information and assumptions used in calculating the estimate are stated below:

- current staff can absorb the sampling requirements of about 10 additional sites;
- approximately 1,000 to 1,300 sites are suitable for aquaculture (250 to 300 in Calvert County and 750 to 1,000 in St. Mary's County);
- several wharf owners engage in commercial shellfish aquaculture;
- 250 sites apply for aquaculture permits in the first year;
- 20% of sites (50) will be considered commercial sites and will, therefore, need monitoring;
- each commercial site requires one shoreline survey and 24 sampling events annually;
- one monitoring team consists of two people;
- each team requires a boat, boat motor, trailer, tow vehicle, water quality sampling meter, gloves, jars, and other supplies; and
- each team can handle up to 100 sites.

Salaries and Fringe Benefits	\$64,362
Vehicle/Boat Equipment and Operations	66,360
Laboratory Analysis	45,000
Site Surveys	22,500
Other Equipment/Operating Expenses	<u>18,510</u>
Total FY 2005 MDE Expenditures	\$216,732

Future year expenditures could total \$228,595 in fiscal 2006, \$447,505 in fiscal 2007, \$472,365 in fiscal 2008, and \$571,375 in fiscal 2009. Those estimates reflect: (1) an increase in the number of commercial aquaculture sites (to 75 in fiscal 2006, 100 in fiscal 2007, 150 in fiscal 2008, and 200 in fiscal 2009); (2) the need for an additional team (two environmental specialists) and associated equipment in fiscal 2007; (3) increased operating expenses to reflect the increase in the number of sites; and (4) full salaries with 4.6% annual increases and 3% employee turnover.

Department of Health and Mental Hygiene

The relay to unrestricted waters must be done with direct State oversight. If a relay is via land, which would likely be the case, DHMH performs this function. Accordingly, costs could increase for DHMH to provide oversight of any additional land relays conducted. General fund expenditures for DHMH could increase by an estimated \$78,974 in fiscal 2005, which accounts for the bill's October 1, 2004 effective date. This estimate reflects the cost of hiring one sanitarian to oversee the additional relays. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, including costs to hire contractual sanitarians on a temporary basis to witness shellfish being harvested, seal the shellfish, and transport the harvest to a relay area. The information and assumptions used in calculating the estimate are stated below:

- all 50 commercial sites in fiscal 2005 will be in restricted waters;
- the season to relay shellfish is approximately four months long;
- each site is harvested twice, requiring 100 inspections in fiscal 2005;
- each inspection takes one day;
- the daily cost of a contractual sanitarian is \$95.64 (not including fringes); and
- one laptop computer is needed.

Salaries and Fringe Benefits	\$41,664
Automobile Purchase/Operations	19,798
Contractual Sanitarians	9,900
Equipment/Operating Expenses	<u>7,612</u>
Total FY 2005 DHMH Expenditures	\$78,974

Future year expenditures could total \$79,163 in fiscal 2006, \$88,843 in fiscal 2007, \$105,003 in fiscal 2008, and \$122,704 in fiscal 2009. Those estimates reflect: (1) a full salary with 4.6% annual increases and 3% employee turnover; (2) increasing costs for contractual sanitarians, reflecting an increase in the number of sites, as described above; (3) 1% annual increases in ongoing operating expenses, as appropriate; and (4) replacement equipment (laptops).

Department of Natural Resources

DNR could handle the bill's changes with existing resources.

Additional Comments: The bill is unclear as to whether those with "exclusive use" would still be required to meet all permitting, regulatory, and NSSP requirements. It is assumed that all such requirements would apply.

Additional Information

Prior Introductions: HB 735 of 2003, as introduced, was similar to this bill. The bill was amended in the Senate to limit exclusive use to five feet and enrolled as Chapter 174.

Cross File: None.

Information Source(s): Department of Natural Resources, Maryland Department of the Environment, Department of Health and Mental Hygiene, Calvert County, St. Mary's County, Department of Legislative Services

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Analysis by: Lesley Cook

Direct Inquiries to:
(410) 946-5510
(301) 970-5510