

UNOFFICIAL COPY OF SENATE BILL 405  
EMERGENCY BILL

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5lr1034  
CF 5lr2117

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By: **Senators Conway and Frosh**

Introduced and read first time: February 3, 2005

Assigned to: Education, Health, and Environmental Affairs

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A BILL ENTITLED

1 AN ACT concerning

2 **Natural Resources - Nonnative Oysters - Introduction**

3 FOR the purpose of prohibiting a person from introducing a nonnative oyster into  
4 State waters without a permit issued by the Department of Natural Resources;  
5 restricting the Department from introducing a nonnative oyster into State  
6 waters or from issuing a permit to another person for an introduction unless  
7 certain conditions are met; requiring the Department to satisfy certain  
8 conditions before introducing a nonnative oyster into State waters or before  
9 issuing a permit to another person for an introduction; providing for certain  
10 criminal and civil penalties for certain persons who violate this Act; making this  
11 Act an emergency measure; and generally relating to the introduction of a  
12 nonnative oyster into State waters.

13 BY renumbering

14 Article - Natural Resources  
15 Section 4-1008  
16 to be Section 4-1008.1  
17 Annotated Code of Maryland  
18 (2000 Replacement Volume and 2004 Supplement)

19 BY adding to

20 Article - Natural Resources  
21 Section 4-1008  
22 Annotated Code of Maryland  
23 (2000 Replacement Volume and 2004 Supplement)

24 **Preamble**

25 WHEREAS, In this region and across the entire continent, the Chesapeake Bay  
26 is considered a unique and invaluable natural, historic, cultural, and recreational  
27 treasure; and

28 WHEREAS, The Maryland economy and that of the entire region depend on a  
29 balanced and healthy Bay ecosystem; and

1 WHEREAS, The continued ecological and economic productivity of the Bay  
2 depends upon sound, science-based management decisions; and

3 WHEREAS, Various government resource management agencies are now  
4 considering the introduction of a nonnative oyster species, *Crassostrea ariakensis*,  
5 into the waters of the Chesapeake Bay, and recent indications are that this  
6 introduction may occur in Maryland as soon as the current calendar year; and

7 WHEREAS, Several independent fishery experts who speak with great  
8 authority in the scientific community, most notably the National Research Council of  
9 the National Academies of Science and the Scientific and Technical Advisory  
10 Committee of the federal Chesapeake Bay Program, have concluded that, at this time,  
11 there is insufficient scientific evidence upon which to base a decision to introduce this  
12 nonnative oyster species or even to expect that such an introduction would yield a  
13 positive net benefit; and

14 WHEREAS, These experts advise that additional research is absolutely  
15 necessary in order to ascertain a basic working knowledge of this species and its likely  
16 ecological impact on the Bay and the entire East Coast; and

17 WHEREAS, A most significant factor about which little data exists is the likely  
18 impact of this species on the already vulnerable native oyster population; and

19 WHEREAS, Among the most elementary characteristics of this species about  
20 which little is now certain are: reproductive capabilities; larval behaviors that would  
21 indicate potential dispersal patterns and susceptibility to predation; the ability to  
22 build reefs or deal with limitations such as lack of habitat, competition for space, poor  
23 water quality, and high sedimentation rates; and susceptibility to disease; and

24 WHEREAS, It is apparent that introduction of a nonnative oyster would be  
25 premature without the additional research advocated by the National Research  
26 Council and the Scientific and Technical Advisory Committee; and

27 WHEREAS, Such an introduction carries major risk of far-reaching and  
28 irreversible ecological and economic harm; and

29 WHEREAS, Because of the critical nature and potentially grave impact of a  
30 decision to introduce a nonnative oyster into the Bay ecosystem, this decision is best  
31 made in the context of widespread public notice and participation by the citizens of  
32 Maryland; now, therefore,

33 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
34 MARYLAND, That Section(s) 4-1008 of Article - Natural Resources of the Annotated  
35 Code of Maryland be renumbered to be Section(s) 4-1008.1.

36 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
37 read as follows:

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**Article - Natural Resources**

2 4-1008.

3 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
4 INDICATED.

5 (2) "INTRODUCTION" MEANS THE INTENTIONAL OR ACCIDENTAL  
6 PLACEMENT IN STATE WATERS OF A NONNATIVE OYSTER FOR ANY PURPOSE OTHER  
7 THAN SCIENTIFIC RESEARCH THAT IS CONDUCTED IN ACCORDANCE WITH  
8 STANDARDS DEVELOPED BY THE CHESAPEAKE BAY PROGRAM UNDER THE U.S.  
9 ENVIRONMENTAL PROTECTION AGENCY.

10 (3) "NONNATIVE" MEANS A SPECIES OF OYSTER OTHER THAN THE  
11 CRASSOSTREA VIRGINICA.

12 (B) EXCEPT FOR THE DEPARTMENT, A PERSON MAY NOT INTRODUCE A  
13 NONNATIVE OYSTER INTO STATE WATERS UNLESS THE PERSON HAS A PERMIT  
14 ISSUED BY THE DEPARTMENT.

15 (C) (1) THE DEPARTMENT MAY NOT INTRODUCE A NONNATIVE OYSTER  
16 INTO STATE WATERS OR ISSUE A PERMIT TO ANOTHER PERSON FOR AN  
17 INTRODUCTION UNLESS:

18 (I) THE RECOMMENDATIONS SET FORTH IN THE 2004 REPORT,  
19 "NONNATIVE OYSTERS IN THE CHESAPEAKE BAY", PRODUCED BY THE COMMITTEE  
20 ON NONNATIVE OYSTERS IN THE CHESAPEAKE BAY, OCEAN STUDIES BOARD,  
21 DIVISION ON EARTH AND LIFE STUDIES OF THE NATIONAL RESEARCH COUNCIL,  
22 HAVE BEEN SATISFIED TO THE EXTENT FEASIBLE FOR THE STATE OF MARYLAND;  
23 AND

24 (II) THE SPECIFIC RESEARCH PRIORITIES SET FORTH IN  
25 "IDENTIFYING AND PRIORITIZING RESEARCH REQUIRED TO EVALUATE ECOLOGICAL  
26 RISKS AND BENEFITS OF INTRODUCING DIPLOID CRASSOTREA ARIAKENSIS TO  
27 RESTORE OYSTERS TO THE CHESAPEAKE BAY" (STAC PUBLICATION 04-002), HAVE  
28 BEEN FULLY SATISFIED.

29 (2) BEFORE THE DEPARTMENT MAY INTRODUCE A NONNATIVE OYSTER  
30 INTO STATE WATERS OR ISSUE A PERMIT TO ANOTHER PERSON FOR AN  
31 INTRODUCTION, THE DEPARTMENT SHALL:

32 (I) SUBJECT TO § 2-1246 OF THE STATE GOVERNMENT ARTICLE,  
33 SUBMIT A REPORT TO THE GENERAL ASSEMBLY DEMONSTRATING THAT THE  
34 DEPARTMENT HAS MET THE REQUIREMENTS OF PARAGRAPH (1) OF THIS  
35 SUBSECTION;

36 (II) CONDUCT PUBLIC HEARINGS REGARDING THE DEPARTMENT'S  
37 DECISION TO INTRODUCE OR TO ISSUE A PERMIT TO INTRODUCE A NONNATIVE  
38 OYSTER INTO STATE WATERS;

1 (III) FOR AT LEAST 30 DAYS FOLLOWING THE LAST PUBLIC HEARING  
2 CONDUCTED UNDER ITEM (II) OF THIS PARAGRAPH, RECEIVE WRITTEN PUBLIC  
3 COMMENTS ON THE DEPARTMENT'S DECISION TO INTRODUCE OR TO ISSUE A PERMIT  
4 TO INTRODUCE; AND

5 (IV) 1. ISSUE AND PUBLISH A FINAL DECISION, INCLUDING A  
6 FULL SCIENTIFIC RATIONALE FOR THE FINAL DECISION, A SUMMARY OF ORAL AND  
7 WRITTEN COMMENTS RECEIVED UNDER ITEMS (II) AND (III) OF THIS PARAGRAPH,  
8 AND THE DEPARTMENT'S RESPONSE TO THESE COMMENTS, IN THE MARYLAND  
9 REGISTER; AND

10 2. PUBLISH THE FINAL DECISION, INCLUDING ALL  
11 ACCOMPANYING DOCUMENTATION UNDER ITEM 1 OF THIS ITEM, ON THE  
12 DEPARTMENT'S WEBSITE.

13 (3) INTRODUCTION OF A NONNATIVE OYSTER MAY NOT OCCUR UNTIL  
14 AT LEAST 60 DAYS AFTER ISSUANCE OF A FINAL DECISION UNDER PARAGRAPH (2)(IV)  
15 OF THIS SUBSECTION.

16 (D) IN ADDITION TO ANY OTHER PENALTY PROVIDED UNDER LAW, A PERSON  
17 WHO VIOLATES SUBSECTION (B) OF THIS SECTION IS:

18 (1) GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO  
19 IMPRISONMENT NOT EXCEEDING 2 YEARS OR A FINE NOT EXCEEDING \$25,000 OR  
20 BOTH, WITH COSTS IMPOSED IN THE DISCRETION OF THE COURT; AND

21 (2) LIABLE FOR THE IMPOSITION OF A CIVIL PENALTY UP TO \$25,000  
22 AND, IN THE DISCRETION OF THE COURT, THE ACTUAL COSTS ASSOCIATED WITH  
23 REMEDIATION OF THE INTRODUCTION.

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency  
25 measure, is necessary for the immediate preservation of the public health or safety,  
26 has been passed by a ye and nay vote supported by three-fifths of all the members  
27 elected to each of the two Houses of the General Assembly, and shall take effect from  
28 the date it is enacted.