

UNOFFICIAL COPY OF SENATE BILL 405
EMERGENCY BILL

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5lr1034
CF 5lr2117

By: **Senators Conway and Frosh**

Introduced and read first time: February 3, 2005

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 15, 2005

CHAPTER_____

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)

Preamble

1
2 WHEREAS, In this region and across the entire continent, the Chesapeake Bay
3 is considered a unique and invaluable natural, historic, cultural, and recreational
4 treasure; and

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

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

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

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

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

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

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

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

33 WHEREAS, Such an introduction carries ~~major risk of far-reaching and~~
34 ~~irreversible ecological and economic harm~~ a risk of irreversible ecological and
35 economic impacts; and

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

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

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

6 **Article - Natural Resources**

7 4-1008.

8 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
 9 INDICATED.

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

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

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

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

23 (I) THE RECOMMENDATIONS SET FORTH IN THE 2004 REPORT,
 24 "NONNATIVE OYSTERS IN THE CHESAPEAKE BAY", PRODUCED BY THE COMMITTEE
 25 ON NONNATIVE OYSTERS IN THE CHESAPEAKE BAY, OCEAN STUDIES BOARD,
 26 DIVISION ON EARTH AND LIFE STUDIES OF THE NATIONAL RESEARCH COUNCIL,
 27 HAVE BEEN ~~SATISFIED~~ MET TO THE EXTENT FEASIBLE FOR THE STATE OF
 28 MARYLAND; ~~AND~~

29 (II) THE SPECIFIC RESEARCH ~~PRIORITIES~~ RECOMMENDATIONS SET
 30 FORTH IN "IDENTIFYING AND PRIORITIZING RESEARCH REQUIRED TO EVALUATE
 31 ECOLOGICAL RISKS AND BENEFITS OF INTRODUCING DIPLOID CRASSOTREA
 32 ARIAKENSIS TO RESTORE OYSTERS TO THE CHESAPEAKE BAY" (STAC PUBLICATION
 33 04-002), HAVE BEEN FULLY ~~SATISFIED~~ MET; AND

34 (III) A DRAFT ENVIRONMENTAL IMPACT STATEMENT CONDUCTED
 35 IN ACCORDANCE WITH THE RECOMMENDATIONS SPECIFIED IN SUBPARAGRAPHS (I)
 36 AND (II) OF THIS PARAGRAPH HAS BEEN COMPLETED; AND

37 (IV) AN INDEPENDENT OYSTER ADVISORY PANEL OF SCIENTIFIC
 38 EXPERTS APPOINTED BY THE SECRETARY HAS:

1 1. REVIEWED AND APPROVED THE SUFFICIENCY OF THE
2 DATA AND ASSESSMENTS USED TO IDENTIFY THE ECOLOGICAL AND ECONOMIC
3 RISKS AND BENEFITS OF INTRODUCING A NONNATIVE OYSTER INTO STATE WATERS
4 AND THE DEGREE OF RISK ASSOCIATED WITH IMPLEMENTING EACH OYSTER
5 RESTORATION ALTERNATIVE IDENTIFIED IN THE DRAFT ENVIRONMENTAL IMPACT
6 STATEMENT PREPARED IN ACCORDANCE WITH ITEM (III) OF THIS PARAGRAPH; AND

7 2. IDENTIFIED ANY ADDITIONAL RESEARCH THAT THE
8 PANEL RECOMMENDS TO REDUCE THE LEVEL OF RISK AND UNCERTAINTY.

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

12 (I) SUBJECT TO § 2-1246 OF THE STATE GOVERNMENT ARTICLE,
13 SUBMIT A REPORT TO THE GENERAL ASSEMBLY DEMONSTRATING THAT THE
14 DEPARTMENT HAS MET THE REQUIREMENTS OF PARAGRAPH (1) OF THIS
15 SUBSECTION;

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

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

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

28 2. PUBLISH THE FINAL DECISION, INCLUDING ALL
29 ACCOMPANYING DOCUMENTATION UNDER ITEM 1 OF THIS ITEM, ON THE
30 DEPARTMENT'S WEBSITE.

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

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

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

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

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