

SENATE BILL 148

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71r0174
CF HB 133

By: **The President (By Request – Administration) and Senators Frosh and Miller**

Introduced and read first time: January 25, 2007

Rules suspended

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Natural Resources – Chesapeake Bay – Oyster Restoration**

3 FOR the purpose of authorizing the Department of Natural Resources to lease land
4 under certain waters of the Chesapeake Bay for oyster restoration; requiring
5 the Department to adopt regulations and condition the leases to require a
6 holder of certain oyster bottom to plant a certain minimum amount of seed
7 oyster on certain surfaces within a certain time frame; authorizing the
8 Department to extend the time frame for planting oyster seed on certain leased
9 oyster bottom under certain circumstances; authorizing a holder of certain
10 leased oyster bottom to catch oysters for certain purposes; establishing that a
11 holder of certain leased oyster bottom may only restore a certain species of
12 oyster; establishing that certain penalties apply for certain unlawful taking of
13 oysters; establishing that certain penalties apply for unlawfully taking oysters
14 in certain areas; altering a certain element of the criminal offense of unlawfully
15 taking oysters; altering the range of time for a tidal fish license suspension that
16 applies to a person who unlawfully takes oysters; establishing a certain
17 additional penalty for a violation of certain time restrictions on catching or
18 landing oysters; requiring the Department to impose certain license suspensions
19 in a certain manner; requiring the Department to adopt certain regulations;
20 establishing the Task Force on Oyster Restoration in the Chesapeake Bay;
21 providing for the membership of the Task Force; requiring the Secretary of
22 Natural Resources to appoint the chair of the Task Force; requiring the Task
23 Force to examine certain issues related to oysters in the Chesapeake Bay and to
24 formulate a certain action plan; providing for reimbursement for the expenses of

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 a member of the Task Force; providing that certain provisions of the Maryland
 2 Public Ethics Law do not apply under certain circumstances to certain regulated
 3 lobbyists who serve on the Task Force; providing for the staff of the Task Force;
 4 requiring the Task Force to report to the Governor and the General Assembly
 5 by a certain date; providing for the termination of certain provisions of this Act;
 6 making certain technical corrections; making certain stylistic changes; altering
 7 a certain definition; and generally relating to oyster restoration in the
 8 Chesapeake Bay.

9 BY repealing and reenacting, with amendments,

10 Article – Natural Resources

11 Section 4–11A–05(a)(1), (b), and (f)(1) and (2), 4–11A–07, 4–11A–11,
 12 4–11A–12(a), 4–11A–13(a), (b), and (c)(1), and 4–1201(f)

13 Annotated Code of Maryland

14 (2005 Replacement Volume and 2006 Supplement)

15 BY adding to

16 Article – Natural Resources

17 Section 4–1201(g)

18 Annotated Code of Maryland

19 (2005 Replacement Volume and 2006 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article – Natural Resources**

23 4–11A–05.

24 (a) (1) (I) The Department may lease, in the name of the State, tracts
 25 or parcels of land beneath the waters of the State to residents of the State for
 26 protecting, sowing, bedding, or cultivating oysters or other shellfish, subject to the
 27 provisions of this [section] SUBTITLE.

28 (II) **THE DEPARTMENT MAY LEASE, IN THE NAME OF THE**
 29 **STATE, TRACTS OR PARCELS OF LAND BENEATH THE WATERS OF THE**
 30 **CHESAPEAKE BAY AND ITS TRIBUTARIES TO RESIDENTS OF THE STATE FOR**
 31 **OYSTER RESTORATION, SUBJECT TO THE PROVISIONS OF THIS SUBTITLE.**

32 (III) These submerged lands when leased shall be known as
 33 leased oyster bottoms.

1 (b) **(1)** The Department may not lease any of the submerged areas of the
2 State within the jurisdictional boundaries of Dorchester, Kent, Queen Anne's,
3 Somerset and Talbot counties for oyster **RESTORATION OR** cultivation. The
4 Department also may not lease any of the submerged areas of the State in the
5 tidewater tributaries of Charles County, except the Patuxent River, for oyster
6 **RESTORATION OR** cultivation. This subsection does not affect any existing lease in
7 Somerset County made prior to and effective on June 1, 1952; any lease in Dorchester
8 County made prior to and effective on June 1, 1957; in Charles County made prior to
9 and effective on July 1, 1968 and in Kent, Queen Anne's and Talbot counties made
10 prior to July 1, 1973. This subsection also does not prevent any lessee from renewing,
11 assigning, devising by will or prohibit the descendants of any lessee, his heirs, or next
12 of kin, from inheriting rights by the operation of the laws of descent and distribution.
13 If an existing lease does not provide for renewal, the Department may grant renewal
14 when the lease terminates unless good cause to the contrary is shown. However, a
15 person may not lease more acreage than now authorized by law regardless of the
16 manner in which the lease or the rights under the lease are obtained.

17 **(2) THE DEPARTMENT MAY LEASE A SUBMERGED AREA OF THE**
18 **STATE FOR OYSTER RESTORATION ONLY:**

19 **(I) IN THE CHESAPEAKE BAY AND ITS TRIBUTARIES; AND**

20 **(II) IF, ON JUNE 1, 2007, THE AREA WAS OR HAD**
21 **PREVIOUSLY BEEN CONSIDERED A LEASED OYSTER BOTTOM.**

22 (f) **(1)** If a person applies to the Department for a lease of submerged land
23 for oyster **RESTORATION OR** cultivation, the Department shall determine if the
24 submerged land is a productive natural clam bar.

25 **(2)** Notwithstanding any other provision of this subtitle, if the
26 Department determines that the submerged land is a productive natural clam bar, the
27 Department may not lease the submerged land for purposes of oyster **RESTORATION**
28 **OR** cultivation.

29 4-11A-07.

30 (a) Except as provided in subsection (c)(2) of this section the term of leases
31 for submerged lands shall be 20 years at an annual rent the Department deems proper
32 and commensurate with the value of the leased land.

1 (b) If the Department ascertains that any leased area is affected by
2 environmental factors which destroy or seriously impede the culture and growth of
3 oysters and threaten the potential of the area for continued oyster production, it may
4 reduce or abate the annual rent by an amount and for a period the Department deems
5 equitable and reasonable in view of the degree of damage.

6 (c) (1) In this subsection, "utilize" [includes] **INCLUDES:**

7 (I) **FOR CULTIVATING OYSTERS OR CLAMS**, the planting or
8 harvesting of not less than 25 bushels of oysters or 25 bags of clams per lease during 1
9 year of each 3-year period; **AND**

10 (II) **FOR RESTORING OYSTERS, THE PLANTING OF NOT LESS**
11 **THAN 250,000 CULTCHED OYSTERS ON SUITABLE GROUND OR SUBSTRATE IN AN**
12 **AREA THAT IS ECOLOGICALLY SUITABLE FOR OYSTER GROWTH.**

13 (2) If any part of the rent required by a lease remains unpaid for more
14 than 60 days after it becomes due, the Department may declare the lease null and void
15 in accordance with subsection (e) of this section and the land shall revert to the State
16 and may be leased again. The Department may cancel any lease, either in whole or in
17 part, and may diminish or cancel the annual rental to an extent commensurate with
18 the area remaining under lease on the written request of the lessee.

19 (3) (I) The Department shall adopt regulations and condition each
20 lease to require a leaseholder to actively utilize the leased area [within] **WITHIN:**

21 1. **FOR OYSTER OR CLAM CULTIVATION**, any 3-year
22 period commencing July 1, 1990, or the effective date of a lease after July 1, 1990; **OR**

23 2. **FOR OYSTER RESTORATION, 1 YEAR AFTER THE**
24 **EFFECTIVE DATE OF THE LEASE.**

25 (II) The Department may allow a longer period than 3 years
26 [upon] **FOR THE CULTIVATION OR 1 YEAR FOR THE RESTORATION OF THE**
27 **LEASED AREA ON** a showing that natural conditions, including unavailability of
28 oyster shell or seed, prevented utilization.

29 (4) If a leaseholder fails to actively utilize leased bottom in accordance
30 with regulations promulgated under [paragraph (2)] **PARAGRAPH (3)** of this
31 subsection, the leasehold shall revert to the State and may be leased again. A

1 leaseholder shall maintain records documenting activities which show that the lease is
2 being used for shellfish production as required by the Department.

3 (d) A lease may not be invalidated in any way by facts determined in any
4 resurvey under § 4-1102 of this title unless the lessee forfeits [his] **THE LESSEE'S**
5 lease voluntarily, fails to pay rental or other fees, or fails to actively utilize the lease
6 areas [within a period of 3 years] **UNDER SUBSECTION (C)(3) OF THIS SECTION.**

7 (e) (1) The provisions of Title 8 of the Real Property Article do not apply
8 to leases under this subtitle.

9 (2) [Upon] **ON** a determination under subsection (c) of this section, the
10 Department shall notify a lessee of the lessee's opportunity to contest the
11 Department's action in a hearing under Title 10, Subtitle 2 of the State Government
12 Article.

13 4-11A-11.

14 (a) The lessee of any leased oyster bottom shall have exclusive ownership of
15 and title to all the oysters planted by [him] **THE LESSEE** or existing on the leasehold.
16 Lessees shall have the rights to use their lease subject to the following conditions:

17 (1) Land leased under this subtitle shall be used only for the purpose
18 of planting and cultivating oysters, **OR RESTORING OYSTERS;**

19 (2) Persons may fish on all leased oyster bottoms, if they do not
20 remove or destroy oysters on the areas; and

21 (3) A person may not redeem or purchase any leased oyster bottom.

22 (b) (1) **[A] IF A LEASED OYSTER BOTTOM IS USED FOR OYSTER**
23 **CULTIVATION, THE** lessee may catch oysters at any time from [his] **THE** leased
24 [oyster bottom] **AREA** for private use, planting or cultivating, or for sale for planting
25 by other lessees.

26 (2) **IF A LEASED OYSTER BOTTOM IS USED FOR OYSTER**
27 **RESTORATION, THE LESSEE MAY CATCH OYSTERS AT ANY TIME FROM THE**
28 **LEASED AREA AS NECESSARY TO FACILITATE OYSTER RESTORATION.**

29 (c) (1) In Wicomico and Somerset counties, any State resident holding a
30 current tonging license may catch oysters on any leased oyster bottom **USED FOR**

1 **CULTIVATION** if the State resident first obtains the written permission of the lessee of
2 the leased oyster bottom.

3 (2) A lessee or a bona fide representative of a lessee who has written
4 permission from the lessee is not required to have a tonging license in the Manokin
5 River.

6 (d) The season for catching oysters from leased oyster bottoms of the State
7 for sale shall be between sunrise and sunset of any day, except Sunday, throughout
8 the year, if the leased oyster bottoms are marked as prescribed in this subtitle.

9 4-11A-12.

10 (a) A lessee may plant, cultivate, sow, or protect oysters, **OR RESTORE**
11 **OYSTERS**, only of the species known as *Crassostrea virginica* in the waters of the
12 State.

13 4-11A-13.

14 (a) A lessee may cultivate or remove oysters planted on [his] **THE LESSEE'S**
15 leased oyster bottom in any manner [he] **THE LESSEE** deems proper, if [he] **THE**
16 **LESSEE** complies with the provisions of this subtitle relating to dredging and tonging
17 when transplanting oysters or catching them for commercial purposes.

18 (b) Each lessee shall keep accurate records concerning the seeding and
19 planting of cultch and oysters on, and the harvesting, and selling of oysters from [his]
20 **THE LESSEE'S** leased oyster bottom. Each lessee shall report this information to the
21 Department on forms the Department prescribes.

22 (c) (1) In that water area in Somerset County of Pocomoke Sound and
23 Pocomoke River, east of Tull's Point, and Marumsco natural oyster bar eastward to
24 William's Point, **IF THE OYSTER BOTTOM IS LEASED FOR CULTIVATION** a lessee
25 may authorize a nonresident to take oysters by tong as provided by this section.

26 4-1201.

27 (f) (1) In addition to any other applicable penalty set forth in this title
28 **AND NOTWITHSTANDING § 4-215(H) OF THIS TITLE**, a person who unlawfully takes
29 oysters from an [oyster sanctuary or oyster reserve that is] **OYSTER SANCTUARY,**
30 **OYSTER RESERVE, OR AREA CLOSED TO SHELLFISH HARVEST BY THE**
31 **DEPARTMENT OF THE ENVIRONMENT, WHEN** designated and marked by buoys or

1 other signage, [and who knew or should have known that taking the oysters from the
2 sanctuary or reserve was unlawful, shall be subject to a] **IS SUBJECT TO:**

3 (I) A fine not exceeding [\$3,000] **\$3,000**; and

4 (II) [immediate] **IMMEDIATE** suspension of the person's tidal
5 fish license for a period not less than [6 months but not more than 1 year] **180 DAYS**
6 **AND NOT EXCEEDING 365 DAYS.**

7 (2) **A SUSPENSION IMPOSED UNDER THIS SUBSECTION SHALL:**

8 (I) **APPLY ON CONSECUTIVE DAYS DURING THE OPEN**
9 **OYSTER SEASON FOR WHICH THE VIOLATOR IS LICENSED; AND**

10 (II) **CONTINUE INTO SUCCESSIVE OPEN SEASONS UNTIL THE**
11 **SUSPENSION IS FULLY SERVED.**

12 (G) (1) **IN ADDITION TO ANY OTHER APPLICABLE PENALTY SET**
13 **FORTH IN THIS TITLE AND NOTWITHSTANDING § 4-215(H) OF THIS TITLE, A**
14 **PERSON WHO VIOLATES THE TIME RESTRICTIONS ON CATCHING OR LANDING**
15 **OYSTERS UNDER § 4-1008 OF THIS TITLE IS SUBJECT TO IMMEDIATE**
16 **SUSPENSION OF THE PERSON'S TIDAL FISH LICENSE FOR A PERIOD NOT LESS**
17 **THAN 180 DAYS AND NOT EXCEEDING 365 DAYS.**

18 (2) **A SUSPENSION IMPOSED UNDER THIS SUBSECTION SHALL:**

19 (I) **APPLY ON CONSECUTIVE DAYS DURING THE OPEN**
20 **OYSTER SEASON FOR WHICH THE VIOLATOR IS LICENSED; AND**

21 (II) **CONTINUE INTO SUCCESSIVE OPEN SEASONS UNTIL THE**
22 **SUSPENSION IS FULLY SERVED.**

23 SECTION 2. AND BE IT FURTHER ENACTED, That:

24 (a) There is a Task Force on Oyster Restoration in the Chesapeake Bay.

25 (b) The Task Force shall consist of the following members:

26 (1) one member of the House of Delegates, appointed by the Speaker of
27 the House;

1 (2) one member of the Senate of Maryland, appointed by the President
2 of the Senate;

3 (3) the following eight members, appointed by the Secretary of
4 Natural Resources:

5 (i) a representative of the Department of Natural Resources
6 Fisheries Service;

7 (ii) a representative of the Department's Oyster Restoration and
8 Repletion Programs;

9 (iii) a representative of the Natural Resources Police;

10 (iv) a representative of the Maryland seafood industry;

11 (v) a representative with scientific expertise on oyster disease;

12 (vi) a representative with scientific expertise on oyster
13 restoration;

14 (vii) a representative of the Maryland recreational fishing or
15 fishing guide community; and

16 (viii) a representative of a nongovernmental organization engaged
17 in oyster restoration in the Chesapeake Bay and its tributaries; and

18 (4) a representative of the Maryland Watermen's Association,
19 appointed by the President of the Association.

20 (c) The Secretary of Natural Resources shall appoint the chair of the Task
21 Force.

22 (d) The Task Force shall:

23 (1) formulate an action plan regarding the necessary methodology,
24 time frame, and costs of:

25 (i) minimizing the impact of oyster disease in the Chesapeake
26 Bay and its tributaries;

27 (ii) maximizing the ecological benefits of natural oyster bars;

- 1 (iii) promoting oyster aquaculture in Maryland; and
- 2 (iv) increasing the native oyster population of the Chesapeake
3 Bay and its tributaries; and
- 4 (2) include in its deliberations:
- 5 (i) an examination of the practice of bar cleaning;
- 6 (ii) an examination of State oyster restoration and repletion
7 programs;
- 8 (iii) an examination of current management practices of natural
9 oyster bars, including:
- 10 1. the fairness and equitability of the quality and
11 percentage of these areas that are currently designated as sanctuaries; and
- 12 2. current restrictions on the leasing and use of these
13 areas for aquaculture;
- 14 (iv) the most recent findings related to the nonnative oyster
15 Environmental Impact Statement; and
- 16 (v) any other scientific, economic, or cultural information
17 relevant to oyster management practices.
- 18 (e) (1) A member of the Task Force:
- 19 (i) may not receive compensation; but
- 20 (ii) is entitled to reimbursement for expenses under the
21 Standard State Travel Regulations, as provided in the State budget.
- 22 (2) If a regulated lobbyist is appointed to serve as a member of the
23 Task Force, the lobbyist:
- 24 (i) is not subject to § 15–504(d) of the State Government Article
25 with respect to that service; and
- 26 (ii) is not subject to § 15–703(f)(3) of the State Government
27 Article as a result of that service.

1 (f) The Department of Natural Resources shall provide staff support for the
2 Task Force.

3 (g) The Task Force shall issue a final report of its findings and
4 recommendations to the Governor and, subject to § 2-1246 of the State Government
5 Article, to the General Assembly on or before December 1, 2007.

6 SECTION 3. AND BE IT FURTHER ENACTED, That, as required under §
7 4-11A-07(c) of the Natural Resources Article, as enacted by Section 1 of this Act, the
8 Department of Natural Resources shall adopt regulations on or before December 31,
9 2007, to establish standards for determining whether a leased oyster bottom is being
10 actively utilized for sound restoration purposes.

11 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 June 1, 2007. Sections 2 and 3 of this Act shall remain effective for a period of 9
13 months and, at the end of February 29, 2008, with no further action required by the
14 General Assembly, Sections 2 and 3 of this Act shall be abrogated and of no further
15 force and effect.