

Department of Legislative Services
 Maryland General Assembly
 2007 Session

FISCAL AND POLICY NOTE
Revised

House Bill 133 (The Speaker, *et al.*) (By Request – Administration)
 Environmental Matters Education, Health, and Environmental Affairs

Natural Resources - Chesapeake Bay - Oyster Restoration

This Administration bill authorizes specified nonstock, nonprofit corporations to lease up to 30 acres of submerged land in Anne Arundel County for the purpose of oyster restoration, subject to specified conditions. The bill requires the Department of Natural Resources (DNR) to annually publish maps and coordinates of areas closed to shellfish harvest and establishes provisions regarding the distribution of such documents. The bill also modifies existing penalty provisions governing oyster poaching and establishes an Oyster Advisory Commission within DNR. Finally, the bill requires that one-tenth of the oyster seed or spat produced for planting in accordance with the bill at the University of Maryland Center for Environmental Science (UMCES) Horn Point Laboratory be made available for purchase to any leaseholder of submerged land.

The bill generally takes effect June 1, 2007. The changes to existing penalty provisions take effect October 1, 2007.

Fiscal Summary

State Effect: General fund expenditure increase of \$82,800 in FY 2008 to facilitate the commission’s work and to publish required documents. Future year general fund expenditures are adjusted for inflation and reflect ongoing costs. Potential minimal increase in special fund revenues and expenditures beginning in FY 2007 from any additional leases.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
SF Revenue	-	-	-	-	-
GF Expenditure	0	82,800	57,900	58,000	58,200
SF Expenditure	-	-	-	-	-
Net Effect	\$0	(\$82,800)	(\$57,900)	(\$58,000)	(\$58,200)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The modified penalty provisions of this bill are not expected to significantly affect local finances or operations.

Small Business Effect: A small business impact statement was not provided by the Administration in time for inclusion in this fiscal note. A revised fiscal note will be issued when the Administration's assessment becomes available.

Analysis

Bill Summary:

Leasing of Submerged Lands for Oyster Restoration

A nonstock, nonprofit corporation that leases submerged land under the bill's provisions may renew a lease. The nonprofit corporation must adhere to a management plan approved by DNR and must plant a minimum of 250,000 oysters at a density of one million oysters per acre. The bill prohibits the transfer of any interest in submerged land acquired by lease.

Enhancing Enforcement

DNR must annually publish maps and coordinates of oyster sanctuaries, closed oyster harvest reserve areas, and areas closed to shellfish harvest by the Maryland Department of the Environment (MDE). DNR must provide the publications to each tidal fish licensee who pays the oyster surcharge required under current law. Before a person may catch oysters, the person must certify to DNR that the publications were received.

The bill expands the areas to which existing penalty provisions apply to include areas closed to shellfish harvest by MDE and leased oyster bottoms. The bill repeals the existing penalty regarding suspension of a tidal fish license, but requires DNR, by October 1, 2007, to adopt regulations relating to the suspension and revocation of licenses and authorizations issued under Title 4, Subtitle 7 of the Natural Resources Article. The bill establishes requirements for the regulations.

Oyster Advisory Commission

The commission is charged with:

- providing DNR with advice on matters related to oysters;

- reviewing the best possible science and recommending changes to the framework and strategies for rebuilding and managing the oyster population in the Chesapeake Bay;
- reviewing the latest findings relevant to the Environmental Impact Statement evaluating oyster restoration alternatives; and
- reviewing any other scientific, economic, or cultural information relevant to oysters in the Chesapeake Bay.

The commission is required to report, by December 31, 2007 and to the extent reasonably appropriate, to the Governor and the General Assembly on:

- strategies to minimize the impact of oyster disease, including the State repletion program and bar cleaning;
- the framework and effectiveness of the oyster sanctuary, harvest reserve, and repletion programs, and the overall management of natural oyster bars, after performing a specified cost-benefit analysis;
- strategies to maximize the ecological benefits of natural oyster bars; and
- strategies to improve enforcement of closed oyster areas.

Current Law:

Leasing of Submerged Lands

DNR is authorized to lease tracts or parcels of land beneath the waters of the State to residents for protecting, sowing, bedding, or cultivating oysters or other shellfish, except under specified conditions and in specified areas. Under current regulations, the rental rate for submerged lands leased from the State for oyster cultivation is \$3.50 per acre per year, payable in advance.

4-H clubs and specified educational institutions in the State may lease or acquire submerged land, generally for education and research purposes only. A nonstock, nonprofit corporation organized under the laws of the State exclusively for educational purposes may lease or acquire up to two leases consisting of at most 30 acres of submerged land in the Severn River for educational or ecological purposes. Such a nonprofit corporation may harvest oysters in accordance with a harvesting program approved by DNR only if any revenues from harvesting are maintained by the nonprofit corporation exclusively for educational or ecological purposes and for the maintenance and preservation of leased lands.

Any person wishing to lease submerged lands of the State must apply to DNR and pay a nonrefundable application fee of \$300 to be used by DNR to process applications and record leases. Upon receiving the application and fee, DNR is required to conduct a resource survey of the proposed lease site. Depending on the results of the survey, DNR must advertise the application.

Penalties for Poaching

According to the Natural Resources Fine Schedule of the District Court, effective October 1, 2006, the prepayable fine for the removal of oysters from oyster sanctuaries and reserves is \$450, and the prepayable fine for violating time restrictions is \$125. There is no prepayable fine for taking oysters from polluted waters. If a prepayable fine is not available or the individual chooses to appear in court, the fines that appear in the Natural Resources Article would be applied by the court upon conviction. In general, for a first offense, a person who violates *Title 4 – Fish and Fisheries* of the Natural Resources Article, is guilty of a misdemeanor and, upon conviction, is subject to a fine of up to \$500, with costs imposed in the discretion of the court. For a second or subsequent offense, a person is subject to a fine of up to \$1,000, or imprisonment for up to one year, or both, with costs imposed in the discretion of the court.

In addition to any other applicable penalty, a person who unlawfully takes oysters from an oyster sanctuary or oyster reserve that is designated and marked by buoys or other signage, and who knew or should have known that taking the oysters from the sanctuary or reserve was unlawful, is subject to a fine of up to \$3,000 and immediate suspension of the person's tidal fish license for a period of at least six months but not more than one year.

Current regulations also provide for penalties for the removal of oysters from sanctuaries, reserves, and polluted waters and for violations of the time restrictions for taking oysters. Points are assigned against a licensee for each conviction. The suspension period for a licensee is based upon the numbers of points accumulated over a specified period of time.

Background: On June 28, 2000, the Chesapeake Executive Council signed the *Chesapeake 2000* agreement (C2K), which is guiding the bay states, the Chesapeake Bay Commission, and the U.S. Environmental Protection Agency in their combined efforts to restore and protect the Chesapeake Bay. *Chesapeake 2000* outlines more than 90 commitments detailing protection and restoration goals critical to the health of the bay watershed. From pledges to increase riparian forest buffers, preserve additional tracts of land, restore oyster populations, and protect wetlands, *Chesapeake 2000* strives toward improving water quality as it is the most critical element in the overall protection and restoration of the bay and its tributaries. *Maryland's Tributary Strategy*, released in April

2004, serves as the State's roadmap for achieving the nutrient and sediment reduction goals of C2K.

At its peak, the bay's oyster population acted as a natural filter, removing 133 million pounds of nitrogen annually. Largely due to two diseases, MSX and Dermo, the oyster stock has been severely depleted. Today, the oyster population has dropped to less than 1% of its original population. The 2005 oyster harvest was nearly 44% below the 1995 harvest and 69% below the 2000 harvest. However, the 2004-2005 season harvest increased from the previous season, reversing a five-year trend of declining catches. On a positive note, in DNR's 2005 fall survey, observed oyster mortality was 17%, the lowest it has been since 1989 and much lower than its peak in 2002.

In a November 2006 report, the Chesapeake Bay Foundation (CBF) reported that four elements are critical to a successful oyster restoration effort: (1) cleaner water through reduced nitrogen and sediment pollution; (2) increased oyster production via seed production and disease controls; (3) more oyster reefs; and (4) enforcement of harvest regulations. CBF reported that several key actions need to be taken in order to restore the native oyster. Examples of recommended policy actions include:

- establishing a dedicated funding source for implementation of Maryland's Tributary Strategies to reduce nutrient and sediment pollution;
- authorizing bay bottom areas to be leased for purposes of oyster restoration;
- enhancing penalties for poaching; and
- establishing a task force to address native oyster restoration.

In addition, CBF also recommended an increase in funding for the University of Maryland's Horn Point Hatchery, which produces the vast majority of seed oysters for restoration purposes; a State oyster shell recovery program for reef building; alternative substrate oyster reef projects; and personnel and equipment necessary for on-water enforcement of oyster harvest regulations.

State Fiscal Effect:

Department of Natural Resources

Special fund revenues to the Fisheries Research and Development Fund could increase minimally beginning in fiscal 2007. Any additional leases would generate \$3.50 per acre, assuming DNR applies the same rental rate charged for oyster cultivation leases under current regulations. The total number of acres that would be leased under the bill is not anticipated to be significant.

DNR would also collect \$300 for each lease application submitted; any increase in special fund revenues from application fees would be offset by an increase in special fund expenditures associated with processing, advertising, and surveying responsibilities. In fact, Legislative Services advises that application fees may or may not fully cover such costs. In any event, because the number of additional lease applications submitted under the bill is not anticipated to be significant, any impact on special fund finances would likely be minimal.

General fund expenditures could increase by an estimated \$82,840 in fiscal 2008, which reflects a July 1, 2007 implementation date. This estimate reflects the cost of contractual services to facilitate the Oyster Advisory Commission’s evaluation of oyster management and restoration strategies as well as other costs related to the commission. The estimate also reflects costs to publish booklets containing maps and coordinates for tidal fish licensees who pay the oyster surcharges under current law, as required by the bill. The estimate, which is based on the annual number of licensees who paid the oyster surcharges over the past five years, assumes that DNR would publish 800 booklets annually.

Contractual Services	\$75,000
Commission Expenses	4,940
Publications	<u>2,900</u>
Total FY 2008 General Fund Expenditures	\$82,840

Future year general fund expenditures reflect: • ongoing contractual services of \$50,000 annually; and • 1% annual increases in ongoing operating expenses. This assumes ongoing work of the commission with annual reports. Costs could be less to the extent the work of the commission subsides over time.

UMCES Horn Point Laboratory

The bill requires that one-tenth of the oyster seed or spat produced for planting *in accordance with the bill* at the UMCES Horn Point Laboratory be made available for purchase to any leaseholders of submerged land. Legislative Services notes, however, that the bill does not *require* UMCES to provide seed or spat to such leaseholders. In any event, UMCES advises that this provision is not expected to materially affect its operations or finances. Any spat provided to leaseholders would be charged a fee (currently estimated at 2 cents per spat) to offset the costs of producing and distributing the spat. In addition, although the laboratory does not currently sell spat, UMCES advises that it is planning on expanding its production of oyster larvae over the next few

years regardless of this bill, and that, even in the absence of this bill, it would likely charge a fee for spat provided to private leaseholders.

Other

The modified penalty provisions of this bill are not expected to significantly affect State finances.

Additional Information

Prior Introductions: None.

Cross File: SB 148 (The President, *et al.*) (By Request – Administration) – Education, Health, and Environmental Affairs.

Information Source(s): Department of Natural Resources, University System of Maryland, District Court of Maryland, Chesapeake Bay Foundation, Department of Legislative Services

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Analysis by: Lesley G. Cook

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