

HOUSE BILL 966

M2, M3

1lr1263

By: **Delegates O'Donnell, Bohanan, and Wood**

Introduced and read first time: February 11, 2011

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 18, 2011

CHAPTER _____

1 AN ACT concerning

2 **Natural Resources – Restricted Waters for Shellfish Harvesting – ~~Method of~~**
3 **Testing**

4 FOR the purpose of requiring the Department of the Environment ~~to use a certain test~~
5 ~~to detect Escherichia coli (E. coli)~~, in determining whether to restrict, or lift any
6 restrictions on, an area for the catching or storing of shellfish to use certain
7 tests for certain purposes; requiring the Department, on or before a certain
8 date, to reconsider the designation of certain restricted waters in accordance
9 with certain testing requirements; and generally relating to methods of testing
10 to determine restricted waters for shellfish harvesting.

11 BY repealing and reenacting, with amendments,
12 Article – Natural Resources
13 Section 4–742
14 Annotated Code of Maryland
15 (2005 Replacement Volume and 2010 Supplement)

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

18 **Article – Natural Resources**

19 4–742.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (a) (1) If the Department of the Environment determines by appropriate
2 investigation that any area of waters of the State devoted to the production or storage
3 of shellfish is polluted so that shellfish produced or stored in the area are a hazard to
4 public health, it shall restrict the area for the catching or storing of shellfish.

5 (2) If the Department of the Environment finds it necessary to restrict
6 an area of water for the taking and storing of shellfish because of the proximity of the
7 area to the point of discharge of a sewage treatment plant or a point of overflow of a
8 sewage pumping station, the Department of the Environment may increase or
9 decrease the size of a restricted area in relation to the operational effectiveness of the
10 sewage treatment plant or sewage pumping station.

11 (3) ~~THE DEPARTMENT OF THE ENVIRONMENT SHALL USE THE~~
12 ~~MOST RELIABLE AVAILABLE TEST TO DETECT ESCHERICHIA COLI (E. COLI) IN~~
13 IN DETERMINING WHETHER TO RESTRICT, OR LIFT ANY RESTRICTIONS ON, AN
14 AREA FOR THE CATCHING OR STORING OF SHELLFISH, THE DEPARTMENT OF
15 THE ENVIRONMENT SHALL USE THE MOST RELIABLE AVAILABLE TESTS TO:

16 (i) DETERMINE WHETHER A SHELLFISH PRODUCTION
17 AREA POSES A RISK TO CONSUMER HEALTH; AND

18 (ii) RULE OUT CONTAMINANTS THAT DO NOT POSE A RISK
19 TO CONSUMER HEALTH, INCLUDING BACTERIA FROM VEGETATION.

20 (b) (1) The action of the Department of the Environment to restrict an
21 area of water becomes effective immediately upon giving formal notice of the action to
22 the Department. Notice also shall be given the appropriate governing body and the
23 committee of oystermen of any county affected by the restriction.

24 (2) The Natural Resources Police Force shall patrol the area to warn
25 watermen until public notice is given in newspapers of general circulation in each of
26 the counties whose watermen work the restricted area normally. No arrests may be
27 made until the next workday following the day the notice appeared unless the
28 watermen fail to heed a warning of the officers.

29 (3) (i) If the Department of the Environment closes any area to the
30 catching of shellfish under this section, in addition to the notice required in paragraph
31 (1) of this subsection, the Department of Natural Resources shall mark the area so
32 that the area can be seen from the water.

33 (ii) The Department of Natural Resources shall adopt rules and
34 regulations to provide for the marking in a plain and visibly obvious fashion of any
35 area that is closed to the catching of shellfish because of pollution. Even in the absence
36 of such marking devices, a person may not catch shellfish in a restricted area as
37 designated by the Department of the Environment if notice has been given to the
38 appropriate governing body and the committee of watermen of any county affected by
39 the restriction.

1 (c) (1) After establishing a restriction, the Department of the
2 Environment shall test the water in the restricted area or inspect the source of
3 pollution of the water at least twice monthly, or more frequently if requested by the
4 appropriate governing body of any county affected by the restriction. A copy of the
5 report of analysis of every test and inspection shall be filed promptly with the
6 appropriate governing body of every county affected by the restriction.

7 (2) Updated charts of the Chesapeake Bay and its tributaries showing
8 all polluted areas shall be filed promptly with the appropriate governing body and
9 oystermen's committee of every tidewater county. Copies of these charts shall be filed
10 also with the Fisheries Administration and the Natural Resources Police.

11 (d) Whenever samples of water and shellfish of a restricted area indicate
12 that the shellfish and water again comply with standards for harvesting shellfish, the
13 restrictions promptly shall be lifted.

14 (e) The Secretary of the Department of the Environment may delegate
15 authority to impose restrictions, or remove restrictions no longer required. These
16 actions, however, shall be reported and consented to by the Secretary.

17 (f) Each violation of this section constitutes a separate offense punishable as
18 provided by the provisions of this title.

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

20 (a) On or before December 31, 2011, in accordance with the testing
21 requirements established in § 4-742 of the Natural Resources Article, as enacted by
22 Section 1 of this Act, the Department of the Environment shall reconsider the
23 designation of waters of the State that are currently restricted from shellfish
24 harvesting.

25 (b) When reconsidering the designation of waters of the State under
26 subsection (a) of this section, the Department of the Environment shall prioritize the
27 reconsideration of areas where there are existing or pending shellfish leases or
28 aquaculture permits.

29 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
30 effect ~~October~~ June 1, 2011.