

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 396

(Delegate Beidle, *et al.*)

Environmental Matters

Education, Health, and Environmental Affairs

Natural Resources - Administrative Procedures - Electronic Citations,
Inspections, and Hearings

This bill authorizes Natural Resources Police (NRP) officers to issue electronic citations for specified offenses and requires these citations to include acknowledgement of receipt in a specified manner. The bill modifies recreational and commercial fishing license hearing requirements and clarifies and expands the Department of Natural Resources (DNR) authority to conduct tidal fish license-related inspections.

The bill takes effect July 1, 2011.

Fiscal Summary

State Effect: Because electronic citations are only authorized and the equipment is too costly for DNR to purchase in the near term, the bill is not expected to materially affect State finances. However, the bill makes DNR's fisheries enforcement operations more efficient.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill requires DNR to notify a licensee in writing of the licensee's right to a hearing on request, instead of requiring a hearing to be held within a specified period of time, prior to suspending a recreational or commercial fishing license. If a licensee submits a written request for a hearing, DNR must hold a specified hearing within 30 days after the notice is mailed and must provide at least 10 days' notice to the

licensee. A recreational or commercial fishing license may be suspended without a hearing if the licensee does not submit a written hearing request or fails to appear for a scheduled hearing for which notice was given.

The bill authorizes any police officer, at reasonable times, including when the licensee or person is engaged in an activity that requires a tidal fish license, to inspect commercial fishing vessels, vehicles used to transport fish for commercial purposes, and fish businesses owned or operated by a licensee. However, such inspections are restricted to inspections of fishing gear and places where fish may be stored and may not include a dwelling house. DNR is also authorized to seize fishing gear found during an inspection that is used or possessed in connection with a violation. Seized property or proceeds must be held by DNR pending disposition of court proceedings and, on conviction, forfeited to the State. DNR may use its discretion to dispose of fish that are seized.

Current Law:

Natural Resources Citations

NRP officers are authorized to prepare a written citation containing specified information when they apprehend a person for violating any law punishable as a misdemeanor. Individuals charged may give written promise to appear in court by signing the citation; and, when this occurs, officers are not required to take the person into physical custody for the violation unless specified conditions exist. A person may not violate a written promise to appear in court unless specified sufficient collateral for the offense is posted, the fine is paid in advance of the trial, or the person is represented by counsel in court.

Fishing License Suspension

The Secretary of Natural Resources may revoke or suspend any recreational or commercial fishing license and may adopt regulations listing criteria for a suspension of a person's entitlement to engage in an activity or activities licensed or permitted under State fish and fisheries law. The grounds for immediate suspension of a fishing or fisheries license are specified. Prior to suspending a recreational or commercial tidal fishing license, DNR must hold a hearing after at least 10 days notice to the licensee. If a nonresident charged with a fishing or fisheries violation fails to appear in court, DNR is authorized to suspend a fishing or fisheries license immediately and without a hearing.

Tidal Fish License – Inspection Authority

A tidal fish licensee or any person to whom a licensee has transferred a license must possess the license and specified application to transfer the license whenever engaged in any licensed activity. The licensee or person to whom a license has been transferred must

allow any police officer to (1) inspect the license and any applicable application to transfer the license; (2) conduct specified searches; and (3) inspect books, statements, and accounts as authorized in a specified provision of the Natural Resources Article.

Forfeiture of Property

An NRP officer or any law enforcement officer may seize any device, equipment, conveyance, or property unlawfully used upon arrest for a violation of fish and fisheries provisions in the Natural Resources Article or a regulation adopted pursuant to those provisions. If the owner or person in charge of the seized property is convicted, the court may declare the property forfeited and it becomes the property of DNR. If the owner of the property is not known, the court may proceed *ex parte* to hear and determine any question of forfeiture. If the owner or person in charge of the seized property is not convicted, the property is returned to the owner or person. Property may not be forfeited if the owner was not a consenting party or privy to a violation.

Background: DNR's NRP serves as a public safety agency with statewide authority to enforce all natural resources and conservation laws and regulations relating to seafood harvesting and sport fishing, boating, waterways pollution, wildlife conservation, and enforcement activities in State parks, forests, and other public lands. In addition, NRP is responsible for maritime and rural search and rescue and is the lead agency for maritime homeland security on State waterways. NRP also provides public education in the areas of hunting, boating, and water safety. Each NRP officer has full law enforcement powers statewide.

DNR's natural resources law enforcement efforts have been strengthened in recent years. In accordance with Chapter 453 of 2009, DNR introduced a new administrative penalty system to help deter violations of commercial fisheries laws. In order to further enhance enforcement, DNR is also installing a network of radar and camera units to monitor sensitive areas that are prone to fisheries violations. In addition, a pilot program was launched under which the District Court in Anne Arundel County sets aside one day each month to hear all pending natural resources cases. Finally, a majority of NRP officers are now equipped with mobile data terminals (MDTs) which allow them to remain on patrol while performing investigative and administrative functions. While MDTs may be used to issue citations electronically, NRP currently lacks the statutory authority to do so.

Among other things, Chapter 367 of 2010 required DNR to submit a report that identifies statutory recommendations for improving NRP's effectiveness and efficiency and addresses the use of technology for the prevention and detection of violations. In December 2010, DNR submitted a report that made specific recommendations for clarifying commercial fisheries inspection laws, supporting continuous electronic vessel

monitoring, increasing penalties, streamlining administrative enforcement, and authorizing electronic ticketing. The bill implements several of these recommendations.

DNR advises that the bill will streamline and clarify fisheries enforcement efforts and allow NRP to more effectively protect and preserve Maryland fisheries.

Additional Information

Prior Introductions: None.

Cross File: SB 414 (Senator Frosh) - Education, Health, and Environmental Affairs.

Information Source(s): Department of Natural Resources, Office of Administrative Hearings, Department of Legislative Services

Fiscal Note History: First Reader - February 22, 2011
ncs/lgc Revised - House Third Reader - March 31, 2011

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