

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

Revised

House Bill 208

(Chair, Environmental Matters Committee)(By Request -
Departmental - Natural Resources)

Environmental Matters

Education, Health, and Environmental Affairs

Aquaculture - Shellfish Leasing Areas - Expansion

This departmental bill authorizes the Department of Natural Resources (DNR) to resurvey any submerged area of the State to determine the position and extent of any natural oyster bar and amend existing charts or coordinates by regulation to make any natural oyster bar location or submerged land condition accurate. The bill alters the prohibition on Aquaculture Enterprise Zones (AEZs) and submerged land leases being located within 150 feet of an oyster reserve or sanctuary to within 150 feet of an oyster reserve or any “Yates Bar” located within an oyster sanctuary, effectively allowing leasing in portions of sanctuaries. AEZs and submerged land leases located within an oyster sanctuary must be compatible with oyster restoration and satisfy specified regulations. While the bill preserves a specified right of a riparian owner or other lawful occupant to use a creek, cove, or inlet for cultivating shellfish, it requires that such individuals obtain a submerged land lease before doing so. The bill authorizes DNR to issue an aquaculture or submerged land lease to a corporation only if the corporation is organized under State laws and more than 50% of the corporation’s stock is owned by Maryland residents.

The bill takes effect July 1, 2011.

Fiscal Summary

State Effect: Minimal increase in DNR special fund revenues and expenditures in FY 2012 and future years to the extent individuals seek leases in oyster sanctuaries and DNR must process these leases.

Local Effect: The bill does not directly affect local operations or finances.

Small Business Effect: DNR has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment as discussed below. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: The “Chesapeake Bay” is redefined to include the waters commonly known as the Chesapeake Bay as defined by the charts of the Oyster Survey of 1906 to 1912 and its amendments.

The bill updates the general definition of “natural oyster bar” by repealing provisions that expressly include the following areas as natural oyster bars: (1) any area declared by any circuit court to be a natural oyster bar; (2) any area on which DNR plants oysters or shells; and (3) any bar beneath the waters of the State where the natural growth of oysters abounds to a specified extent. The definition of “natural oyster bar” as it applies to aquaculture is updated to be consistent with other uses of the term. A “natural oyster bar” is any submerged oyster bar, reef, rock, or area represented as an oyster bar on the charts of the Oyster Survey of 1906 to 1912 *and its amendments*. A “Yates Bar” is any submerged oyster bar, reef, rock, or area represented as an oyster bar on the charts of the Oyster Survey of 1906 to 1912 *not including any amendments*.

The Secretary of Natural Resources is prohibited from establishing daily catch limits for oysters in leased areas or AEZs; however, the area within which the Secretary may establish such limits is broadened from just natural oyster bars to all waters of the State.

The bill’s provisions are severable.

Current Law: “Chesapeake Bay” means the waters commonly known as the Chesapeake Bay. “Natural oyster bar” generally means (1) any submerged oyster bar, reef, rock, or area represented as an oyster bar on the charts of the Oyster Survey of 1906 to 1912, and its amendments, or any area declared by any circuit court to be a natural oyster bar, or any area on which DNR plants oysters or shells; and (2) any bar beneath the waters of the State where the natural growth of oysters abounds to the extent that the public has resorted to the bar for a livelihood, whether continuously or at intervals, during any oyster season within five years prior to the filing of any application for a lease of the area in question, or within five years prior to the making of a specified resurvey. With respect to aquaculture, “natural oyster bar” means any submerged oyster bar, reef, rock, or area represented as an oyster bar on the charts of the Oyster Survey of 1906 to 1912, and its amendments, or any area declared by any circuit court to be a natural oyster bar, or any area on which DNR plants oysters or shells.

Catch Limits

The Secretary of Natural Resources may establish by rule or regulation daily catch limits on the quantities of oysters which may be caught from the natural oyster bars of the State and may amend the daily catch limits to conserve the public oyster resource. Notice of the establishment or amendment of these catch limits must be given in a specified manner.

Shellfish Lease Program

Chapters 173 and 174 of 2009 made several changes to the State's shellfish leasing program and sought to encourage shellfish aquaculture in the State. Specifically, this law requires DNR to identify and establish by regulation (1) public shellfish fishery areas on which leasing is prohibited; (2) AEZs for aquaculture leasing and submerged land aquaculture leases, which have no limits on proximity to natural oyster bars, county of location, corporate or out-of-state lease holding, or acreage; and (3) aquaculture demonstration leases for educational, conservation, or ecological purposes. A leaseholder in an AEZ is not required to obtain water quality approval from the Maryland Department of the Environment or a tidal wetlands permit.

Generally, aquaculture and submerged land leases are limited to a term of 20 years, for any size area as long as it is actively used, and at an annual rental rate and with an aquaculture development surcharge determined by DNR. DNR must transfer aquaculture development surcharge funds to the Maryland Department of Agriculture for development of, and training and grants for, shellfish aquaculture. Individuals must submit specified application information, including a \$300 fee, to DNR for aquaculture and submerged land leases.

An AEZ and a submerged land lease may not be located in several specified areas, including (1) within 150 feet of an oyster sanctuary or oyster reserve; (2) within 150 feet of a federal navigational channel; or (3) in any creek, cove, bay, or inlet less than 300 feet wide at its mouth at mean low tide.

Shellfish Cultivation Rights

An owner or other lawful occupant has exclusive right to use any creek, cove, or inlet for preserving or depositing oysters or other shellfish if the water surface at the mouth of the creek, cove, or inlet is 300 feet or less in width at mean low tide. However, the cove, creek, or inlet may not be included in the lines of any patent and all rights of the riparian proprietor extend only to the middle of the creek, cove, or inlet.

An owner of any wharf or other structure constructed on or about the water and approved by the U.S. Army Corps of Engineers, has exclusive use, for the purpose of growing and

harvesting shellfish, of the area below the owner's wharf or structure and within additional specified areas.

Background: The Chesapeake Bay's oyster population acts as a natural filter and, at its peak, removed 133 million pounds of nitrogen annually. Affected by diseases, habitat loss, and harvest pressures, the oyster stock has declined to about 1% of historic levels, and the remaining oysters remove only about 250,000 pounds of nitrogen from the bay each year. Consequently, oyster restoration is an urgent priority for DNR.

In December 2009, Governor Martin O'Malley proposed an Oyster Restoration and Aquaculture Development Plan designed to enhance oyster restoration for ecological purposes and encourage the development of aquaculture businesses, while continuing to support a more targeted and sustainable public oyster fishery. Adopted in September 2010, the plan increases Maryland's network of oyster sanctuaries from 9% to 24% of remaining quality habitat; increases areas open to leasing for oyster aquaculture and streamlines the permitting process; and maintains 76% of the bay's remaining quality oyster habitat for a more targeted, sustainable, and scientifically managed public oyster fishery. The wide-scale development of shellfish aquaculture in the Chesapeake and coastal bays is a fundamental component of the plan and may be essential to efforts to rebuild the region's seafood industry.

DNR advises that the bill corrects minor references, makes definitions and terms consistent throughout the Fisheries Service title of the Natural Resources Article, and removes existing sanctuary leasing restrictions on tens of thousands of acres within oyster sanctuaries. DNR estimates the bill effectuates a 20% increase in leasable acreage in the bay.

State Fiscal Effect: Special fund revenues to DNR's Fisheries Research and Development Fund increase in fiscal 2012 and subsequent years to the extent additional leases are approved in the newly available areas. Assuming DNR applies current rates, any additional leases generate \$300 per application and \$3.50 per on-bottom acre in annual rental fees. To the extent DNR increases the application and rental rates, special fund revenues increase further. However, any increase in special fund revenues from application fees is offset by an increase in special fund expenditures associated with processing and surveying responsibilities. Processing responsibilities include advertising fees, resource surveys, and half-day field surveys to determine lease area size. Also, DNR may assume more law enforcement responsibility as lease acreage increases.

This analysis assumes the bill does not have a material effect on MDA's aquaculture development surcharge revenue, as the surcharge is not being applied at this time.

Small Business Effect: Only a few small fishing businesses are expected to lease several hundred acres. The extent to which these businesses benefit depends on how successful the businesses are at growing, harvesting, and selling aquaculture-grown shellfish.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Agriculture, Department of Natural Resources, Maryland Department of the Environment, Department of Legislative Services

Fiscal Note History: First Reader - February 21, 2011
ncs/lgc Revised - House Third Reader - March 25, 2011

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Aquaculture – Shellfish Leasing Areas – Expansion

BILL NUMBER: HB 208

PREPARED BY: Department of Natural Resources

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

Removing the homeowner lease provision will have a positive fiscal impact for potential leaseholders and oyster cultivators as the submerged land area available for leasing will increase. Declassifying a natural oyster bar that has become barren is a positive fiscal impact for potential leaseholders and shellfish cultivators as the submerged land area available for leasing will increase.

Making barren areas within a sanctuary available to leasing will provide important regional access opportunities for individuals and businesses interested in pursuing shellfish aquaculture.