

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1306

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

Environmental Matters

Education, Health, and Environmental Affairs

Department of Natural Resources - Aquaculture Leasing

This departmental bill expands the Department of Natural Resources' (DNR) aquaculture leasing authority to include charging an application fee, annual rent, and aquaculture development surcharge for water column leases. DNR must establish aquaculture, water column, and submerged land application fees, rents, and surcharges in consultation with the Aquaculture Coordinating Council. DNR is required to advertise a submerged land or water column lease application in a newspaper weekly for two weeks instead of weekly over four successive weeks. The bill prohibits placement of unlawfully harvested oysters on a lease and authorizes aquaculture demonstration leases in specified portions of oyster sanctuaries. DNR's authority to regulate the taking, possession, transportation, or sale of certain oysters from leased oyster bottoms is expanded to include (1) efforts with a purpose other than replanting on leased bottoms; and (2) the sale of oysters from leased bottoms that measure less than three inches. The bill repeals provisions authorizing power dredging in Wicomico County that were inadvertently reauthorized by Chapter 411 of 2011.

The bill takes effect June 1, 2012.

Fiscal Summary

State Effect: Special fund expenditures decrease by an estimated \$1,000 in FY 2012 and \$12,000 annually in FY 2013 and future years due to reduced advertising costs. Special fund revenues increase in FY 2012 and future years due to water column application and lease fees.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
SF Revenue	-	-	-	-	-
SF Expenditure	(\$1,000)	(\$12,000)	(\$12,000)	(\$12,000)	(\$12,000)
Net Effect	\$1,000	\$12,000	\$12,000	\$12,000	\$12,000

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

Local Effect: None.

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

Analysis

Current Law: Chapter 411 of 2011 transferred specified aquaculture, seafood, and related marketing functions from the Maryland Department of Agriculture, the Maryland Department of the Environment (MDE), and the Board of Public Works (BPW) to DNR and established DNR as the lead State agency for (1) coordinating and streamlining the process of applying for a State aquaculture permit; (2) promoting, coordinating, and marketing aquaculture and aquaculture products; and (3) enforcing laws, regulations, and rules. Chapter 411 also authorized DNR to issue water column leases in State waters that MDE classifies in a specified manner.

In an effort to encourage the expansion of the aquaculture industry in the State, Chapters 173 and 174 of 2009 require DNR to establish Aquaculture Enterprise Zones (AEZs) in the Chesapeake Bay by regulation. AEZs are areas of the bay approved for the leasing of submerged land or the water column. Aquaculture leases are leases of any submerged land and the water column in an AEZ for cultivating oysters or other shellfish for commercial purposes. A person must submit an application and pay a nonrefundable application fee to DNR for an aquaculture or submerged land lease in an AEZ. A person must submit an application to DNR for a water column lease located outside an AEZ. DNR must establish an annual amount of rent and an aquaculture development surcharge for an aquaculture or submerged land lease in an AEZ.

DNR must advertise submerged land or water column lease applications on the DNR website as well as once a week for four successive weeks in a newspaper published in the county or counties where the proposed lease is located.

Aquaculture demonstration leases may not be located in several specified areas, including within 150 feet of an oyster sanctuary or oyster reserve.

DNR may adopt regulations that allow the taking, possession, transport, or sale of oysters from leased oyster bottoms only for the purpose of replanting on leased bottoms that are less than a specified minimum size limit. This provision does not permit the sale of oysters for human consumption that measure less than three inches.

In the Wicomico and Nanticoke rivers in Wicomico County, a person may dredge by power boat on grounds that person leases for cultivation of oysters. However, prior to dredging, a person must first obtain a \$15 special permit from DNR. Individuals are subject to additional dredging limits and requirements and may not dredge for at least one year, if convicted, for a violation of specified requirements.

Background: Since 1994, the Chesapeake Bay's oyster population has languished at 1% of historic levels; suitable oyster habitat has decreased 80%, and the number of harvesters has dwindled from 2,000 in the mid-1980s to approximately 550 annually since 2002. To help reverse this trend, DNR unveiled a new management and restoration plan for oysters and the State's oyster industry in December 2009. The plan increased the State's network of oyster sanctuaries from 9% to 24% of the bay's remaining quality oyster bars, established oyster aquaculture leasing opportunities and related financial assistance programs, and maintained 76% of the bay's remaining quality oyster habitat for a public oyster fishery. Since the 2010 implementation of the plan, 28 new oyster aquaculture leases have been approved for more than 20 individuals on approximately 650 acres. An additional 52 lease applications covering 620 acres are currently being processed.

The Aquaculture Coordinating Council is responsible for guiding the responsible development of the aquaculture industry. The council's duties include developing annual proposals for advancing the industry for the Governor and the General Assembly, conducting studies of projects and products that will expand the industry, developing best management practices, and reviewing State regulations.

DNR advises that the bill will help provide revenue to administer the aquaculture leasing program and process aquaculture leases in a more expedient manner. Since July 2011, DNR has issued eight leases for aquaculture in the water column outside an AEZ, affecting approximately 50 acres. DNR advises that 28 additional lease applications, affecting approximately 100 acres, are currently pending.

State Fiscal Impact: The bill authorizes DNR to establish aquaculture application, lease, and surcharge fees for leases in the water column. Currently, no State agency is authorized to charge these fees. When BPW had responsibility for issuing water column leases a year ago, a lease fee of \$80 per acre was charged, which is significantly more than the \$3.50 per acre that DNR charges for submerged land leases. DNR advises that the water column lease rental fees it ultimately recommends will likely be similar to or less than the previous BPW fees.

DNR special fund revenues increase in fiscal 2012 and subsequent years to the extent water column lease applications are submitted and approved. However, any revenues cannot be reliably estimated at this time, as it will depend on the application and lease fee

amounts charged and the number of applications received and ultimately approved. *For illustrative purposes*, if the 50 acres currently leased are charged a lease fee of \$80 per acre, lease fee revenue from current permittees totals \$4,000 annually. 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.

Currently, DNR pays approximately \$1,000 to advertise each aquaculture application. DNR advises that, on average, approximately two applications are advertised every month. The bill reduces DNR's advertising requirements in half. Therefore, DNR expenditures decrease by an estimated \$1,000 in fiscal 2012 and \$12,000 in fiscal 2013 and future years due to reducing aquaculture advertising requirements.

The repeal of the provisions relating to power dredging in Wicomico County do not have an impact on State finances; DNR advises that no permits for that activity have been issued in recent years.

Small Business Effect: Under current law, the State may not charge application and rental fees for water column leases outside an AEZ. Thus, the bill has a potentially meaningful impact on small fishing businesses to the extent they are interested in conducting aquaculture in the water column and must pay lease application and rental fees. Also, small aquaculture businesses benefit to the extent DNR adopts regulations authorizing the sale of oysters that measure less than three inches.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - March 15, 2012
mc/lgc Revised - House Third Reader - March 28, 2012

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Department of Natural Resources – Aquaculture Leasing

BILL NUMBER: HB 1306

PREPARED BY: Maryland 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

HB 1306 would provide an increase in revenue to the Department when the Department institutes the water column lease fees by regulation (the statute authority itself will not cause an increase for us until we adopt regulations). They will likely not be very different than they were previously under BPW. From the small business' perspective, they will likely only see a change in where they make their rental payments and application payments (formerly with BPW and now with DNR). Those few leases which have been issued during the time period when the Department had no fee, will notice a difference when the fee is created by regulation. Small businesses will not see a significant change in water column lease fees as fees are likely to remain similar to current lease fees. Newspapers may be slightly negatively impacted as the Department will not be paying for as many legal notices.