

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE

House Bill 96 (Chair, Environmental Matters Committee)(By Request -  
Departmental - Environment)

Environmental Matters Education, Health, and Environmental Affairs

---

Natural Resources - Restricted Shellfish Harvest Areas - Water Testing

---

This departmental bill repeals a provision requiring the Maryland Department of the Environment (MDE) to test or inspect waters that have been restricted for shellfish harvesting at least twice monthly or more frequently if requested by the appropriate governing body of any county affected by the restriction.

The bill takes effect July 1, 2013.

---

Fiscal Summary

**State Effect:** The bill is not expected to materially affect State operations or finances.

**Local Effect:** The bill is not expected to materially affect local operations or finances.

**Small Business Effect:** MDE has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

---

Analysis

**Current Law:** After determining by appropriate investigation that an area is so polluted that shellfish in the area are a hazard to public health, MDE is authorized to restrict catching or storing shellfish in the area. After establishing a restriction, MDE must test the water in the restricted area or inspect the sources of the pollution at least twice monthly or more frequently if requested by a local governing body.

**Background:** The U.S. Food and Drug Administration's (FDA) National Shellfish Sanitation Program (NSSP) is a cooperative federal/state effort to ensure the sanitary control of shellfish produced and sold for human consumption. The purpose of NSSP is to promote and improve the sanitation of shellfish moving in interstate commerce through federal/state cooperation and uniformity of state shellfish programs.

In Maryland, responsibility for the sanitary control of the shellfish industry is split among three State agencies: MDE, the Department of Health and Mental Hygiene (DHMH), and the Department of Natural Resources (DNR). MDE is responsible for identifying and eliminating pollution sources affecting Maryland's shellfish harvesting waters, as well as determining whether the shellfish harvested are safe for human consumption. DHMH is responsible for any food control measures necessary to ensure that shellfish are harvested, processed, packaged, and transported under sanitary conditions. DHMH also regulates shellfish dealers to ensure compliance with sanitary standards. DNR is responsible for posting areas restricted to shellfish harvesting and patrolling areas to prevent illegal harvesting.

Maryland first established water monitoring requirements for shellfish harvesting areas approximately 50 years ago. Since that time, federal water monitoring requirements have been established. To sell Maryland shellfish in interstate markets, the State must maintain specified FDA monitoring and oversight practices that ensure shellfish are safe for human consumption. As part of these requirements, MDE must test all harvesting waters on a regular basis to document that the water is safe for shellfish harvesting. The State's twice monthly water testing requirement is four times the minimum federal testing requirement for areas closed to harvesting.

MDE advises that over the past 20 years, local governments have requested additional water testing on two occasions; however, both requests were denied due to, among other reasons, limited MDE funding. MDE advises that conducting additional tests in response to local government requests, as current law requires, could prompt limited State resources to be shifted to lower priority areas. Overall, MDE advises that the bill makes State and federal requirements consistent, reflects current practice, and alleviates the State's risk of being sued by local governments seeking more frequent MDE water tests.

---

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Natural Resources, Maryland Department of the Environment, U.S. Food and Drug Administration, Department of Legislative Services

**Fiscal Note History:** First Reader - January 24, 2013  
mc/lgc

---

Analysis by: Amanda Mock

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



## ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Natural Resources -Restricted Shellfish Harvest Areas – Water Testing

BILL NUMBER: HB 96

PREPARED BY: Maryland Department of the Environment

### 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

This change would be beneficial to small businesses in Maryland as it helps the Department prioritize and focus resources for water sampling. If the Department were to be sued by a County requesting additional testing under the existing law, the Department may need to shift resources to meet our court mandated sampling and risk closure to shellfish harvesting in areas that might be otherwise tested. This would have a negative economic impact on Maryland's shellfish industry.