

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 1111 (Senator Colburn, *et al.*)
Education, Health, and Environmental Affairs

Natural Resources - Fresh Oyster Shells - Purchase by County Oyster Committees

This emergency bill requires the Department of Natural Resources (DNR) to authorize county oyster committees to purchase annually up to 400,000 bushels of fresh oyster shells that have not gone through a hatchery for production of spat on the fresh oyster shell for placement on a public oyster fishery bottom.

Fiscal Summary

State Effect: To the extent the bill limits oyster hatchery production, resulting in changes to the State's oyster program, State finances may be significantly affected.

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

Small Business Effect: Potential meaningful.

Analysis

Current Law:

County Oyster Committees

DNR must have licensed oystermen in each tidewater county of the State select county committees to confer with DNR concerning oyster propagation conducted by the department in each county.

Oyster Severance Tax and Surcharge

A severance tax of \$1 is levied on every bushel of oysters caught within the limits of the natural oyster bars of the State, excluding the Potomac River. Oyster severance tax revenue is credited to DNR's Fisheries Research and Development Fund and is used only for the repletion of the State's natural oyster bars. A certain portion of those revenues is limited to use for an oyster seed program.

A person who catches oysters for sale must pay an annual surcharge of \$300 and the revenue must be used by DNR only for oyster repletion activities.

Background:

Oyster Restoration

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. 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.

DNR's oyster restoration activities include the construction of restored oyster reefs, oyster production, and the promotion of oyster aquaculture. Costs for DNR's restoration, hatchery, and aquaculture activities for fiscal 2015 through 2017 are projected to be slightly more than \$10.0 million annually, consisting largely of capital general obligation bond funding.

County Oyster Committees and Use of Oyster Tax and Surcharge Funding

As required by statute, revenues from the oyster severance tax and oyster surcharge are used by DNR for oyster repletion activities (placing shell that has gone through a hatchery on a public oyster fishery bottom, placing shell directly on a public oyster fishery bottom for natural production, or dredging and moving shell to a public oyster fishery bottom). The funding is used based on recommendations of the county oyster committees, but subject to DNR's approval. The funding is separate from the restoration activity funding mentioned above. DNR indicates that in the past, it has also directed a portion of oyster restoration funding received from the Maryland Department of Transportation (MDOT) to county oyster committee activities. However, the MDOT funding is provided under a contract and memorandum of understanding, which currently do not extend past fiscal 2014.

Fresh Oyster Shell

There is a limited amount of fresh oyster shell (from shucking houses) available for oyster restoration, aquaculture, and the public oyster fishery in the State. DNR estimates that 120,000 to 200,000 bushels of shell can be purchased annually from shucking houses in Maryland and Virginia, which is less than the demand for fresh shell. According to DNR, fresh shell is the preferred and only material currently used by oyster hatcheries. The fresh shell purchased by DNR is used largely for hatchery production, with certain amounts also going toward direct placement on a public oyster fishery bottom for natural production (60,000 bushels have been reserved for this purpose in 2014) and to aquaculturists to set spat (young oysters) on the shell themselves (outside of a hatchery). According to DNR, a recent report by the University of Maryland Center for Environmental Science (UMCES) and University of Maryland Extension concluded that the most cost-effective use for fresh shell is through hatchery seed production.

State Fiscal Effect: To the extent the bill causes a greater amount of available fresh shell to be used for direct placement on a public oyster fishery bottom and reduces the amount available for hatchery production, State finances associated with oyster restoration efforts may be significantly affected. DNR indicates that the hatcheries support each of the different components of the State's oyster program – oyster restoration, Marylanders Grow Oysters (waterfront property owners growing young oysters in protective cages before placement in sanctuaries), aquaculture, and the public oyster fishery.

The bill requires DNR to authorize *up to* 400,000 bushels of fresh oyster shells to be placed directly on a public oyster fishery bottom, making it uncertain to what extent the use of fresh shell shifts from hatchery production to direct placement as a result of the bill. If hatchery production is substantially reduced or eliminated, however, the State's oyster program is significantly affected. Fiscal impacts include (1) an expected closure of the UMCES Horn Point Oyster Hatchery (that currently receives more than \$2.0 million in annual funding from DNR, the federal government, and other sources) and (2) a potential loss of significant federal and private funding for restoration projects that involve hatchery-produced spat. While federal and private funding levels may be affected by the elimination of hatchery production, it is unclear whether the amount of State funds dedicated to oyster restoration efforts changes. DNR indicates that oyster restoration efforts continue and the overall amount of State funds dedicated to the oyster program, while redistributed, may not necessarily change. However, DNR advises that if hatchery seed is no longer available, it cannot implement the 2009 management and restoration plan.

The Department of Legislative Services notes that it is unclear what funding is used to purchase the fresh oyster shells (up to 400,000 bushels) under the bill, though it appears that the oyster tax and surcharge revenue directed toward county oyster committee activities may be the intended source of funding.

Small Business Effect: To the extent the bill causes a greater amount of available fresh shell to be used for direct placement on a public oyster fishery bottom and reduces the amount available for hatchery production, small businesses may be significantly affected.

As mentioned above, the bill requires DNR to authorize *up to* 400,000 bushels of fresh oyster shells to be placed directly on a public oyster fishery bottom, making it uncertain to what extent the use of fresh shell shifts from hatchery production to direct placement. If hatchery production is substantially reduced or eliminated and fresh shell is also not available to aquaculturists independently setting spat on shell, DNR estimates losses for the aquaculture industry and the public oyster industry in the millions of dollars annually. The expectation of losses for the public oyster industry is based on a comparison of estimated harvest revenue resulting from the hatchery-produced oysters currently used by the public oyster industry and the estimated revenue resulting from direct placement of fresh shell on a public oyster fishery bottom.

The Department of Legislative Services notes, however, that DNR's estimate of losses for the public oyster industry appears to be based on a baywide average success rate for natural production from direct placement. DNR's estimate, therefore, may not be representative of the impact for a specific region with a better success rate for natural production.

Additional Information

Prior Introductions: None.

Cross File: HB 1551 (Delegate Jacobs, *et al.*) - Environmental Matters.

Information Source(s): Department of Natural Resources; University System of Maryland; Maryland Watermen's Association; Donald Meritt and Donald Webster, *Considerations for Shell Use in Oyster Rehabilitation and Predicting Oyster Production*; Department of Legislative Services

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