

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

Senate Bill 88 (Senator Astle, *et al.*)
 Education, Health, and Environmental Affairs Environment and Transportation

Natural Resources - Game Birds - Baiting

This bill modifies the existing prohibition against a person hunting baited wetland game birds or upland game birds (except quail and pheasant) by adding language that a person may not hunt these game birds *if the person knows or reasonably should know that the area is a baited area.*

Fiscal Summary

State Effect: General fund expenditures may increase by up to \$386,300 in FY 2016 for the Department of Natural Resources (DNR) to purchase equipment necessary to enforce the prohibition, as amended by the bill. Future year expenditures reflect maintenance of equipment. Revenues are not affected.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	386,300	15,000	18,000	21,000	24,000
Net Effect	(\$386,300)	(\$15,000)	(\$18,000)	(\$21,000)	(\$24,000)

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

Local Effect: None.

Small Business Effect: None. The bill does not directly affect small businesses.

Analysis

Current Law: Broadly, “baiting” means putting out corn, grain, salt or other feed to lure birds over an area where people are attempting to hunt them. The “baited area” broadly means the place where the bait was deposited or distributed. An area is considered to be

baited for 10 days after removal of the bait. In Maryland, a person may not hunt wetland game birds or upland game birds (except quail and pheasant) by the aid of baiting, or on or over any baited area. Maryland's baiting laws are more restrictive than federal regulations because baiting is a strict liability offense, meaning a hunter does not need to know, nor reasonably should know, that an area is baited to be in violation.

Maryland's prohibition does not extend to hunting wetland and upland game birds on or over grains or other feed scattered solely as the result of normal agricultural planting or harvesting. Further, the baiting prohibition does not include hunting upland game birds on or over lands where grains or feed were distributed or scattered as the result of a bona fide agricultural operation or as the result of the manipulation of a crop or other feed on the land when grown for wildlife purposes. In addition, by rule or regulation, DNR may exempt from the prohibition captive raised mallard ducks that are released on a regulated shooting ground to be shot at immediately after release.

Under general wildlife penalties, a person who violates the baiting provisions is guilty of a misdemeanor and subject to a fine of up to \$1,500 for the first violation and a fine of up to \$4,000 and/or imprisonment for one year for second or subsequent violations. Natural Resources Police (NRP) officers may seize any bird unlawfully caught, sold, offered for sale, transported, or possessed. DNR may dispose of any seized animal at the department's discretion. Further, NRP officers may seize any device, equipment, conveyance, or property unlawfully used. DNR, by regulation, is required to (1) establish a schedule of resource values for individual species in order to value and charge restitution to guilty parties for injury, death, or destruction of any wildlife, including game birds and (2) list criteria for the suspension of a person's hunting license or privileges for up to five years. However, DNR has not yet adopted regulations establishing offenses, or combination of offenses, for which the department may suspend hunting licenses and hunting privileges. Thus, it is unknown whether unlawful baiting would lead to an immediate suspension of a person's license and privileges.

Background: Maryland established strict liability for baiting violations when the General Assembly amended the statute in 1990 to remove "knows or in the exercise of reasonable diligence should have known" from statute through Chapter 145 of 1990. In general, Maryland hunting crimes are both misdemeanors and strict liability offenses.

Federal law is less stringent than Maryland baiting statute. The federal law reads: "It shall be unlawful for any person to (1) take any migratory game bird by the aid of baiting, or on or over any baited areas, if the person knows or reasonably should know that the area is a baited area..." Thus, the federal law includes an element of criminal intent that is absent from Maryland's law, and would be added by the bill. Under the federal standard, the prosecution must prove criminal intent either under a subjective standard (that the person

knew the area was baited) or an objective standard (that a reasonable person would have known the area was baited).

Even so, the migratory bird provisions of federal law also explicitly state:

Nothing in this Act shall be construed to prevent the several states and territories from making or enforcing laws or regulations not inconsistent with the provisions of said conventions or of this Act, or from making or enforcing laws or regulations, which shall give further protection to migratory birds...

Maryland's strict liability standard provides further protection to migratory birds and is not inconsistent with the federal law prohibiting hunting by use of baiting.

Based on a limited survey of states in the fall of 2014, Delaware, Montana, North Carolina, and Pennsylvania prohibit all forms of hunting by bait or over a baited area for all species. New York and West Virginia laws in this area directly mirror federal law. New Jersey law includes a criminal intent requirement that a person "knowingly" hunt game birds by bait or over a baited area before a violation occurs. Virginia also requires that a person knowingly violate its law before a violation occurs, but adds a rebuttable presumption that the person knew the area in question was baited. Ohio law governing hunting game birds by bait or over a baited area directly mirrors Maryland's current law.

State Expenditures: DNR advises that removing strict liability from baiting offenses significantly increases the workload for enforcement and prosecution of baiting cases. Under current law, an NRP officer does not need to prove knowledge or intent of wrongdoing; an officer needs only to prove that a violation occurred and the person charged was present and participated in the violation. Thus, DNR advises that the bill requires NRP officers to use covert surveillance cameras to document baiting activity and identify baiters. Based on information provided by DNR, general fund expenditures may increase by up to \$386,324 in fiscal 2016. This estimate reflects the cost of purchasing 18 surveillance systems and 200 digital recording cameras. The information and assumptions used in calculating the estimate are stated below:

- two surveillance systems at each of the eight NRP areas as well as two surveillance systems for the Special Operations Division are needed, at a cost of \$13,980 per unit;
- each NRP officer at the rank of Sergeant and below needs a digital recording camera at a cost of approximately \$673 per unit; and
- NRP officers, who are already oversubscribed, must attend training sessions (estimated at a total of 4,800 hours per year) to learn to deploy and operate the surveillance equipment.

Future year expenditures reflect maintenance costs for the equipment purchased in fiscal 2016.

The Department of Legislative Services advises that costs could be less that to the extent that DNR is able to implement and enforce the prohibition, as amended by the bill, with less equipment.

Additional Information

Prior Introductions: None.

Cross File: HB 170 (Delegate Beitzel, *et al.*) – Environment and Transportation.

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

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md/lgc

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