

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 410

(Delegate O'Donnell, *et al.*)

Environment and Transportation

Education, Health, and Environmental Affairs

Natural Resources - Poaching Restitution Act of 2016

This bill defines “poaching” and requires that if a person is convicted of poaching deer in the State, the court must order the person, in addition to any criminal penalties, to pay restitution and/or perform community service as determined by the court. For an act of poaching that involves trespassing on another’s property, the additional restitution and community service penalties apply with respect to the trespass violation only if the act of trespass is performed knowingly or willfully. Any restitution collected under the bill’s provisions is credited to the State Wildlife Management and Protection Fund within the Department of Natural Resources (DNR). DNR must adopt implementing regulations.

The bill takes effect June 1, 2016.

Fiscal Summary

State Effect: Potential significant increase in special fund revenues for the State Wildlife Management Protection Fund due to the bill’s restitution provisions. The bill is not expected to have a material impact on State expenditures, but likely has an operational impact, as discussed below.

Local Effect: The bill is not expected to have a material impact on local operations or finances.

Small Business Effect: None, assuming compliance with the law.

Analysis

Bill Summary: “Poaching” is defined as the illegal hunting, killing, or taking of game.

A person convicted of poaching deer must pay restitution of between \$2,000 and \$5,000, in an amount deemed reasonable by the court, and perform 80 hours of community service for each sika deer or antlered white-tailed deer with a Boone and Crockett Club score of 150 gross inches or less that is taken.

If a person is convicted of poaching an antlered white-tailed deer with a Boone and Crockett Club score of more than 150 gross inches, the person must pay restitution of between \$5,000 and \$10,000, in an amount deemed reasonable by the court, and perform 80 hours of community service.

If a person is convicted of poaching an antlerless white-tailed deer, the person must pay restitution of between \$300 and \$500, in an amount deemed reasonable by the court, or perform 40 hours of community service.

The bill states that the General Assembly encourages DNR and the Administrative Office of the Courts (AOC) to develop a database that accounts for the disposition of proceeds derived from confiscated property used in the commission of a wildlife offense and submit a progress report on those efforts to specified legislative committees by December 1, 2016.

In addition, the bill states that the General Assembly encourages DNR to work with local law enforcement agencies to develop protocols and strategies that facilitate a coordinated time-sensitive approach to investigate reports of deer poaching, including the authority to legally charge individuals suspected of poaching and confiscate property used in the commission of the offense.

Finally, the bill states that the General Assembly finds and declares that poaching is not only a violation of the public trust doctrine but also violates the tenets of sound wildlife management and conservation practices strictly adhered to by law-abiding sportsmen and sportswomen who deem the act intolerable.

Current Law: DNR must keep land managed by it open for hunting except under specified conditions. DNR also must manage land under its authority to support, promote, and enhance hunting opportunities to the extent authorized under State law and manage land under its authority to prevent, to the greatest practical extent, any net loss of acreage available for hunting opportunities on land managed by DNR. DNR establishes the open season to hunt forest and upland game birds and mammals by regulation each year. DNR may adopt regulations to enlarge, extend, restrict, or prohibit hunting wildlife.

Under general wildlife penalties, each mammal taken illegally constitutes a separate offense. A person who illegally takes a deer is guilty of a misdemeanor and subject to a fine of up to \$1,500 for the first violation; unless another penalty is specifically provided elsewhere, for a second or subsequent violation, a violator is subject to a fine of up to \$4,000 and/or imprisonment for up to one year. Natural Resources Police (NRP) officers may seize any deer 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 deer and (2) list criteria for the suspension of a person's hunting license or privileges for up to five years. Individuals who violate general wildlife penalties that result in the injury, death, or destruction of any wildlife, including deer, may be ordered by the court to pay restitution to the State for the resources value of the wildlife in addition to any other penalties. DNR has established that both white-tailed and sika deer are valued at \$300. However, DNR has not yet adopted regulations establishing offenses, or a combination of offenses, for which the department may suspend hunting licenses and privileges.

Background: According to the bill's preamble, Maryland's Wildlife Poaching Prevention Act (Chapter 698 of 2012) enhances the State's ability to suspend and revoke hunting privileges for those individuals found guilty of a State or federal hunting violation. The preamble also states that the Act focuses exclusively on the loss of hunting privileges in order to help deter crimes against nature consistent with the tenets of the public trust doctrine but is silent on financial restitution to further deter wildlife poaching.

The Wildlife & Heritage Service (WHS) within DNR oversees the management of 61 Wildlife Management Areas (WMAs) ranging in size from 1 acre to more than 30,000 acres. The mission of the WMA system is to conserve and enhance diverse wildlife populations and associated habitats while providing for public enjoyment of the State's wildlife resources through hunting and other wildlife-dependent recreation. The system encompasses more than 123,000 acres, with WMAs located in 18 of Maryland's 23 counties. WHS, in cooperation with NRP, is responsible for administering and enforcing the State's hunting programs, laws, and regulations.

According to its website, the Boone and Crockett Club is a wildlife conservation organization that was founded in 1887 by Theodore Roosevelt and George Bird Grinnell. The club is responsible for creating a big game scoring and data collection system to objectively measure and evaluate species and population health and habitat quality to improve state and federal wildlife policies and management. DNR advises that the Boone and Crockett Club scoring system is the most well-known method for scoring white-tailed

deer. The system is used to rank antlered deer, commonly known as bucks, harvested by hunters. Essentially, the bigger the score is, the bigger the buck.

State Revenues: Special fund (State Wildlife Management and Protection Fund) revenues increase, potentially significantly, due to the bill's restitution provisions for cases heard both in the District Court and the circuit courts. However, a reliable estimate of the bill's impact on special fund revenues cannot be determined because the number of convictions and the actual amount of restitution assessed pursuant to the bill cannot be predicted. For context, DNR advises that:

- NRP issues between 75 and 100 citations for trespassing on private property annually;
- the number of overall deer violations ranges from 200 to 400 annually; and
- the conviction rate for NRP cases is approximately 60% annually.

State Expenditures: DNR advises that all proceeds from confiscated property used in the commission of a wildlife offense are currently submitted to the Comptroller and coded by offense. There is a database record of the proceeds, and DNR has the ability to download and track reports regarding such proceeds. Accordingly, the bill's provision that encourages DNR and AOC to develop a database that accounts for the disposition of proceeds derived from confiscated property used in the commission of a wildlife offense is likely already satisfied. To the extent that the intent of the bill is to establish a different type of database or a more specific database, general fund expenditures for DNR and/or AOC may increase significantly.

AOC advises that the Judiciary has no involvement in the collection or tracking of the proceeds from confiscated property used in the commission of a wildlife offense, since the proceeds are submitted to the Comptroller. Developing a separate database within the Judicial Information Systems department within AOC to collect and report information about confiscated property used in the commission of a wildlife offense, and to amend the General Enterprise and Resource Support procurement system and (Revenue Collection System) RCS cash register system, requires 9,600 hours of analysis, programming, testing, and project management at a cost of approximately \$795,000. Additionally, AOC advises that it cannot develop such a database by the bill's June 1, 2016 effective date.

DNR advises that local law enforcement agencies do not handle deer poaching claims internally and generally turn any reports of deer poaching over to DNR. Thus, the bill's provision that encourages DNR to work with local law enforcement agencies to develop protocols and strategies that facilitate a coordinated time-sensitive approach to investigate reports of deer poaching appears to codify current practice. To the extent that the intent of the bill is to facilitate further cooperation between local law enforcement agencies and

DNR, general fund expenditures (as well as local law enforcement expenditures) may increase.

DNR can develop implementing regulations with existing budgeted resources. However, DNR reports that the bill may have a significant operational impact. DNR advises that its officers are not currently trained to score antlered deer using the Boone and Crockett Club scoring system and need training before they are able to enforce the bill's provisions. Further, antlers need to air dry at room temperature for 60 days before scoring under the system. This results in logistical issues and may cause a delay in the timely prosecution of an offense under the bill.

Although the exact number of cases that are tried under the bill's provisions is unknown, any increase in caseloads as a result of the bill is not expected to have a material impact on the Judiciary. The bill is also not expected to materially affect State incarceration expenditures.

Additional Information

Prior Introductions: None.

Cross File: SB 266 (Senator Salling, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Anne Arundel, Baltimore, Charles, Frederick, and Montgomery counties; Maryland Municipal League; Judiciary (Administrative Office of the Courts); Department of Natural Resources; Office of Administrative Hearings; Boone and Crockett Club; Department of Legislative Services

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