

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader - Revised

Senate Bill 362

(Senator Hershey, *et al.*)

Education, Health, and Environmental Affairs

Natural Resources - Oyster Planting - Substrate Material

This bill authorizes use of only native oyster shell, including fossilized native oyster shell, as substrate for an oyster restoration, propagation, or replenishment project, unless specified conditions (including the preparation of an environmental impact statement) are met with respect to the use of a specified alternate substrate.

Fiscal Summary

State Effect: General fund expenditures may increase significantly (by \$250,000 to \$2 million per environmental impact statement) beginning in FY 2020. General obligation (GO) bond expenditures and federal fund revenues and expenditures for oyster restoration may be delayed or reduced. Special fund revenues may decrease by a relatively minimal amount (in the range of \$10,000 annually).

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill authorizes the Department of Natural Resources (DNR) to plant or allow to be planted only native oyster shell, including fossilized native oyster shell, of the species *Crassostrea virginica*, for use as substrate for an oyster restoration, propagation, or replenishment project. However, DNR may use or allow to be used stone, rocks, concrete, marl, brick, cinderblock, or mixed shell as an alternate substrate for an oyster restoration, propagation, or replenishment project (1) if the use is recommended by the Oyster Advisory Commission and approved by the county oyster committee for any

county in which the project is to be implemented and (2) after the department prepares an environmental impact statement for the project and holds a public hearing on the project.

The bill applies to oyster plantings on an oyster sanctuary, a natural oyster bar, any leased bottom, specified riparian bottom below a pier, wharf, or other structure, and the public shellfish fishery area.

Current Law: State law and regulations do not currently address what types of substrate material are authorized to be used for an oyster restoration, propagation, or replenishment project. Placing of substrate material in the Chesapeake Bay, however, can be subject to State and federal approvals that must be obtained from the Maryland Department of the Environment (MDE), the Board of Public Works, and the U.S. Army Corps of Engineers (USACE), respectively.

Background: In response to the oyster population in the Chesapeake Bay languishing at 1% of historic levels, decreased suitable oyster habitat, and a dwindling number of harvesters, 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 assigned 76% of the bay's remaining quality oyster habitat to the public oyster fishery.

DNR indicates that the availability of hard substrate material is critical for increasing the number of oysters in the Chesapeake Bay, but sedimentation and deterioration of oyster shell together are reducing suitable hard-bottom habitat. DNR has proposed to dredge buried oyster shell at Man-O-War shoal in the upper Chesapeake Bay – for which final approval is still pending – to be planted on sanctuary bars for ecological restoration, aquaculture sites for private oyster production, and harvest reserves and open harvest areas for public fishery production.

In its joint application to USACE and MDE for the dredging, DNR discusses the use of alternate substrate materials, indicating that alternate materials have been used in the past and the department has done more recent investigation and testing of alternate materials.

State Fiscal Effect:

Environmental Impact Statement(s) Cost

General fund expenditures may increase significantly beginning in fiscal 2020 to prepare one or more environmental impact statements for oyster restoration, propagation, or replenishment projects that use an alternate substrate. If there is a need for alternate substrate for oyster restoration, propagation, or replenishment projects, DNR expects to

complete at least one environmental impact statement, whether in the immediate future or in later years, likely assessing the environmental impact of multiple types of alternate substrate in one study. The bill, however, refers to an environmental impact statement being prepared *for each specific project* that uses an alternate substrate, potentially requiring multiple environmental impact statements. DNR estimates that the cost of an environmental impact statement ranges from \$250,000 to \$2 million.

As mentioned above, DNR has proposed to dredge buried oyster shell at Man-O-War shoal and if that is approved, the department indicates that that will more or less eliminate the need for alternate substrate in the immediate future. The Man-O-War shoal project has not yet been approved, however, and the currently proposed dredging project will only produce a finite amount of shell, so alternate substrate may still be needed in the future even if the project goes forward.

Oyster Restoration Funding

DNR's oyster restoration program includes large-scale restoration efforts in selected tributaries to meet restoration goals under the 2014 Chesapeake Bay Watershed Agreement. To the extent there is a need to use alternate substrate for DNR's oyster restoration program because of limited availability of native oyster shell, whether in the immediate future or in later years, the bill may impact the funding of the program if the use of the alternate substrate is (1) delayed because of the time needed to complete an environmental impact statement; (2) not recommended by the Oyster Advisory Commission; and/or (3) not approved by the county oyster committee for a county in which a project is to be implemented.

It cannot be reliably estimated how funding is ultimately affected, but State expenditures – including GO bonds and federal funds (used for oyster hatchery production) – for oyster restoration may be delayed or reduced overall if substrate is not available to provide the hard-bottom habitat necessary for oyster restoration efforts. The *Capital Improvement Program* contains \$23.4 million in GO bond expenditures for the oyster restoration program (for in-water projects) from fiscal 2020 through 2024.

Aquaculture Leasing Revenue

Special fund revenues may decrease, relatively minimally, as a result of reduced aquaculture lease application fee revenues and lease rent revenues. To the extent the bill limits the availability of, and alternatives for, substrate material by limiting access to the use of alternate substrate and/or consequently increasing the demand for native oyster shell, it may discourage private investment in shellfish aquaculture. DNR indicates that if the number of new shellfish aquaculture lease applications each year is reduced by approximately half, the reduction in annual revenue is in the range of \$10,000.

Small Business Effect: The bill may have a meaningful negative economic impact on small businesses engaged in shellfish aquaculture, and may discourage new small business opportunities in shellfish aquaculture, to the extent it limits the availability of, and alternatives for, substrate material needed for shellfish aquaculture. DNR estimates that interest in the industry may decrease.

However, leaseholders and other small businesses, such as those engaged in commercial fisheries, may also be meaningfully positively affected by the bill if the bill's requirement of an environmental impact statement helps guard against negative environmental and/or economic effects of the use of alternate substrate.

Additional Information

Prior Introductions: SB 926 of 2018 received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee.

Cross File: HB 348 (Delegate Jacobs, *et al.*) - Environment and Transportation.

Information Source(s): Department of Natural Resources; Maryland Department of the Environment; Board of Public Works; University System of Maryland; Montgomery County; Maryland Watermen's Association; Department of Legislative Services

Fiscal Note History: First Reader - February 14, 2019
mag/lgc Revised - Updated Information - February 14, 2019

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