

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1498 (Delegate Mautz, *et al.*)
Environment and Transportation

Tidal Fish Licenses - Oyster Authorizations - Revocation

This bill authorizes, rather than requires, the Department of Natural Resources (DNR) to revoke a person's authorization to catch oysters after a hearing if the presiding officer finds or concludes that the person knowingly has committed an offense. The bill also allows a person whose authorization to catch oysters is revoked to apply for reinstatement of the authorization at any time after five years from the date of revocation. **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: Special fund expenditures may increase by up to \$37,700 and general fund expenditures may increase by up to \$19,300 in FY 2021. Special and general fund expenditure increases continue in future years, as discussed below. Special fund revenues are also affected, as discussed below.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Revocation of a Person's Authorization to Catch Oysters

In addition to any other penalty or fine, a person who holds an authorization to catch oysters and receives a citation for any of the following offenses may have the authorization

revoked: (1) taking oysters located more than 200 feet within a closed or prohibited area; (2) taking oysters with gear that is prohibited in that area; (3) taking oysters outside of a time restriction for the harvest of oysters by more than one hour; (4) taking oysters during closed seasons; and (5) taking oysters from a leased area by a person other than the leaseholder or the leaseholder's designee.

Chapter 520 of 2018 removed a requirement that DNR hold a hearing within 60 days of a person receiving a citation for taking oysters unlawfully to determine whether the person's license to catch oysters must be revoked. Instead, a hearing must simply be held before the revocation of an authorization to catch oysters. If a hearing is held, it must be held within 90 days after the offense occurs.

After a hearing is conducted, if the presiding officer finds or concludes that the person knowingly has committed an offense, DNR must revoke the person's authorization to catch oysters. A person who is aggrieved by DNR's final decision may obtain judicial review of the decision in accordance with the Administrative Procedure Act.

A person whose authorization has been revoked may not engage or work in the oyster fishery, whether or not it requires the use of another license.

Oyster "Authorization"

DNR uses a single, commercial license, known as a tidal fish license, which authorizes a licensee to engage in each activity indicated on the license. The department may issue authorizations for activities listed in statute for which the indicated fee has been paid. The authorization for harvesting oysters for sale, for example, has a fee of \$250 for a dredge boat and \$100 for harvesting other than from a dredge boat.

State Expenditures: Special fund expenditures may increase by up to \$37,700 and general fund expenditures may increase by up to \$19,300 in fiscal 2021, reflecting:

- a potential one-time computer programming cost to reconfigure DNR's COMPASS licensing system to allow for revoked oyster authorizations to be held for reinstatement (up to \$15,000 in special fund expenditures); and
- the cost for the department to hold reinstatement hearings with the Office of Administrative Hearings (as is currently done for revocations) to ensure due process for those applying for reinstatement (up to \$42,000 – \$22,700 (54%) in special fund expenditures and \$19,300 (46%) in general fund expenditures – assuming all 12 individuals who would be eligible for reinstatement in fiscal 2021 based on the timing of past revocations, would apply, with an approximate cost of \$3,500 per hearing).

Future year expenditures for reinstatement hearings depend on (1) the number of individuals eligible to apply for reinstatement in a given fiscal year, based on the timing of their revocation; (2) the number of eligible individuals who choose to apply; and (3) the number of individuals who are reinstated each year (assuming that those who are not reinstated continue to apply for reinstatement in subsequent years, adding to the number of applications in subsequent years). If it is assumed that all who are eligible to apply for reinstatement do apply for reinstatement, and that 75% of applicants are reinstated each year, future year hearing costs are within the range of \$17,500 to \$35,000 (total special and general funds) each year. If only 25% are reinstated each year, future year hearing costs are higher due to more individuals reapplying, within the range of \$45,500 to \$66,500 (total special and general funds) each year.

State Revenues: Special fund revenues are expected to be affected by the potential for reinstatement of authorizations under the bill. DNR sets targets for the number of tidal fish license authorizations issued by the department, limiting the number available. Authorizations that are revoked or voluntarily relinquished are reallocated to individuals on the commercial license waiting list maintained by DNR. If the bill's reinstatement provision instead requires DNR to hold revoked oyster authorizations for five years or more for potential reinstatement, during which time fees and surcharges associated with the authorizations are not paid, special fund revenues decrease.

It is assumed, for the purposes of this fiscal and policy note, that the fact that the bill authorizes, rather than requires, DNR to revoke a person's authorization does not materially affect the number of revocations. Chapter 520 of 2018 gives DNR the discretion to choose whether or not to pursue a revocation and it appears unlikely, if DNR does pursue a revocation and hold a hearing, that DNR would subsequently choose to not revoke a person's authorization to catch oysters if the presiding officer finds or concludes that the person knowingly committed an offense.

Based on recent numbers of offenders, DNR estimates that it revokes an average of three authorizations per year, with a loss under the bill of either \$400 or \$635 of revenue per authorization. The \$400 loss consists of the \$100 fee for the oyster authorization and \$300 oyster surcharge to catch oysters for sale. The \$635 loss consists of the \$100 authorization fee and \$300 oyster surcharge plus the \$215 harvester registration fee and \$20 seafood marketing surcharge, if the individual does not hold any other authorizations for which they would continue to pay the harvester registration fee and seafood marketing surcharge.

The revenue loss from the revocations, however, may be offset by reinstated authorizations, assuming those reinstated authorizations can be issued irrespective of whether they may cause the total number of oyster authorizations to go beyond DNR's oyster authorization target (since authorizations from past revocations have been reissued to others).

Assuming three authorizations are revoked each year, but 75% of individuals who apply for reinstatement are reinstated, there is a net special fund revenue increase in fiscal 2021 of between \$1,700 and \$4,500 (depending on whether the revocations and reinstatements result in \$400 or \$635 decreases/increases). By fiscal 2025, because of continuing revocations and reinstatements, the potential range of the net special fund revenue increase is between \$2,900 and \$13,700.

Alternatively, assuming three authorizations are revoked each year, but only 25% of individuals who apply for reinstatement are reinstated each year, the net impact on special fund revenues in fiscal 2021 is in the range between a special fund revenue decrease of \$700 and a special fund revenue increase of \$700. By fiscal 2025, the net impact on special fund revenues is in the range between a special fund revenue decrease of \$1,900 and a special fund revenue increase of \$6,100.

Small Business Effect: The bill may meaningfully affect the small business opportunities of individuals on the commercial license waiting list, to the extent fewer oyster authorizations are made available to those on the list as a result of (1) newly revoked authorizations being held for potential reinstatement instead of redistributed to the waiting list and (2) authorizations being allocated to reinstated individuals instead of those on the waiting list.

Additional Information

Prior Introductions: HB 1153 of 2019 received an unfavorable report from the House Environment and Transportation Committee. HB 1488 of 2017 was referred to the House Environment and Transportation Committee but was subsequently withdrawn.

Designated Cross File: None.

Information Source(s): Department of Natural Resources; Office of Administrative Hearings; Department of Legislative Services

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mr/lgc

Analysis by: Scott D. Kennedy

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