

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 799

(Delegate Clark)

Environment and Transportation

Education, Health, and Environmental Affairs

Aquaculture Coordinating Council - Application of Tidal Wetlands Permit
Requirements to Aquaculture Operations - Study

This emergency bill requires the Aquaculture Coordinating Council, in consultation with the Maryland Department of the Environment (MDE), to (1) review MDE policies regarding the application of State or tidal wetlands license and permit requirements to aquaculture operations in the State and (2) in addition to an existing reporting requirement of the council, by December 1, 2021, report to the Governor and the General Assembly its findings and recommendations, including any proposed legislation, on changes necessary to eliminate conflicts or redundancies in the oversight of aquaculture operations by MDE and the Department of Natural Resources (DNR). **The bill terminates May 31, 2022.**

Fiscal Summary

State Effect: The bill can be implemented with existing resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law:

Aquaculture Leases

A person who wishes to obtain an aquaculture, water column, or submerged land lease must pay an application fee and complete and submit an application to DNR. Statute establishes general provisions that a leaseholder must follow, including the requirement that a leaseholder actively use the lease and comply with any standards for planting, harvesting, and use of the leased area established by DNR. Leaseholders must also mark the lease area and comply with any other DNR marking requirements, pay rent, and comply with related specified regulations. All leaseholders must also obtain and possess a shellfish aquaculture harvesting permit prior to engaging in any aquaculture activities on their lease.

Tidal Wetlands Licenses and Permits

Pursuant to statute and MDE regulations, and subject to certain exceptions, a person may not dredge, fill, or construct or reconstruct structures in (1) State wetlands, without a license or (2) private wetlands, without a permit. “Dredging” means the removal or displacement by any means of soil, sand, gravel, shells, or other material, whether or not of intrinsic value, from any State or private wetlands. “Filling” means (1) the displacement of navigable water by the depositing into State or private wetlands of soil, sand, gravel, shells, or other materials or (2) the artificial alteration of navigable water levels by any physical structure, drainage ditch, or otherwise.

Statute establishes an exception to the requirement to obtain a license to dredge or fill on State wetlands for aquaculture activities occurring under a lease issued by DNR. Additionally, pursuant to Chapters 236 and 237 of 2019, a person cultivating shellfish seed using a pump, a pipe, or any other equipment attached to a pier in accordance with a shellfish nursery permit is not required to obtain a tidal wetlands license or permit from MDE or a State wetlands license from the Board of Public Works (BPW), provided that the pump, pipe, or other equipment does not require increasing the length, width, or channelward encroachment of the pier. Pursuant to DNR regulations, a shellfish nursery permittee is only authorized to culture shellfish seed to a maximum size measuring no greater than one inch in length from hinge to bill.

Statute also generally prohibits BPW and MDE from issuing a license or permit to authorize a nonwater-dependent project located on State or private wetlands. A “nonwater-dependent project” is a temporary or permanent structure that, by reason of its intrinsic nature, use, or operation, does not require location in, on, or over State or private wetlands. Statute does authorize BPW (for State wetlands) and the Secretary of the

Environment (for private wetlands) to issue such a license or permit under specified conditions. Chapters 236 and 237 established that a pump, a pipe, or any other equipment attached to a pier that is associated with a permitted shellfish nursery operation is not a “nonwater-dependent project” for the purpose of wetlands license and permit requirements.

Aquaculture Coordinating Council

The Aquaculture Coordinating Council is made up of government, industry, academic, and nonprofit organization representatives. The council has various responsibilities relating to advancing Maryland aquaculture, including formulating and making proposals for such advancement, to the Governor and specified committees of the General Assembly, by September 1 each year.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 442 (Senator Klausmeier) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of the Environment; Maryland Department of Health; Department of Natural Resources; Board of Public Works; Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2021
an/sdk Third Reader - April 7, 2021
Revised - Amendment(s) - April 7, 2021

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