

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 830

(Senator Elfreth, *et al.*)

Education, Health, and Environmental Affairs
and Budget and Taxation

Environment and Transportation

Natural Resources – Oysters – Spat, Shells, and Substrate

This bill establishes various programs, goals, survey/evaluation requirements, planning requirements, and funding requirements related to oyster spat, oyster shells, and oyster substrate. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: State finances are significantly affected, as summarized in the table below and discussed and shown in more detail in the Analysis section. **This bill establishes mandated appropriations in FY 2024 through 2026.**

(\$ in millions)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1.04	1.28	0.53	0.28	0.28
GF/FF Exp.	0	2.00	2.00	2.00	2.00
Bond/PAYGO Exp.	0	4.50	2.00	2.00	0
Net Effect	(\$1.04)	(\$7.78)	(\$4.53)	(\$4.28)	(\$2.28)

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

Local Effect: The bill does not materially affect local government finances.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The provisions discussed below are numbered for purposes of reference in the State Fiscal Effect section of this fiscal and policy note.

The bill makes the following changes to State law:

- (1) ***Loans for Eligible Seafood Processing Projects*** – (1) requires the Maryland Agricultural and Resource-Based Industry Development Corporation (MARBIDCO) to provide specified loans of up to \$250,000 to licensed seafood dealers to finance costs of eligible seafood processing projects that support the goal of increasing the amount of oyster shells retained in the State and returned to the Chesapeake Bay (with specified loan forgiveness available that is based on the value of bushels of oyster shells returned to the Department of Natural Resources (DNR) at no cost or \$25 per bushel of spat-on-shell planted on a public fishery bottom) and (2) requires the Governor to include an appropriation of \$1.0 million in the annual budget bill for fiscal 2024 to MARBIDCO to provide the loans and administer and operate the loan program;
- (2) ***Grants for Oyster Shell Recycling*** – (1) requires DNR to provide specified annual grants to nonprofit organizations, community associations, restaurants, and seafood processors and dealers that recycle oyster shells; (2) requires DNR to provide, at no cost, receptacles for the collection of oyster shells to restaurants that agree to recycle at least 25 bushels of oyster shells per year; and (3) authorizes DNR to enter into agreements with nonprofit organizations with expertise in oyster shell recycling to execute the grant program;
- (3) ***Clarification of Termination of Oyster Shell Recycling Tax Credit*** – clarifies that the termination of provisions of State law that allow an individual or corporation to claim a specified credit against the State income tax for oyster shells recycled during the taxable year applies to all taxable years beginning after December 31, 2022;
- (4) ***Survey of Submerged Areas of the State*** – (1) beginning in fiscal 2024, requires the Maryland Geological Survey (MGS) within DNR, in conjunction with the University of Maryland Center for Environmental Science (UMCES), to survey submerged areas of the State to map existing and potential oyster habitats (and to the extent practicable, using specified methods to quantify the total volume of subsurface shell material), prioritizing Eastern Bay and its tributaries, and specified public fishery areas, and (2) requires the Governor to include an appropriation of \$2.0 million in the annual budget bill for each of fiscal 2024 through 2026 to fund the surveys, prioritizing the use of federal funds for the appropriations;
- (5) ***Evaluations Relating to Oyster Substrate and Planting*** – (1) requires UMCES to collaborate with the Smithsonian Environmental Research Center, the Virginia Institute of Marine Science, and specified others, to undertake specified evaluations relating to oyster substrate and oyster planting, and report by December 1, 2025, to the Secretary of Natural Resources and the General Assembly on its evaluations and

- (2) requires the Governor to include an appropriation of \$250,000 in the annual budget bill for each of fiscal 2024 and 2025 for UMCES to carry out the research;
- (6) **Ten-year Plan for Oyster Substrate Needs** – requires DNR to submit a specified plan to the Governor and General Assembly by December 1, 2023, describing the substrate needs for oyster repletion, aquaculture, and restoration activities in the State over the next 10 years;
- (7) **Oyster Production Goal and Infrastructure** – (1) establishes the intent of the General Assembly that by 2025, oyster hatcheries in the State be capable of consistently producing 5 billion larvae or spat per year and (2) requires the Governor to include in the annual operating or capital budget for fiscal 2024 an appropriation of \$2.5 million for the Patuxent Environmental and Aquatic Research Laboratory, Morgan State University (MSU), to be used for infrastructure upgrades to support increased oyster production for research and restoration; and
- (8) **Eastern Bay Goal and Funding** – (1) establishes a goal (in recognition of the December 1, 2021 final report of the Oyster Advisory Commission's consensus recommendations) that, over the next 25 years, a combination of replenishment, restoration, and aquaculture activities be collectively planned and undertaken in Eastern Bay, with an equal amount of funding for spat planting in sanctuaries (\$1.0 million annually adjusted for inflation) and for spat and shell planting on fishery bars (\$1.0 million annually adjusted for inflation) in addition to current replenishment and restoration activities; (2) requires the effectiveness of those activities to be evaluated every five years; and (3) to help reach the goal, requires the Governor to include in the annual operating or capital budget, for each of fiscal 2024 through 2026, an appropriation of \$2.0 million for DNR, with any future funding contingent on the evaluations every five years.

Current Law: Existing statutory provisions relevant to the bill's changes include:

- **Oyster Shell Recycling Tax Credit** – An individual or a corporation may claim a credit against the State income tax in an amount equal to \$5 for each bushel of oyster shells recycled during the taxable year, up to the lesser of \$1,500 or the individual's or corporation's State income tax before application of specified credits. Pursuant to Chapter 604 of 2018, the credit terminates June 30, 2023.
- **Program for the Return of Oyster Shells to the Chesapeake Bay** – Chapter 613 of 1986 required DNR to initiate the development of a program for enactment by the General Assembly to encourage return of the State's oyster shell resource to the tidal waters of the State to assist oyster propagation. Chapter 613 also authorizes DNR to use the Fisheries Research and Development Fund to purchase oyster shell.

- **Oyster Shell Purchase Program** – Chapter 721 of 1988 (as amended by Chapters 318 and 319 of 2009) establishes the Oyster Shell Purchase Program and requires DNR to determine whether sufficient funds are available for the program and to notify every licensed oyster dealer by September 1 of each year whether the program will be carried out during the ensuing license year. If the program is carried out, any licensed oyster dealer must reserve for eight months after the opening of each annual public shellfish fishery season all shells of oysters harvested from the Chesapeake Bay or its tributaries and commercially shucked in the State for purchase by DNR for oyster restoration, unless the dealer plants or provides the shells for planting in specified aquaculture, oyster gardening, or public shellfish fishery areas. DNR must establish procedures for the expeditious notice, payment, and removal of shells purchased and provide for the transportation, storage, and placement of the shells on public oyster bars in State waters.
- **Oyster Taxes and Surcharge for Oyster Repletion** – A severance tax of \$1 per bushel is levied on every bushel of oysters caught within the limits of the natural oyster bars of the State exclusive of the Potomac River, and an inspection tax of \$0.30 per bushel is levied on marketable oysters shipped in the shell to any place outside the State. The taxes are credited to the Fisheries Research and Development Fund and used only for the repletion of the natural oyster bars of the State. Commercial oyster harvesters also pay an annual surcharge of \$300, which DNR must use for oyster repletion activities.
- **Productivity/Utility of Oyster Resources** – DNR must take measures which in its judgment seem best calculated to increase the productivity or utility of oyster resources in the State, including (1) identifying and using effective methods of cleaning diseased oyster bars; (2) providing clean shell for the bars; (3) using hatchery produced oysters to replant sites; and (4) applying for a permit to dredge buried oyster shells.
- **Consensus Recommendations and Updated Fishery Management Plan** – Chapters 5 and 9 of 2020 (as amended by Chapters 597 and 598 of 2020) require DNR to develop an updated fishery management plan for the scientific management of the oyster stock based on management strategies and measurements recommended by the Oyster Advisory Commission through a consensus recommendations process required to be completed by December 1, 2021. The fishery management plan must (1) end overfishing of oysters in all areas and regions of the Chesapeake Bay and its tributaries where it has occurred, while maintaining a harvest in the fishery; (2) achieve fishing mortality rates at target levels; (3) increase oyster abundance; (4) increase oyster habitat; and (5) facilitate the long-term sustainable harvest of oysters, including the public fishery. Chapters 5

and 9 also require DNR, in order to be responsive to changes in the oyster resources due to environmental conditions, to (1) review the status of the stock relative to reference points every two years and conduct a benchmark stock assessment every six years and (2) implement management actions that increase oyster habitat, maintain harvest, and grow the oyster stock.

- ***Maryland Agricultural and Resource-Based Industry Development Corporation*** – MARBIDCO was established under Chapter 467 of 2004 – as a body politic and corporate and an instrumentality of the State – to help Maryland’s farm, forestry, seafood, and related rural businesses achieve profitability and sustainability.

State Fiscal Effect: The estimated State fiscal effect of the bill is summarized in **Exhibit 1** and is based on the following assumptions and information:

- general fund expenditures increase by \$1.0 million in each of fiscal 2023 and 2024 and by indeterminate amounts in future years for the loans for eligible seafood processing projects (under provision 1, as numbered above in the Bill Summary), reflecting the mandated appropriation in fiscal 2024 and assuming a similar amount of funding in fiscal 2023 and continued general fund appropriations for the loans, to the extent needed, in future years;
- at least approximately half of the Maryland restaurants and other Maryland entities identified as participating in the Oyster Recovery Partnership’s (ORP) Shell Recycling Alliance on ORP’s website apply for oyster shell recycling grants (provision 2), receive receptacles for the recycling at no cost (only restaurants), and recycle an average of 80 bushels per year (an approximate minimum estimate of average bushels per year, making certain assumptions based on figures from ORP’s website);
- the bill’s clarification (provision 3) of the taxable years to which the termination of the oyster shell recycling tax credit (occurring pursuant to current law) applies does not materially affect State finances;
- general fund and/or federal fund expenditures for the survey of submerged areas of the State (provision 4) continue into at least fiscal 2027, despite the mandated appropriations ending after fiscal 2026, due to the survey requirement remaining in the law and DNR’s indication that a full survey of submerged areas of the State pursuant to the bill could require well beyond three years of work;

- general fund expenditures increase by \$250,000 in each of fiscal 2024 and 2025 for UMCES to conduct research on oyster substrate and oyster planting, reflecting the bill's mandated appropriations (provision 5);
- DNR can complete the 10-year plan for oyster substrate needs with existing resources (provision 6);
- in addition to the \$2.5 million in general obligation (GO) bond or pay-as-you-go (PAYGO) general fund expenditures in fiscal 2024 for infrastructure upgrades at the Patuxent Environmental and Aquatic Research Laboratory (provision 7), general fund expenditures increase for MSU beginning in fiscal 2025, based on Department of Legislative Services assumptions, due to increased operating costs following the capital expenditures in fiscal 2024 ; and
- GO bond or PAYGO general fund expenditures increase by \$2.0 million annually in at least fiscal 2024 through 2026, reflecting the bill's mandated appropriations to help meet the Eastern Bay goal (provision 8), with any future funding contingent on the required evaluations every five years.

Exhibit 1
Estimated Fiscal Effect of the Bill
(*\$* in Millions)

<u>Prov #</u>	<u>Description</u>	<u>Agency</u>	<u>Type</u>	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>
1	Loans for Eligible Seafood Processing Projects	MARBIDCO	GF Exp	\$1.00	\$1.00	-	-	-
2	Grants for Oyster Shell Recycling	DNR	GF Exp	\$0.04	\$0.03	\$0.03	\$0.03	\$0.03
4	Survey of Submerged Areas of the State	DNR (MGS)/UMCES DNR (MGS)	GF/FF Exp <i>GF/FF Pos's</i>		\$2.00 <i>7.0</i>	\$2.00	\$2.00	\$2.00
5	Research Relating to Oyster Substrate and Oyster Planting	UMCES	GF Exp		\$0.25	\$0.25		
7	Oyster Production Goal and Infrastructure	MSU	Bond/PAYGO Exp GF Exp		\$2.50 \$0.25		\$0.25	\$0.25
8	Eastern Bay Goal and Funding	DNR	Bond/PAYGO Exp		\$2.00	\$2.00	\$2.00	
<i>Subtotals</i>			<i>GF Exp</i> <i>GF/FF Exp</i> Bond/PAYGO Exp <i>GF/FF Pos's</i>	\$1.04 \$0.00 \$0.00 <i>7.0</i>	\$1.28 \$2.00 \$4.50	\$0.53 \$2.00 \$2.00	\$0.28 \$2.00 \$2.00	\$0.28 \$2.00 \$0.00
Net State Effect				(\$1.04)	(\$7.78)	(\$4.53)	(\$4.28)	(\$2.28)

Bond/PAYGO Exp: General obligation bond or pay-as-you-go expenditures

DNR: Department of Natural Resources

GF Exp: General fund expenditures

GF/FF Exp: General/federal fund expenditures

GF/FF Pos's: General/federal fund permanent positions

MARBIDCO: Maryland Agricultural and Resource-Based Industry Development Corporation

MGS: Maryland Geological Survey

MSU: Morgan State University

UMCES: University of Maryland Center for Environmental Science

Source: Department of Legislative Services

Small Business Effect: Small businesses in the oyster industry are expected to meaningfully benefit from the bill's provisions, including the loans for eligible seafood processing projects and the various efforts under the bill aimed at increasing the amount and productivity of oyster resources in the State.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1228 (Delegate Crosby, *et al.*) - Environment and Transportation.

Information Source(s): Comptroller's Office; University System of Maryland; Morgan State University; Department of Budget and Management; Department of Natural Resources; Oyster Recovery Partnership; Department of Legislative Services

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Analysis by: Scott D. Kennedy

Direct Inquiries to:

(410) 946-5510

(301) 970-5510