

Department of Legislative Services  
Maryland General Assembly  
2022 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 1201

(Delegate Jacobs, *et al.*)

Environment and Transportation

Education, Health, and Environmental Affairs

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Water Pollution - Oyster Repletion Supplemental Environmental Projects

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This bill requires the Maryland Department of the Environment (MDE) to (1) prioritize specified supplemental environmental projects (SEPs) involving oyster repletion for specified water pollution violations in the proximity of an oyster population and (2) include oyster repletion projects in the SEPs database required by Senate Bill 90/House Bill 595 of 2022, if one or both of those bills take effect.

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Fiscal Summary

**State Effect:** Special fund revenues may be affected, as discussed below. State expenditures are not materially affected.

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

**Small Business Effect:** Potential meaningful.

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Analysis

**Bill Summary:** The bill requires MDE to prioritize a SEP involving oyster repletion in natural oyster bars in the county where the underlying water pollution violation occurred with input from the county oyster committee for a party who is in violation of an effluent limitation or unpermitted discharge in the proximity of an oyster population. If there are no suitable natural oyster bars for repletion in the county where the violation occurred, the natural oyster bar repletion project must be carried out in an adjacent county.

The bill also requires, contingent on the taking effect of Senate Bill 90/House Bill 595 of 2022, that MDE include oyster repletion projects in the database of SEPs that Senate Bill 90/House Bill 595 require MDE to create and maintain.

## **Current Law:**

### *Supplemental Environmental Projects*

A SEP is an enforcement tool used by environmental agencies (such as the U.S. Environmental Protection Agency (EPA) and MDE) to augment traditional penalty actions when an entity violates an environmental law. Specifically, a SEP is a voluntary project undertaken by the violator as part of a settlement agreement or to offset monetary penalties for the violation. EPA requires a SEP to have a tangible environmental or public health benefit to the affected community or environment that is closely related to the violation being resolved but that goes beyond what is required under federal, state, or local laws.

### *Enforcement of Water Pollution Laws, In General*

MDE has a broad range of actions it is authorized to use to enforce water pollution laws. Among other things, MDE is authorized to issue an injunction against any person who violates any provision of Title 9, Subtitle 3 (“Water Pollution Control”) of the Environment Article. Additionally, civil, administrative, and criminal penalties apply to a person who violates Title 9, Subtitle 3 or any rule, regulation, order, or permit adopted or issued pursuant to Subtitle 3. Penalty revenue collected under Title 9, Subtitle 3 of the Environment Article is paid into the Clean Water Fund.

### *Effluent Limitations and Pollutant Discharges*

Under Title 9 of the Environment Article, “effluent limitation” means a restriction or prohibition that (1) is established under federal law or a law of this State and (2) specifies quantities, rates, or concentrations of chemical, physical, biological, or other constituents that are discharged into the waters of the State. “Effluent limitation” includes (1) parameters for toxic and nontoxic discharges; (2) standards of performance for new sources; and (3) ocean discharge standards.

Also under Title 9, “discharge” means (1) the addition, introduction, leaking, spilling, or emitting of a pollutant into the waters of the State or (2) the placing of a pollutant in a location where the pollutant is likely to pollute. “Discharge permit” is defined under Title 9, Subtitle 3 as a permit issued by MDE for the discharge of any pollutant or combination of pollutants into waters of the State.

Title 9, Subtitle 3 includes various provisions governing discharge permits, including authorization for MDE to issue a discharge permit if the department finds that the discharge meets (1) all applicable State and federal water quality standards and effluent limitations and (2) all other requirements of Title 9, Subtitle 3.

A person must generally hold an MDE discharge permit before constructing, installing, modifying, extending, altering, or operating a system, facility, outlet, or establishment if its operation could cause or increase the discharge of pollutants into the waters of the State. This permitting requirement applies to (1) an industrial, commercial, or recreation facility or disposal system; (2) a State-owned treatment facility; or (3) any other outlet or establishment. Further, a person must hold a concentrated animal feeding operation (CAFO) discharge permit before beginning construction on any part of a new CAFO. MDE has broad authority to require a discharge permit for any other activity by rule or regulation.

**State Revenues:** Special fund revenues may be affected to the extent that an oyster repletion SEP prioritized pursuant to the bill, and undertaken in lieu of payment of monetary penalties, results in a different level of penalties being collected for the associated violation than otherwise is collected in the absence of the bill; however, the extent of any impact on special fund revenues cannot be reliably estimated.

**Small Business Effect:** Small business commercial oyster harvesters may meaningfully benefit to the extent oyster repletion projects prioritized under the bill lead to increased harvest.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** SB 876 (Senators Bailey and Carozza) - Education, Health, and Environmental Affairs.

**Information Source(s):** Baltimore, Caroline, Charles, Kent, Prince George's, and St. Mary's counties; Maryland Department of the Environment; Department of Natural Resources; Department of Legislative Services

**Fiscal Note History:** First Reader - February 27, 2022  
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