

Testimony of Hon. Brian Frosh in Opposition to SB 76

Senate Committee on Education, Energy and the Environment, February 4, 2025

Chair Feldman, Vice Chair Kagan and members:

I am offering this testimony as a private citizen. In 2010, I was the lead Senate sponsor of the law that SB 76 now seeks to amend. The issue of oyster poaching was brought to my attention during a site visit by the Chesapeake Bay Commission to the Horn Point Laboratory.

The Commission met with Dr. Donald Merritt who was in charge of oyster restoration in the Chesapeake Bay. Dr. Merritt told the Commission that the greatest threat to the oyster population in the Bay was not disease. It was not pollution. It was theft.

The State, at great expense, has grown billions of oysters at the laboratory at Horn Point. It has built reefs. It has placed the oysters in sanctuaries and elsewhere in the Bay.

Dr. Merritt told us that the sanctuaries were being devastated by licensed individuals who dragged oysters from the sanctuaries. Even when caught in the act, the thieves rarely received significant punishment and were absolutely undeterred from stealing oysters from state sanctuaries.

I believe that the law on the books is fundamentally fair. The state grows the oysters. It plants them in strategic areas around the Bay, and it grants a privilege – a license – to competent, law-abiding citizens to harvest oysters once they have reached maturity.

Before someone's license can be revoked under existing law, **an administrative law judge must hold a hearing and determine that the offense was committed knowingly.** See, Natural Resources Article, Sec. 4-1210(b)(2).

When someone is more than 200 feet inside a sanctuary and is **knowingly** scraping oysters from the sea bed, significant punishment is warranted.

When someone is **knowingly** taking oysters in a bed that has been declared off limits because of health threats due to pollution, significant punishment is warranted.

When someone is **knowingly** stealing oysters from an aquaculture operation that belongs to someone else, significant punishment is warranted.

The law you are considering is not a criminal law. It does not provide for jail time for the offenders. It merely allows for the revocation of a privilege if the violation was intentional.

My understanding is that in the nearly 15 years that the law has been in effect, 32 licenses have been revoked. The individuals who have been sanctioned had managed to accumulate, on average, 18 other violations. Moreover, only about 1/3 of those charged ultimately had their licenses revoked.

I believe that the current standards are fair and appropriate. Even if you were to find them to be too harsh, it is critical to set sanctions that are high enough to deter the intentional misconduct that is addressed by the law.

SB 76 certainly does not meet that test. It is too lenient. A maximum penalty of a two year suspension for knowingly stealing oysters is insufficient. A blanket pardon of past misconduct is indiscriminate and inappropriate. DNR ought to have some discretion if those who have intentionally stolen oysters in the past are to be readmitted to the fishery.

I would urge the Committee to give SB 76 an UNFAVORABLE report.

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