

Department of Legislative Services  
Maryland General Assembly  
2015 Session

FISCAL AND POLICY NOTE

House Bill 419 (Delegate Jacobs, *et al.*)  
Environment and Transportation

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Natural Resources - Aquaculture Leases - Consideration of User Conflicts

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This bill requires the Department of Natural Resources (DNR), in determining the location of specified submerged land leases in the Chesapeake Bay and water column leases in the waters of the State, to consider potential conflicts presented by other uses of the proposed areas, including navigation, recreation, and commercial fishing. The bill also requires DNR, with the exception of demonstration leases, to mitigate and minimize the effects of proposed submerged land or water column leases or lease areas, if it determines that conflicts presented by other uses exist.

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Fiscal Summary

**State Effect:** General fund expenditures may increase beginning in FY 2016 due to costs of additional contested case hearings, by \$3,500 per hearing. Special fund revenues decrease minimally beginning in FY 2016 to the extent the bill delays or prevents issuance of leases that otherwise would occur.

**Local Effect:** None.

**Small Business Effect:** Meaningful.

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Analysis

**Current Law:** Aquaculture leases allow a person to cultivate shellfish on submerged land or in a floating structure. A person wishing to obtain a submerged land or water column lease must undergo an application process that includes DNR providing public notice and an opportunity for any person with a specific right, duty, privilege, or interest different

from that held by the general public that may be adversely affected to protest the proposed lease. Certain location restrictions on leases are also specified in statute and regulations.

In determining the location of specified preapproved leasing areas in the Chesapeake Bay and the Atlantic Coastal Bays, DNR must consider potential conflicts presented by other uses of the proposed area, including navigation, recreation and commercial fishing. DNR is not required, in general, to mitigate and minimize the effects of proposed aquaculture locations/areas if it determines that conflicts presented by other uses exist.

**Background:** In response to the oyster population in the Chesapeake Bay languishing at 1% of historic levels, decreased suitable oyster habitat, and a dwindling number of harvesters, DNR unveiled a new management and restoration plan for oysters and the State's oyster industry in December 2009. The plan increased the State's network of oyster sanctuaries from 9% to 24% of the bay's remaining quality oyster bars, established oyster aquaculture leasing opportunities and related financial assistance programs, and maintained 76% of the bay's remaining quality oyster habitat for a public oyster fishery.

**State Expenditures:** DNR advises that the bill likely increases (1) the time and resources it spends on its review of each lease application; (2) the number of protests against leases; and (3) the number of contested case hearings held. In addition, DNR advises that the bill may significantly delay lease issuances.

DNR advises that it receives approximately 55 lease applications per year, and that each contested case hearing costs about \$3,500. Although the additional number of contested case hearings that are held each year is unknown, *for illustrative purposes only*, if all lease applications result in a contested case, general fund expenditures increase by \$192,500 annually.

**State Revenues:** Special fund revenues from lease application and rental fees may decrease to the extent the bill delays or prevents the issuance of leases that otherwise would occur. Application fees are either \$150 or \$300, depending on whether an application is for a lease in a specified Aquaculture Enterprise Zone or not. The rental rate for a submerged land lease is \$3.50 per acre per year and the rental rate for a water column lease is \$25 per acre per year.

**Small Business Effect:** Currently, approximately 150 entities hold 319 leases. DNR advises that these small businesses generate approximately \$2.0 million annually from the sale of marketable oysters. Under this bill, however, DNR advises that additional leases will be difficult to obtain.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 709 (Senator Conway) - Education, Health, and Environmental Affairs.

**Information Source(s):** Department of Natural Resources, Department of Legislative Services

**Fiscal Note History:** First Reader - March 5, 2015  
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