

Department of Legislative Services  
Maryland General Assembly  
2022 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 580 (Senator Bailey)  
Education, Health, and Environmental Affairs

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Sewer Systems and Wastewater Treatment Plants - Water Pollution - Shellfish  
Harvester Restitution

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This bill requires the Maryland Department of the Environment (MDE) to order a person to pay restitution to shellfish harvesters affected by a closure of a shellfish harvesting area under § 4-1006(b) of the Natural Resources Article if (1) the person is responsible for the sewer overflow, treatment plant bypass, or discharge in violation of a discharge permit issued under § 9-323 of the Environment Article and (2) the violation results in the affected area being closed to shellfish harvesting. Restitution must be in an amount equal to three times the economic damages caused to the shellfish harvester caused by the closure, as determined by MDE. A shellfish harvester is eligible for restitution if the shellfish harvester (1) holds the appropriate authorizations from the Department of Natural Resources (DNR) to harvest oysters or clams in the area affected by the closure and (2) is able to demonstrate that the shellfish harvester caught oysters or clams in the affected area during at least one of the two most recent harvest seasons, as specified.

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**Fiscal Summary**

**State Effect:** As early as FY 2023, general fund expenditures increase in any year that a request for restitution is filed. As early as FY 2023, State expenditures (all/multiple fund types) increase to pay restitution to the extent a State-owned/operated wastewater facility is responsible for paying restitution. State revenues are not affected.

**Local Effect:** As early as FY 2023, local expenditures increase to the extent that a locally owned/operated wastewater facility is responsible for paying restitution. Local revenues are not affected.

**Small Business Effect:** Potential meaningful.

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## Analysis

### Current Law:

#### *Tidal Fish License and Oyster and Clam Authorizations*

DNR uses a single, commercial license, known as a tidal fish license, which authorizes a licensee to engage in each activity indicated on the license. The department may issue authorizations for activities listed in statute for which the indicated fee has been paid. The authorization for harvesting oysters for sale, for example, has a fee of \$250 for a dredge boat and \$100 for harvesting other than from a dredge boat. The fee for clams is \$100.

#### *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.

#### *Prohibitions and Restrictions on Catching Shellfish in Certain Areas*

There are numerous restrictions related to the type of gear and areas where a person is authorized to catch shellfish in the waters of the State. Among other things, MDE has the authority to close any area to the catching of clams and oysters due to pollution. DNR is responsible for marking any area that MDE closes due to pollution such that the area can be seen from the water. DNR is required to adopt rules and regulations to designate the marking in a plain and visibly obvious fashion, as specified. However, even in the absence of such marking devices, a person is still prohibited from catching oysters or clams in an MDE-designated restricted area if appropriate notice of the restriction has been given, as specified.

DNR is responsible for annually publishing maps and coordinates of oyster sanctuaries, closed oyster harvest reserve areas, and areas closed to shellfish harvest by MDE.

#### *National Shellfish Sanitation Program*

The National Shellfish Sanitation Program (NSSP) is a federal/state cooperative program recognized by the U.S. Food and Drug Administration and the Interstate Shellfish

Sanitation Conference for the sanitary control of shellfish produced and sold for human consumption. In Maryland, DNR, MDE, and the Maryland Department of Health work closely together to ensure compliance with NSSP.

#### *Discharge Permits Issued by the Maryland Department of the Environment*

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 Expenditures:** MDE advises that the closure of shellfish harvesting areas due to sewage pollution is rare and has occurred seven times in the last 15 years (once in 2007, once in 2011, three times in 2021, and twice so far in 2022).

#### *Maryland Department of the Environment Administrative Costs*

General fund expenditures for MDE increase in any fiscal year in which MDE must order a person to pay restitution to a shellfish harvester; specifically, costs increase to hire contractual staff to develop orders to direct any required restitution, evaluate claims, determine economic damages, and manage any cases referred to the Office of the Attorney General. Costs could increase as early as fiscal 2023, but the timing and magnitude of any costs cannot be predicted in advance; they depend on the timing and magnitude of any sewer overflows, treatment bypasses, or discharges made in violation of a discharge permit, any subsequent closures of shellfish harvesting areas, and any losses claimed by eligible shellfish harvesters.

MDE estimates that 2.5 regular full-time positions are needed to implement the bill. However, given the rarity of shellfish harvesting area closures due to sewage pollution, and the fact that there is no time limit on the turnaround for a restitution claim under the bill, the Department of Legislative Services advises that the added responsibilities incurred by this legislation are not permanent or consistent and, thus, may be performed by contractual employees instead. To the extent that sewage pollution resulting in shellfish harvesting area closures becomes more regular and/or frequent, and contractual staffing is insufficient, MDE may request additional resources through the annual budget process.

## *State Agencies as Owners/Operators of Wastewater Treatment Plants*

Expenditures for owners/operators of wastewater treatment plants (which could be State agencies) increase, potentially significantly, to the extent that a sewer overflow, treatment bypass, or discharge made in violation of a discharge permit causes the closure of a shellfish harvesting area, and the owner/operator is responsible for paying restitution to a shellfish harvester. While the impact of any potential restitution cannot be predicted in advance, there is the potential for it to be significant.

**Local Expenditures:** As owners/operators of most of the wastewater treatment plants in the State, local government expenditures increase to the extent they must pay restitution, in the same manner as described above for wastewater treatment plants owned/operated by the State.

**Small Business Effect:** To the extent any small businesses own/operate wastewater treatment plants in the State, costs increase to the extent they must pay restitution, in the same manner as described above.

Shellfish harvesters, many of which are small businesses, that are eligible for restitution under the bill benefit meaningfully from being able to recoup economic damages resulting from the closure of shellfish harvesting areas.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Maryland Environmental Service; Prince George's County; Maryland Department of the Environment; Department of Natural Resources; Department of Legislative Services

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