

Chapter 30

(House Bill 1228)

AN ACT concerning

Natural Resources – Oysters – Spat, Shells, and Substrate

FOR the purpose of establishing various programs, goals, research requirements, planning requirements, and funding requirements related to oyster spat, oyster shells, and oyster substrate; requiring the Maryland Agricultural and Resource–Based Industry Development Corporation to provide loans ~~and grants~~ up to a certain amount to finance the eligible costs of certain eligible seafood processing projects; replacing the oyster shell recycling tax credit with an annual grant program administered by the Department of Natural Resources; requiring the Maryland Geological Survey, in conjunction with certain other entities, to conduct certain bottom surveys; requiring the University of Maryland Center for Environmental Science to conduct ~~research~~ evaluations related to substrate in collaboration with certain entities; requiring the Department to develop a certain substrate plan; providing for the ~~construction and~~ expansion of certain oyster hatcheries; providing for oyster replenishment and restoration in Eastern Bay; and generally relating to oysters.

BY repealing

Article – Tax – General

Section 10–724.1

Annotated Code of Maryland

(2016 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, without amendments,

Article – Economic Development

Section 10–501(a), (f), and (l)

Annotated Code of Maryland

(2018 Replacement Volume and 2021 Supplement)

BY adding to

Article – Economic Development

Section 10–519.1

Annotated Code of Maryland

(2018 Replacement Volume and 2021 Supplement)

BY repealing

Article – Natural Resources

Section 4–1019.1

Annotated Code of Maryland

(2018 Replacement Volume and 2021 Supplement)

BY adding to

Article – Natural Resources
Section 4–1019.1 and 4–1019.2(g)
Annotated Code of Maryland
(2018 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, with amendments,
Article – Natural Resources
Section 4–1102
Annotated Code of Maryland
(2018 Replacement Volume and 2021 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Tax – General

[10–724.1.

(a) (1) Subject to the limitations of this section, 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.

(2) An individual or a corporation that claims the credit under this section shall provide verification of the amount of oyster shells recycled during the taxable year with the individual or corporation tax return.

(b) (1) For any taxable year, the credit allowed under this section may not exceed the lesser of:

(i) \$1,500; or

(ii) the State income tax calculated before application of the credit allowed under this section and §§ 10–701 and 10–701.1 of this subtitle.

(2) The unused amount of the credit may not be carried over to any other taxable year.

(c) (1) The Department of Natural Resources and the Comptroller jointly shall adopt regulations to carry out the provisions of this section.

(2) The regulations shall establish eligibility criteria and provide for the certification of businesses, landfills, and nonprofit organizations to verify the amount of oyster shells recycled by each individual or corporation.]]

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Economic Development

10–501.

(a) In this subtitle the following words have the meanings indicated.

(f) “Corporation” means the Maryland Agricultural and Resource–Based Industry Development Corporation.

(l) (1) “Project” means any property, the acquisition or improvement of which the Board, in its sole discretion, determines by resolution will accomplish at least one of the purposes listed in § 10–502 of this subtitle, whether or not the property, or any interest in the property:

(i) is or will be used or operated for profit or not for profit;

(ii) is or will be located on one or more sites; or

(iii) may be financed by bonds, the interest on which is exempt from taxation under federal law.

(2) “Project” includes:

(i) property and rights related to the property, appurtenances, rights–of–way, franchises, easements, and other interests in property;

(ii) structures, equipment, furnishings, rail or motor vehicles, barges, and boats;

(iii) property that is functionally related and subordinate to a project; and

(iv) patents, licenses, and other rights necessary or useful in the improvement or operation of a project.

10–519.1.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “ELIGIBLE SEAFOOD PROCESSING PROJECT” MEANS A PROJECT TO ESTABLISH OR EXPAND THE BUSINESS OF A LICENSED SEAFOOD DEALER THAT:

(I) SUPPORTS THE GOAL OF INCREASING THE AMOUNT OF OYSTER SHELLS RETAINED IN THE STATE AND RETURNED TO THE CHESAPEAKE BAY; AND

(II) MEETS THE CRITERIA ESTABLISHED BY THE CORPORATION UNDER THIS SECTION.

(3) “LICENSED SEAFOOD DEALER” MEANS A PERSON LICENSED UNDER § 4-701 OF THE NATURAL RESOURCES ARTICLE TO BUY, PROCESS, PACK, RESELL, MARKET OR OTHERWISE DEAL IN FISH CAUGHT IN THE TIDAL WATERS OF THE STATE.

(4) “REPLETION” MEANS ENHANCING AREAS WHERE COMMERCIAL HARVEST IS PERMITTED.

(B) (1) THE CORPORATION SHALL PROVIDE LOANS ~~AND GRANTS~~ UP TO \$250,000 TO FINANCE THE COSTS OF ELIGIBLE SEAFOOD PROCESSING PROJECTS IN ACCORDANCE WITH THIS SECTION, INCLUDING HISTORIC OYSTER SHUCKING FACILITIES, NOT TO EXCEED \$25,000 FOR EACH FULL-TIME JOB THAT IS PROJECTED TO BE CREATED OR RETAINED.

(2) FINANCING PROVIDED UNDER THIS SECTION SHALL BE CONDITIONED ON THE AGREEMENT BY THE RECIPIENT TO ~~RETURN, AT NO COST TO THE STATE, ALL OYSTER SHELLS PROCESSED BY THE RECIPIENT;~~

~~(I) TO THE DEPARTMENT OF NATURAL RESOURCES, FOR USE IN THE DEPARTMENT’S REPLETION AND RESTORATION ACTIVITIES; OR~~

~~(II) DIRECTLY TO OYSTER BARS IN THE PUBLIC FISHERY OR RESTORATION AREAS, IN ACCORDANCE WITH REGULATIONS OF THE DEPARTMENT OF NATURAL RESOURCES~~ COMPLY WITH THE PROVISIONS OF § 4-1019.2 OF THE NATURAL RESOURCES ARTICLE UNTIL THE LOAN IS REPAYED.

(3) THE CORPORATION SHALL FORGIVE ~~\$35 OF~~ ANY LOAN PROVIDED UNDER THIS SECTION AS FOLLOWS:

(I) THE CURRENT MARKET VALUE AS ESTABLISHED IN § 4-1019.2 OF THE NATURAL RESOURCES ARTICLE FOR EACH BUSHEL OF OYSTER SHELLS THAT THE LOAN RECIPIENT RETURNS TO THE DEPARTMENT OF NATURAL RESOURCES AT NO COST; OR ~~DIRECTLY TO OYSTER BARS IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION~~

(II) \$25 FOR EACH BUSHEL OF SPAT-ON-SHELL THAT THE PERSON PLANTS ON A PUBLIC FISHERY BOTTOM AS VERIFIED BY THE DEPARTMENT OF NATURAL RESOURCES.

(C) A PERSON IS ELIGIBLE TO RECEIVE FINANCING UNDER THIS SECTION IF THE PERSON:

(1) (I) HAS BEEN A LICENSED SEAFOOD DEALER FOR AT LEAST 5 YEARS; OR

(II) HAS HELD A TIDAL FISH LICENSE ISSUED UNDER § 4-701 OF THE NATURAL RESOURCES ARTICLE FOR AT LEAST 5 YEARS AND AGREES TO OBTAIN A SEAFOOD DEALER LICENSE ON RECEIVING FINANCING UNDER THIS SECTION;

(2) HAS PAID ALL APPLICABLE BUSINESS TAXES AND FEES FOR THE PAST 5 YEARS;

(3) DEMONSTRATES TO THE SATISFACTION OF THE CORPORATION THROUGH A BUSINESS PLAN AND PRO FORMA FINANCIAL PROJECTIONS THAT, WITHIN 5 YEARS AFTER RECEIVING FINANCING UNDER THIS SECTION, THE PERSON'S SEAFOOD PROCESSING BUSINESS WILL:

~~(I) EMPLOY AT LEAST 15 INDIVIDUALS; AND~~

~~(II) HAVE THE POTENTIAL TO ACHIEVE VIABILITY AS A BUSINESS; AND~~

(4) MEETS ANY OTHER ELIGIBILITY REQUIREMENTS ESTABLISHED BY THE CORPORATION; AND

(5) AGREES TO THE FINANCING TERMS AND CONDITIONS ESTABLISHED BY THE CORPORATION THAT ARE OTHERWISE IN CONFORMANCE WITH THIS SECTION.

(D) (1) FOR FISCAL YEAR 2024, THE GOVERNOR SHALL INCLUDE IN THE ANNUAL BUDGET BILL AN APPROPRIATION OF \$1,000,000 TO THE CORPORATION FOR THE PURPOSE OF PROVIDING ~~GRANTS AND~~ LOANS UNDER THIS SECTION.

(2) THE APPROPRIATION IN PARAGRAPH (1) OF THIS SUBSECTION SHALL BE DISTRIBUTED TO A SPECIAL ACCOUNT TO BE USED ONLY TO:

(I) PROVIDE LOANS UNDER THIS SECTION; AND

(II) PAY THE COSTS NECESSARY TO ADMINISTER AND OPERATE THIS SECTION.

Article – Natural Resources

[4–1019.1.

The Department shall initiate the development of a program for enactment by the Maryland General Assembly to encourage return of the State's oyster shell resource to the tidal waters of the State to assist oyster propagation. The Department also may use the Fisheries Research and Development Fund to purchase oyster shell.]

4–1019.1.

(A) THE DEPARTMENT SHALL PROVIDE ANNUAL GRANTS TO NONPROFIT ORGANIZATIONS, COMMUNITY ASSOCIATIONS, RESTAURANTS, AND SEAFOOD PROCESSORS AND DEALERS THAT RECYCLE OYSTER SHELLS BY PROVIDING THE SHELL TO AN AUTHORIZED SHELL RECYCLING COLLECTOR CERTIFIED BY THE DEPARTMENT.

(B) (1) GRANTS TO NONPROFIT ORGANIZATIONS AND COMMUNITY ASSOCIATIONS SHALL BE PROVIDED IN THE FOLLOWING AMOUNTS:

(I) \$100 FOR THE RECYCLING OF AT LEAST 5 BUT LESS THAN 20 BUSHELS OF OYSTER SHELLS IN A YEAR; AND

(II) \$250 FOR THE RECYCLING OF AT LEAST 20 BUSHELS OF OYSTER SHELLS IN A YEAR.

(2) GRANTS TO RESTAURANTS AND SEAFOOD PROCESSORS AND DEALERS SHALL BE PROVIDED ~~IN THE FOLLOWING AMOUNTS:~~

~~(I) \$100 FOR THE RECYCLING OF AT LEAST 25 BUT LESS THAN 50 BUSHELS OF OYSTER SHELLS IN A YEAR;~~

~~(II) \$250 FOR THE RECYCLING OF AT LEAST 50 BUT LESS THAN 100 BUSHELS OF OYSTER SHELLS IN A YEAR;~~

~~(III) \$500 FOR THE RECYCLING OF AT LEAST 100 BUT LESS THAN 250 BUSHELS OF OYSTER SHELLS IN A YEAR;~~

~~(IV) \$1,000 FOR THE RECYCLING OF AT LEAST 250 BUT LESS THAN 500 BUSHELS OF OYSTER SHELLS IN A YEAR;~~

~~(V) \$1,500 FOR THE RECYCLING OF AT LEAST 500 BUT LESS THAN 1,000 BUSHELS OF OYSTER SHELLS IN A YEAR; AND~~

~~(VI) \$2,000 FOR THE RECYCLING OF AT LEAST 1,000 BUSHELS OF OYSTER SHELLS IN A YEAR AT A RATE OF \$5 PER BUSHEL UP TO A MAXIMUM OF \$2,000 PER YEAR.~~

(C) THE DEPARTMENT SHALL 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.

(D) (1) THE DEPARTMENT SHALL ADOPT REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION.

(2) THE REGULATIONS SHALL ESTABLISH ELIGIBILITY CRITERIA AND PROVIDE FOR THE CERTIFICATION OF NONPROFIT ORGANIZATIONS, COMMUNITY ASSOCIATIONS, RESTAURANTS, AND SEAFOOD PROCESSORS AND DEALERS TO VERIFY THE AMOUNT OF OYSTER SHELLS RECYCLED BY EACH ENTITY.

(3) THE DEPARTMENT MAY ENTER INTO AGREEMENTS WITH NONPROFIT ORGANIZATIONS WITH EXPERTISE IN OYSTER SHELL RECYCLING TO EXECUTE THE PROVISIONS OF THIS SECTION.

4-1019.2.

(G) THE DEPARTMENT MAY USE THE FISHERIES RESEARCH AND DEVELOPMENT FUND TO PURCHASE OYSTER SHELLS.

4-1102.

(a) The Department may resurvey any submerged area of the State to determine the position and extent of any natural oyster bar.

(b) If, after conducting a survey in accordance with subsection (a) of this section, the Department finds that any natural oyster bar is located incorrectly on existing charts or that the existing charts do not reflect the actual condition of submerged lands, the Department shall amend the existing charts or coordinates by regulation.

(C) (1) BEGINNING IN FISCAL YEAR 2024, THE MARYLAND GEOLOGICAL SURVEY, IN CONJUNCTION WITH THE UNIVERSITY OF MARYLAND CENTER FOR ENVIRONMENTAL SCIENCE, SHALL SURVEY SUBMERGED AREAS OF THE STATE TO MAP EXISTING AND POTENTIAL OYSTER HABITATS IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBSECTION.

(2) IN SELECTING SITES FOR SURVEYING UNDER THIS SUBSECTION, THE MARYLAND GEOLOGICAL SURVEY AND THE UNIVERSITY OF MARYLAND CENTER FOR ENVIRONMENTAL SCIENCE SHALL:

~~(I)~~ ~~PRIORITIZE~~ PRIORITIZE:

~~1.~~ (I) EASTERN BAY AND ITS TRIBUTARIES; AND

~~2.~~ (II) PUBLIC FISHERY AREAS WHERE THERE ARE LIKELY TO BE SHALLOWLY BURIED SHELL DEPOSITS FROM PREVIOUS REPLETION ACTIVITIES, IDENTIFIED IN CONSULTATION WITH THE DEPARTMENT, WHO SHALL CONSULT WITH COUNTY OYSTER COMMITTEES, AND COMMERCIAL OYSTER HARVESTERS; ~~AND~~

~~(II) AVOID IMPORTANT FISH SPAWNING AREAS, ESPECIALLY AREAS WHERE STRIPED BASS OR STURGEON ARE KNOWN TO SPAWN.~~

(3) TO THE EXTENT PRACTICABLE, SURVEYS CARRIED OUT UNDER THIS SUBSECTION SHALL USE SUB-BOTTOM PROFILING COMBINED WITH PHYSICAL SAMPLING TO QUANTIFY THE TOTAL VOLUME OF SUBSURFACE SHELL MATERIAL.

(4) (I) FOR FISCAL YEARS 2024 THROUGH 2026, THE GOVERNOR SHALL INCLUDE IN THE ANNUAL BUDGET BILL AN APPROPRIATION OF \$2,000,000 TO THE DEPARTMENT TO FUND THE SURVEYS REQUIRED UNDER THIS SUBSECTION.

(II) THE GOVERNOR SHALL PRIORITIZE THE USE OF FEDERAL FUNDS FOR APPROPRIATIONS REQUIRED UNDER THIS PARAGRAPH.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) The University of Maryland Center for Environmental Science shall collaborate with the Smithsonian Environmental Research Center, the Virginia Institute of Marine Science, appropriate State and federal agencies, and industry and other stakeholders to ~~research~~ evaluate:

(1) the types of substrate, including fresh shell, fossilized shell, combinations of shell, and alternative substrates, that are most appropriate for use in oyster harvest areas;

(2) the benefits, including habitat-related benefits, of using ~~larger stones~~ versus smaller stones of various sizes in oyster restoration areas;

(3) alternative substrates used for oyster restoration or repletion in other regions, including the success of efforts to use alternative substrates; ~~and~~

(4) the potential for retrofitting existing structures, such as riprap revetments, that are unrelated to oyster restoration but that use materials similar to artificial reefs, to include oyster plantings; and

(5) the effect of spat size upon deployment on oyster abundance.

(b) On or before December 1, 2025, the University of Maryland Center for Environmental Science shall report to the Secretary of Natural Resources and, in accordance with § 2–1257 of the State Government Article, the General Assembly on its ~~research findings~~ evaluations under this section.

(c) For fiscal years 2024 and 2025, the Governor shall include in the annual budget bill an appropriation of \$250,000 for the University of Maryland Center for Environmental Science to carry out the research required under this section.

(d) The evaluations undertaken in accordance with this section shall be conducted in a manner that is not disruptive to the public oyster fishery, aquaculture, or restoration.

SECTION 4. AND BE IT FURTHER ENACTED, That:

(a) On or before December 1, 2023, the Department of Natural Resources shall submit a plan to the Governor and, in accordance with § 2–1257 of the State Government Article, the General Assembly describing the substrate needs for oyster ~~restoration and~~ repletion, aquaculture, and restoration activities in the State over the next 10 years.

(b) The plan shall include:

(1) an estimate of the quantity of the substrate materials that will be needed and the purposes for which the substrate materials will be used;

(2) an overview of the full spectrum of substrate materials available;

(3) an analysis of the availability, sourcing, and relative cost of each substrate material;

(4) an estimate of the total and annual costs of implementing the plan; and

(5) opportunities for improving the cost-effectiveness of substrate acquisition and use, including opportunities for increasing coordination with the Commonwealth of Virginia, undertaking larger-scale projects to take advantage of economies of scale, and reducing mobilization and demobilization costs.

SECTION 5. AND BE IT FURTHER ENACTED, That:

(a) It is the intent of the General Assembly that by 2025, oyster hatcheries in the State shall be capable of consistently producing 5 billion larvae or spat-on-shell spat per year.

(b) To help reach the goal established under subsection (a) of this section, for fiscal year 2024, the Governor shall include in the annual operating or capital budget:

~~(1) an appropriation of \$20,000,000 for the University of Maryland Center for Environmental Science to build a second oyster hatchery, to be named after Michael E. Busch, former Speaker of the House of Delegates; and~~

~~(2)~~ an appropriation of \$2,500,000 for the Patuxent Environmental and Aquatic Research Laboratory, Morgan State University, to be used for infrastructure upgrades to support increased oyster production for research and restoration.

SECTION 6. AND BE IT FURTHER ENACTED, That:

(a) (1) In recognition of the final report, dated December 1, 2021, of the Oyster Advisory Commission's consensus recommendations, over the next 25 years, a combination of replenishment, restoration, and aquaculture activities should be collectively planned and undertaken in Eastern Bay, with an equal amount of funding for spat planting in sanctuaries (\$1,000,000 annually adjusted for inflation) and for spat and shell planting on fishery bars (\$1,000,000 annually adjusted for inflation) in addition to current replenishment and restoration activities.

(2) The effectiveness of the activities under paragraph (1) of this subsection shall be evaluated every 5 years.

(b) To help reach the goals established under subsection (a) of this section, for fiscal years 2024 through 2026, the Governor shall include in the annual operating or capital budget an appropriation of \$2,000,000 for the Department of Natural Resources.

(c) Any funding provided in the operating or capital budgets in accordance with subsection (b) of this section after fiscal year 2026 shall be contingent upon the evaluation provided for in subsection (a)(2) of this section.

SECTION ~~6~~ 7. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take effect July 1, 2023, and shall be applicable to all taxable years beginning after December 31, ~~2021~~ 2022.

SECTION ~~7~~ 8. AND BE IT FURTHER ENACTED, That, except as provided in Section 7 of this Act, this Act shall take effect July 1, 2022.

Enacted under Article II, § 17(b) of the Maryland Constitution, April 9, 2022.