



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

SENATE BILL NO. 1402

PRINTERS NO. 2415

PRIME SPONSOR: Alloway

COST / (SAVINGS)

FUND	FY 2012/13	FY 2013/14
General Fund	\$0	\$0
Fish & Boat Fund	\$0	\$0

SUMMARY:

SB 1402 makes numerous substantive and technical changes to the Fish and Boat Code.

ANALYSIS:

SB 1402 amends Title 30 Section 102 (relating to definitions) to clarify the definition of "fishing" to include fishing on any land, in order to cover reptiles that spend little or no time in water, but are considered fish by definition.

Section 301 (relating to organization of the commission) is amended to clarify that a candidate for the Board of Commissioners nominated by the Governor need only a majority approval vote in the Senate to be confirmed, which is consistent with the Administrative Code, instead of the repealed two-thirds vote still listed in the section.

Section 305 (relating to deputy waterways conservation officers) is amended to provide that after completion of training, a certificate of qualification for equivalent training as determined by the executive director may be obtained prior to appointment, instead of the currently required training under the Lethal Weapons Training Act. The section is also amended to clarify that deputy waterways conservation officers, as authorized by the director, are considered volunteers.

Section 327 (relating to status of volunteers) is amended to provide that no volunteer may be assigned to any full-time or wage position covered by labor agreement, whether presently filled, vacant or authorized in the commission. Currently, full-time wage positions, whether vacant or not, are not specifically addressed in the section.

Section 703 (relating to damage to property) is newly added to Title 30 to provide that it is unlawful to intentionally or recklessly destroy or cause damage to property owned, leased or controlled by the commission. Intentionally causing pecuniary loss in excess of \$5,000 will be a felony of the third degree. Intentionally causing loss in excess of \$1,000 is a misdemeanor of the second degree. Intentionally or recklessly causing loss in excess of \$500 is a misdemeanor of the third degree. Otherwise destroying or causing damage to commission property is a summary of the first degree.

Section 741 (relating to control of property) is amended to provide that all lands or waters owned, leased or otherwise controlled shall be under the sole direction of the commission, and the commission may promulgate rules and regulations as such. Current law only provides control of lands or waters under the direction of the commission, as opposed to sole direction. Language is also added to the section to provide that the acquisition, use and management of such lands or waters shall not be subject to regulation by counties or municipalities.

Section 901 (relating to powers and duties of waterways conservation officers and deputies) Subsection (a) (relating to waterways conservation officers) is amended to clarify the duties of officers by changing “when acting within the scope of their employment” to “when in the performance of their duties”. Section 901 is also amended to change the outdated term “patrolman” to conservation officer for consistency within the Title. Subsection (a) (16) is amended to clarify the commission’s law enforcement use of a Commonwealth owned or leased vehicle, equipped with flashing or rotating lights and audible devices to be consistent with Title 75 Sections 102 (relating to definitions) and 3105 (relating to drivers of emergency vehicles).

Section 902 (relating to enforcement of other laws) is amended to again change the outdated term of “patrolmen” to conservation officer, and update “Department of Environmental Resources” to Department of Conservation and Natural Resources.

Section 910 (relating to unlawful use of computer) is added as a new section to provide that it is unlawful to use a computer, computer network or electronic device with the intent to falsify or forge electronic mail transmissions, electronic transactions or other electronic information in connection with the purchase of a fishing license, boat registration or other commission-issued permit or privilege. A violation of the section is a misdemeanor of the second degree.

Section 911 (relating to liability for conduct of another; complicity) is also added as a new section to be consistent with related language in Title 18 (Crimes Code) and provide that a person is guilty of an offense under the Title 30 if it is committed under his own conduct or by the conduct of another for which he is legally accountable. The section also provides for culpability and prosecution of an accomplice.

Section 929 (relating to suspension of privileges pending payment of penalties) is amended to provide that an automatic suspension of fishing and boating privileges will result from a failure to respond to a citation or summons within 30 days or failure to pay all penalties in full within 90 days following a conviction or a guilty plea.

Section 2501 (relating to misuse of property and waters) is amended to provide that it is unlawful to drive an all-terrain vehicle on or over any lands or waters, including frozen waters, without permission of the owner or lessee of the land. Current law only prohibits driving a vehicle or other type of conveyance on or over any land without permission of the owner or lessee. A violation is a summary offense of the second degree. A new Subsection (8) is also added to prohibit fishing in a water area or entering a riparian area clearly marked and posted as a no fishing zone. A violation of this subsection is a summary of the third degree.

Section 2503 (relating to littering) is amended to increase the fine for littering from the current \$10 for each piece of litter thrown, discarded, left or emitted, up to a fine of not less than \$20 nor more than \$50 for each piece of litter.

Section 2703 (relating to possession and display of licenses). Current law provides that no person may fish in any waters of the Commonwealth or in any boundary waters without first securing the proper license. This section will be amended to add lands to the areas requirement in order to be consistent with the definition of "fishing" in Section 102 (relating to definitions).

Section 2704 (relating to lost fishing licenses) is amended to correct a misspelling of the word "destroyed."

Section 2708 (relating to institutional licenses) is amended to clarify that resident patients at Commonwealth- supported institutions, in addition to resident patients at Commonwealth-owned institutions and veteran patients at U.S. Government VA Hospitals or in a state veteran's home, are eligible for institutional licenses at no cost. The commission will establish policies and procedures for the issuance of the institutional licenses. Under current law, no cost fishing licenses may be issued by the superintendent or chief medical officer of the institution through an affidavit process.

Section 2709 (relating to exemptions from license requirements) is amended to clarify that participants in an educational program that meets standards established by the executive director are not required to possess a fishing license while participating in the program under the supervision of an instructor who possesses a valid fishing license. Current law allows this exemption only for students enrolled in a secondary or undergraduate course, participating in biological field projects.

Section 2901 (relating to eel chutes) is removed from the Title, as eel chutes are no longer in use.

Section 2902 (relating to net permits) is amended to clarify that the commission may issue permits to use or possess nets larger than 4 feet square or 4 feet in diameter, or any other seine, trawl or quill nets, for use in and along waters of the Commonwealth. Permits to make or sell such nets will no longer be required. Permits for the use of such nets must now specify for what purpose the nets will be used, in addition to the current requirement of where they will be used.

Section 2903 (relating to boat and net license for boundary lakes) Subsection (b) (relating to issuance and fees) is amended to remove boat length and residency requirements for net licenses no longer issued. Current fees for trap nets and seines remain in the section. Subsection (c) (relating to carrying and display requirements) is also amended to change the outdated term "patrolman" to conservation officer for consistency within the Title. Outdated and no longer relevant language in subsection (h) (relating to gill nets) is removed. The current prohibition on gill nets remains.

Section 2908 (relating to penalties) is amended to clarify that violations related to regulations for boundary lake permits concerning seasons, size limits, total catch, trap nets and landing of catch are a misdemeanor of the third degree; a violation of any other regulation related to such permits is a summary of the first degree. Under current law, all violations related to boundary lake permit regulations are a misdemeanor three.

Section 3102 (related to fees) is amended to replace the outdated term of "portable trout" fishing ponds to "Temporary" fishing ponds. A new Subsection (3) is added to provide a reduced cost \$25 fee for a temporary fishing pond operated by or on behalf of a nonprofit sportsmen's, conservation or charitable organization.

Section 5103 (relating to boating education) is amended to clarify valid documentation for boating safety education in lieu of a Commonwealth-issued certificate of boating safety. The requirement of a certificate of boating safety issued in another state is changed to a certificate of boating safety issued to a resident of another state.

Section 5123 (relating to general boating regulations) is amended to allow for an increase in the fine for each piece of boating safety equipment that is missing, not worn when required, not of approved type or serviceable. The fine will increase from a flat \$20 per piece to a fine of not less than \$20 or more than \$50 per piece.

Section 5125 (relating to chemical testing to determine amount of alcohol or controlled substance) is amended to simply correct an inaccurate reference to an appropriate section of law.

Section 5308 (relating to period of registration) is amended to make an editorial change removing the incorrect term "license" and replacing it with the proper term "registration."

Section 5505 (relating to unauthorized operation of boats) is a new section added to provide that it is unlawful to operate the boat of another without the consent of the owner. It will be a defense to prosecution if the operator reasonably believed that the owner would have consented to the operation of the boat had the owner known of it. A violation of this section is a summary of the first degree.

Section 5506 (relating to permitting violations) is also a newly added section. It provides that it is unlawful for a person to authorize or knowingly permit a boat owned by him or under his control to be operated in violation of the Title. A violation of this section is a summary of the first degree. If the operator of the boat is convicted of operating a watercraft under the influence, homicide by watercraft under the influence, or homicide by watercraft, the person violating this section is also subject to revocation.

Section 5507 (relating to duties of operators involved in boating accidents) is a newly added section to provide that the operator of a watercraft involved in an accident must immediately stop at the scene of the accident or as close as possible, without obstructing the safe navigation of other watercraft more than is necessary. An operator involved in an accident resulting in injury or death to a person, or damage to property must provide his name, address and boat registration information to waterways officer and the operator or occupants of any other watercraft involved in the accident or the owner of property damaged. An operator must also render reasonable assistance to a person injured if it can be reasonably done without endangering persons or property. An involved operator must remain at or near the scene of an accident until he has fulfilled his duty to provide required information. When circumstances make it clearly impractical to remain, the operator may fulfill the requirements by going to shore at a location near the scene of the accident. Any person violating this section commits a misdemeanor of the first degree. If a victim of an accident dies, the violator commits a felony of the third degree.

Effective date: 60 days.

FISCAL IMPACT: Enactment of this legislation will have no adverse fiscal impact on Commonwealth Funds. There may be a very small increase in revenue to the Fish Fund for additional penalties. However, the fiscal impact is difficult to predict because the additional penalties are discretionally applied by the Magisterial Court Judge based on the facts of individual cases.

PREPARED BY: Thomas Gwinn
House Appropriations Committee (R)

DATE: October 16, 2012

Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.