

1 HB315
2 116050-2
3 By Representative Collier
4 RFD: Agriculture and Forestry
5 First Read: 19-JAN-10

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ENROLLED, An Act,

Relating to the Department of Conservation and Natural Resources, Division of Marine Resources, and the regulation of the harvesting oysters and other seafoods; to amend Sections 9-12-28, 9-12-32, 9-12-33, 9-12-35, 9-12-37, 9-12-42, 9-12-67, and 9-12-121, Code of Alabama 1975; to further provide for penalties; to repeal Sections 9-12-34, 9-12-38, 9-12-39, 9-12-43, and 9-12-44, Code of Alabama 1975; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 9-12-28, 9-12-32, 9-12-33, 9-12-35, 9-12-37, 9-12-42, 9-12-67, and 9-12-121, Code of Alabama 1975, are amended to read as follows:

"§9-12-28.

"The Commissioner of Conservation and Natural Resources ~~shall have power to~~ may establish ~~ports of entry~~ which shall include Alabama Port, Cedar Point, Mobile, Dauphin Island and Bayou La Batre, and such ports by rule oyster management stations to be used by persons or boats harvesting

1 or landing oysters taken from the public reefs or public water
2 bottoms of this state. The oyster management stations so
3 established in conjunction with other locations designated by
4 the Director of the Marine Resources Division and approved in
5 writing by the Commissioner of Conservation and Natural
6 Resources shall be the only ports used by persons or boats
7 landing such oysters ~~or shrimp~~ in Alabama by water. It and it
8 is unlawful to so use any other port than those regularly
9 ~~established by the said Commissioner of Conservation and~~
10 ~~Natural Resources~~ for landing oysters. When oyster management
11 stations are opened, all oyster catchers taking oysters from
12 the public reefs shall be required to check out and check in
13 at a management station. The regulation establishing oyster
14 management stations may also provide for the Marine Resources
15 Division to require oyster harvest records. A commercial
16 oyster catcher shall record all information required for the
17 completion of the oyster harvest records and shall retain the
18 original of the oyster harvest record in his or her possession
19 while transporting oysters taken from the public reefs or
20 water bottoms of this state. Oysters shall only be sold to
21 seafood dealers certified by the state Department of Public
22 Health and licensed by the division. The oyster harvest record
23 shall be available for inspection upon request by any agent of
24 the Department of Conservation and Natural Resources or the
25 state Department of Public Health. A violation of this section

1 or any regulation promulgated hereunder shall constitute a
2 Class B misdemeanor, punishable as provided by Sections
3 13A-5-7 and 13A-5-12.

4 "§9-12-32.

5 "It shall be the duty of each owner or lessee of any
6 private reef to have established an accurate survey by a
7 registered surveyor of the bottoms, beds or reefs under his
8 control, and each corner shall be clearly marked and defined
9 with the owner's or lessee's name clearly attached. There
10 shall also be established intermediate markers between said
11 corners, the distance between which shall not exceed 600 feet
12 extending from each corner of the private bed, bottom or reef
13 to the adjacent corner, and also from the outside corner every
14 600 feet to the high water mark on the associated beach, bank
15 or marsh edge. The plat of this area, including GPS
16 coordinates of area corners, and any lease agreements or proof
17 of right of ownership shall be filed with the Division of
18 Marine Resources together with the list of any persons using
19 ~~said~~ the bed, bottom, or reef as the owner's agent or
20 permittee. Plats and lease agreements shall be provided to the
21 division in such a manner as to remain current. The director
22 of the division may require private oyster leases to be
23 resurveyed every five years or at any times the director
24 determines that the private leased area has substantially
25 changed. Said The agent or permittee shall have in his or her

1 possession at all times while on ~~said~~ the bed, bottom, or reef
2 a written, dated permit from the owner, ~~said~~ which permit to
3 shall extend for a period not exceeding 30 days from the date
4 of signature of the owner or lessor. Failure of the permittee
5 or agent to have ~~said~~ the permit in his or her possession
6 shall constitute a misdemeanor and, upon conviction thereof,
7 he or she shall be fined not less than ~~\$25.00~~ twenty-five
8 dollars (\$25) nor more than ~~\$100.00~~ five hundred dollars
9 (\$500) and may be imprisoned for a period not exceeding six
10 months.

11 "§9-12-33.

12 "(a) All oysters taken from the public reefs of this
13 state shall be culled ~~upon their natural~~ and sacked, and each
14 sack tagged and identified in accordance with the requirements
15 of the rules of the state Department of Public Health, prior
16 to leaving the public reefs or ~~beds as~~ water bottoms where
17 taken or oyster management stations, and all oysters which
18 measure less than three inches in length and all ~~dead shells~~
19 cultch material shall be immediately replaced ~~and scattered by~~
20 scattering and ~~broadcast~~ broadcasting upon the ~~natural~~ public
21 reefs or ~~beds~~ water bottoms from which they have been taken,
22 and it. It shall be unlawful for any captain or person in
23 charge of any vessel or any canner, packer, commission man,
24 dealer, or other person to purchase, sell, or have in his or
25 her possession or under his or her control any oysters off the

1 public reefs or ~~bedding grounds~~ water bottoms not culled
2 according to ~~the provisions of~~ this section, or any oysters
3 from ~~such~~ the reefs or ~~bedding grounds~~ water bottoms under the
4 legal size ~~aforsaid~~. Any excess of over five percent of ~~dead~~
5 ~~shells~~ cultch material and oysters under the size prescribed
6 in this section shall be considered a violation of this
7 section. In order that the ~~inspector~~ conservation enforcement
8 officer may arrive at the percentage of unculled oysters ~~he~~
9 ~~shall~~ the officer may cause to be culled according to law all
10 or any part of cargo or stock on hand, ~~and~~ provided that if
11 any sack in the cargo or stock on hand is found to contain
12 more than ~~five~~ 10 percent of ~~dead shells~~ cultch material and
13 oysters under three inches in length, it is a violation of
14 this section and the ~~inspector shall~~ officer may condemn ~~said~~
15 the cargo and stock on hand and cause the same to be reculled
16 and cause the shells and young oysters to be taken to some
17 place designated by an agent of the Division of Marine
18 Resources, ~~provided, however, that the Commissioner of~~
19 ~~Conservation and Natural Resources shall have the authority by~~
20 ~~duly promulgated regulations to reduce the legal measure of~~
21 ~~oysters to be culled to a length of not less than two and~~
22 ~~five-eighths inches, with an allowance of not more than five~~
23 ~~percent for undersized oysters and not more than five percent~~
24 ~~for dead shells, when the said Commissioner of Conservation~~
25 ~~and Natural Resources so deems the said reductions expedient~~

1 ~~or necessary, and provided further, that the Commissioner of~~
2 ~~Conservation and Natural Resources may in his discretion~~
3 ~~designate certain public reefs as to which an allowance of not~~
4 ~~more than 25 percent for undersized oysters may be provided~~
5 ~~from January 1 through May 31 in each year.~~

6 "(b) Any person who violates any of the provisions
7 of this section or any rule promulgated hereunder shall be
8 guilty of a misdemeanor and, upon conviction for his or her
9 first offense, he or she shall be punished by a fine of not
10 less than ~~\$50.00~~ one hundred dollars (\$100) nor more than
11 ~~\$100.00, upon his~~ two hundred dollars (\$200). Upon a second
12 conviction thereof, he or she shall be punished by a fine of
13 not less than ~~\$100.00~~ two hundred dollars (\$200) nor more than
14 ~~\$150.00, and, upon~~ three hundred dollars (\$300). Upon a third
15 conviction ~~of a third offense thereof,~~ within two years of the
16 first conviction he or she shall be punished by a fine of not
17 less than ~~\$100.00~~ three hundred dollars (\$300) nor more than
18 ~~\$200.00~~ five hundred dollars (\$500) and by the ~~revocation~~
19 ~~suspension~~ of his or her commercial oyster license privileges
20 for six months.

21 "§9-12-35.

22 ~~"During the closed season, as defined by order of~~
23 ~~the Department of Conservation and Natural Resources, the The~~
24 ~~Director of the Marine Resources Division, or his or her~~
25 ~~agents,~~ under the direction and control of the Department of

1 Conservation and Natural Resources, ~~shall~~ may cultivate,
2 transplant, or replant the public reefs of the state or may
3 employ boats, crews, and laborers ~~and shall~~ to cultivate or
4 replant the public reefs of the state and ~~shall~~ may employ
5 boats, crews, and laborers to dredge the oysters in the
6 Alabama waters from places where they are too thick and shall
7 spread them on reefs where they are too thin, and the
8 Department of Conservation and Natural Resources, in
9 cultivating the reefs, transplanting and spreading oysters and
10 shells, may expend such sums as it may deem proper. ~~In taking~~
11 ~~seed oysters, care shall, however, be used so as not to injure~~
12 ~~or destroy the merchantable oysters on the reefs from which~~
13 ~~they are taken, and the same shall, unless it is practicable~~
14 ~~and safe to dredge, be tonged from the "cooner" or seed reefs.~~

15 "§9-12-37.

16 "Owners of private oyster reefs, beds, or bottoms
17 and the lessees or designated permittees of such reefs, beds,
18 or bottoms may use any mechanical means at their disposal and
19 at any time between the hours of sunrise and sunset, including
20 the use of mechanical rake dredges, to cultivate and harvest
21 or remove live oysters of any size upon or from such grounds.
22 Such a person shall first obtain a dredge license as provided
23 in Section 9-12-87, ~~which the Commissioner of Conservation and~~
24 ~~Natural Resources shall issue if the applicant pays the~~
25 ~~required fee and posts bond payable to the state Department of~~

1 ~~Conservation and Natural Resources in the penal sum of~~
2 ~~\$1,000.00, conditioned upon his faithful and strict observance~~
3 ~~of all statutes and regulations relating to the use of such~~
4 ~~mechanical devices in taking live oysters. Such.~~ The license
5 may be revoked by the Commissioner of Conservation and Natural
6 Resources if any ~~condition of the bond is breached,~~ violation
7 of any statute or regulation relating to the use of the
8 mechanical devices occurs, and the Commissioner of
9 Conservation and Natural Resources may thereafter refuse to
10 issue a new license to ~~such~~ the person.

11 "§9-12-42.

12 ~~"Any person, firm, corporation or association~~
13 ~~taking, catching or removing oysters from any of the public~~
14 ~~reefs, beds or bottoms in the waters of this state, except for~~
15 ~~the purpose of replanting such oysters in this state, shall~~
16 ~~replant 50 percent of all oyster shells so removed upon the~~
17 ~~public reefs, beds or bottoms in the waters of the State of~~
18 ~~Alabama. This duty for replanting such oysters is specifically~~
19 ~~imposed upon any purchaser, dealer, wholesaler, packing or~~
20 ~~canning factory which purchases such oysters for resale from~~
21 ~~any source whatsoever.~~

22 ~~"The person, firm, corporation or association~~
23 ~~obligated under this section to replant such shells shall have~~
24 ~~the option, in lieu of replanting such shells, of paying to~~
25 ~~the Department of Conservation and Natural Resources the then~~

1 ~~reasonable market value of such shells, plus the cost of~~
 2 ~~replanting the same, provided such option is exercised prior~~
 3 ~~to May 1 of each year, and notice of the exercise of such~~
 4 ~~option is given to the Department of Conservation and Natural~~
 5 ~~Resources accompanied by the amount due on the cost of such~~
 6 ~~shells and the cost of replanting same as computed by the~~
 7 ~~Department of Conservation and Natural Resources.~~

8 "(a) The Marine Resources Division may establish by
 9 rule a shell fee to be used for the replanting of oyster
 10 cultch material on the public reefs of this state or to
 11 otherwise manage the oyster resources of this state. This fee
 12 shall be charged on a per sack basis to all seafood dealers
 13 who are purchasing oysters directly from the harvester. The
 14 fee shall be calculated and paid quarterly. The payment will
 15 be due no later than one month after the end of the previous
 16 quarter.

17 "(b) The division shall establish an oyster
 18 management fund and all monies paid to the department pursuant
 19 to this shell fee shall be deposited in this fund. The monies
 20 in this oyster management fund shall be used by the division
 21 to replant cultch material on the public reefs of this state,
 22 to cultivate the public reefs of this state, or to otherwise
 23 manage the oyster resources of this state.

24 "(c) Should the person, firm, corporation, or
 25 association obligated to replant such shells pay the shell

1 ~~fees fail to exercise the hereinabove given option and fail to~~
2 ~~replant such shells or any part thereof by June 1 of each year~~
3 ~~remit the fees to the division by the prescribed date, the~~
4 Department of Conservation and Natural Resources may
5 immediately institute in its name appropriate legal
6 proceedings in any court having jurisdiction thereof to
7 enforce the collection and payment of such amount as may be
8 due ~~as the cost of such shells and of replanting same as~~
9 computed by the Department of Conservation and Natural
10 Resources, and the seafood dealers license of such person,
11 firm, corporation, or association so in default shall
12 ~~automatically~~ may be revoked, nor shall any license for any
13 subsequent year or years be issued to any ~~such~~ the person,
14 firm, corporation, or association as long as ~~such~~ the default
15 continues; and, in addition, ~~such~~ the person, firm,
16 corporation, or association ~~so~~ in default shall be guilty of a
17 misdemeanor and, upon conviction thereof, shall be fined not
18 less than ~~\$50.00~~ fifty dollars (\$50) nor more than ~~\$500.00~~
19 five hundred dollars (\$500).

20 "All shell collected by the Department of
21 Conservation and Natural Resources as provided for in this
22 section shall be replanted by the Department of Conservation
23 and Natural Resources on the public reefs, beds or bottoms in
24 the same year the shell is collected by the Department of
25 Conservation and Natural Resources. Any shell collected by the

1 ~~Department of Conservation and Natural Resources shall not be~~
2 ~~sold to any person, firm, corporation or association.~~

3 "§9-12-67.

4 "(a) All oysters taken from the public or private
5 oyster bottoms of the State of Alabama for commercial purposes
6 shall be sacked in burlap, or similar material, bags
7 containing not more than one-quarter Alabama barrel of
8 oysters. Oysters shall be sacked and each sack tagged and
9 identified in accordance with the requirements of the National
10 Shellfish Sanitation Program Guide for the Control of
11 Molluscan Shellfish, as adopted by the state Department of
12 Public Health, prior to landing at any dock, wharf, ramp or
13 other place of unloading leaving the harvest location or
14 oyster management station. ~~A~~ The tag shall remain attached to
15 each sack until the sack is emptied ~~and the oysters are opened~~
16 ~~by a licensed oyster processor, or in a restaurant or other~~
17 ~~establishment selling half-shell oysters or by the final~~
18 ~~consumer~~ or retagged with a certified dealer tag. Sacks shall
19 not be emptied prior to reaching the destination where ~~said~~
20 the oysters shall be opened, repacked, or processed. If less
21 than the entire sack is to be opened at one time, the tag
22 shall remain attached to the sack until the last oyster is
23 removed. Upon emptying each sack, ~~the~~ or retagging with a
24 certified dealer's tag, the harvester tag shall immediately be
25 ~~destroyed by first cutting it in two pieces and then by~~

1 ~~cutting it~~ removed from the sack and filed or disposed of as
2 required by rules of the state Department of Public Health.
3 Containers of oysters imported into this state shall be tagged
4 and identified as required by the rules of the state
5 Department of Public Health. It shall be unlawful to possess
6 empty sacks with oyster tags attached thereto.

7 "(b) It shall be unlawful for any person, firm, or
8 corporation to sell, purchase, or possess oysters in violation
9 of ~~the provision of~~ this section and upon conviction, persons,
10 firms, or corporations shall be guilty of a Class C
11 misdemeanor.

12 "(c) Tags shall be purchased at a cost of ~~\$.25~~
13 twenty-five cents (\$.25) per tag plus cost of printing
14 (rounded to the nearest five cents) from the Department of
15 Conservation and Natural Resources, Division of Marine
16 Resources, or its duly authorized agents. Receipts shall be
17 deposited to the credit of the Marine Resources Fund and shall
18 be used solely for ~~shell~~ cultch planting and other oyster ~~reef~~
19 ~~improvements~~ management purposes.

20 "§9-12-121.

21 "A Unless otherwise provided specifically in this
22 article, a violation of any of the provisions of this article
23 shall be a Class C misdemeanor, and the person so violating,
24 unless otherwise provided by this article, shall be punished
25 by a fine of not less than \$25.00 nor more than \$100.00

1 punishable as provided by law except that the minimum fine
2 shall not be less than one hundred dollars (\$100)."

3 Section 2. Sections 9-12-34, 9-12-38, 9-12-39,
4 9-12-43, and 9-12-44, Code of Alabama 1975, are repealed.

5 Section 3. Although this bill would have as its
6 purpose or effect the requirement of a new or increased
7 expenditure of local funds, the bill is excluded from further
8 requirements and application under Amendment 621, now
9 appearing as Section 111.05 of the Official Recompilation of
10 the Constitution of Alabama of 1901, as amended, because the
11 bill defines a new crime or amends the definition of an
12 existing crime.

13 Section 4. This act shall become effective on the
14 first day of the third month following its passage and
15 approval by the Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 11-FEB-10.

Greg Pappas
Clerk

Senate

22-APR-10

Passed