

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 4845
STATE OF NEW JERSEY
218th LEGISLATURE

DATED: MARCH 20, 2019

SUMMARY

Synopsis: Prohibits certain possession, sale, trade, distribution, or offering for sale of shark fins.

Type of Impact: Annual State expenditure and revenue increases to the General Fund.

Agencies Affected: Department of Environmental Protection, Department of Law and Public Safety, The Judiciary, Department of Corrections.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Expenditure Increase	Indeterminate
State Revenue Increase	Indeterminate

- The Office of Legislative Services (OLS) estimates that the bill will result in indeterminate, likely nominal, annual State expenditure increases arising from new enforcement and administrative responsibilities for the Department of Environmental Protection (DEP) related to the new prohibition against the possession, sale, distribution, trade, and offer for sale of shark fins. Considering that a third or subsequent violation of the prohibition will be a crime of the fourth degree, the bill can also be expected to periodically increase the expenditures of the Department of Law and Public Safety, The Judiciary, and the Department of Corrections from prosecuting, trying, and possibly incarcerating violators.
- The OLS estimates further that the bill will increase annual State revenue collections by an indeterminate, likely nominal, amount from the assessment of civil administrative penalties by the DEP, the imposition of criminal fines by the courts, and the sale of any confiscated property used in the violation of the prohibition established by the bill.
- The OLS lacks the informational basis to determine the number of violations that the DEP may discover in any given year, but available data suggest that the acts prohibited by the bill are not highly prevalent in New Jersey. Consequently, the fiscal impacts of the bill can be anticipated to be nominal in a typical year.

BILL DESCRIPTION

This bill prohibits: (1) the sale, trade, or distribution, or the offering for sale, of any shark fin; and (2) the possession of any shark fin that has been separated from a shark prior to its lawful landing. The bill's prohibitions do not apply to lawfully obtained shark fins possessed, sold, traded, or distributed for scientific research or educational purposes, or to lawfully obtained smooth dogfish or spiny dogfish fins. The bill allows commercial and recreational fishermen to possess shark fins from sharks if obtained lawfully in a manner consistent with the fisherman's license or permit. Under the bill, a person is authorized, until January 1 of the year next following the date of enactment of the bill, to possess, sell, trade, or distribute, or offer for sale, any shark fin that is in that person's possession.

A person who violates the bill's prohibitions is subject: (1) for a first offense, to a civil administrative penalty of not less than \$5,000 or more than \$15,000; (2) for a second offense, to a civil administrative penalty of not less than \$15,000 or more than \$35,000; and (3) for a third or subsequent offense, to a civil administrative penalty of not less than \$35,000 or more than \$55,000, a criminal fine of up to \$10,000, and a term of imprisonment of not more than one year. Each day during which a violation continues constitutes a distinct offense. The DEP may assess an additional penalty for an amount up to the value of the economic gain from violating the bill's provisions. Shark fins possessed in violation of the bill's provisions, and vessels, vehicles, equipment, or other property utilized in the commission of a second or subsequent violation of the bill's provisions, are subject to seizure and forfeiture by a summary proceeding. Shark fins determined by a court to be possessed, sold, traded, distributed, or offered for sale in violation of the provisions of the bill would be destroyed. The bill also provides that a person or business holding a commercial or recreational fishing license or permit that violates the provisions of the bill would have the license or permit suspended or revoked.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that this bill will result in an indeterminate, likely nominal, increase in State expenditures and revenues to the General Fund. The bill creates new enforcement responsibilities for the DEP, which enforces fishing regulations through the Division of Fish and Wildlife. However, the enforcement of the prohibition against the possession or sale, distribution, trade, and offer for sale of shark fins may be outside the scope of the division's usual duties and may necessitate new enforcement training. These expenditures will vary depending on the prevalence of these activities and practices like "finning" (harvesting only the fin of the shark), which is already a violation of federal law.

The bill also requires the DEP to adopt rules and regulations to implement the provisions of the bill and could impose additional administrative tasks on the DEP that require State expenditures. For example, an alleged violator is to be notified by certified mail or in person that a penalty is being assessed and be made aware of the right to a hearing before any final order assessing a fine is given. However, the DEP currently undertakes administrative actions for

other types of violations and so it is possible that these responsibilities could be subsumed within the duties of current staff using existing resources.

Any person who has been assessed two or more civil administrative penalties will be guilty, upon conviction of a subsequent violation, of a crime of the fourth degree and subject to criminal penalties including a fine of up to \$10,000 and imprisonment for up to one year. The Office of the Attorney General and the courts would incur additional costs for the prosecution of these cases and the administration of the proceedings. However, there is a presumption of non-incarceration for the first conviction for a crime of the fourth degree and so significant expenditures related to imprisonment are unlikely.

The bill requires the DEP to assess civil administrative penalties on persons who violate the provisions of the bill and to recover administrative fees and costs expended in prosecuting violations, which would result in a marginal revenue increase to the General Fund. Repeat violators are subject to additional criminal fines as noted above. The bill also authorizes law enforcement officers to seize any vessels, vehicles, equipment, or other property involved in a second or subsequent violation of the provisions of the bill and requires that all proceeds from the sales of such property be deposited into the "Endangered and Nongame Species of Wildlife Conservation Fund" within the General Fund. However, it is unclear how prevalent the unlawful possession or sale, distribution, trade, and offering for sale of shark fins is in the State and therefore difficult to determine the State revenue impact. According to the Animal Welfare Institute, there were five restaurants in the State offering shark fin soup (the primary use of shark fins) for sale in 2017, while the Humane Society of the United States testified before the Senate Environment and Energy Committee on November 26, 2018 that there were "close to a dozen" restaurants in New Jersey selling shark fins. This suggests that the demand for shark fins is not particularly high. However, the Animal Welfare Institute further claims that there are fourteen restaurants in New York offering shark fin soup for sale despite the state prohibiting their sale in 2014. Therefore, there could be a small but persistent market in the State for shark fins that leads to increased State revenues from civil and criminal fines as well as the sale of property seized in the enforcement of the provisions of the bill.

Section: Environment, Agriculture, and Natural Resources

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).