

# HOUSE BILL 1053

M1, M3, M4

11r0163  
CF 11r0162

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By: **The Speaker (By Request – Administration)**

Introduced and read first time: February 11, 2011

Assigned to: Environmental Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Natural Resources – Aquaculture**

3 FOR the purpose of altering the State agency that is responsible for the employment of  
4 the State’s Aquaculture Coordinator; clarifying certain roles of certain agencies  
5 in the development of an aquaculture industry in the State; altering the  
6 membership of the Aquaculture Review Board; authorizing the Department of  
7 Natural Resources to issue water column leases under certain circumstances;  
8 exempting aquaculture activities in certain leases from a certain wetlands  
9 license requirement; authorizing the Department of Natural Resources to issue  
10 water column leases only in waters that have been classified in a certain way by  
11 the Department of the Environment; prohibiting water column leases in certain  
12 areas; limiting the manner in which shellfish may be cultivated from a water  
13 column lease; requiring the Department of Natural Resources to notify certain  
14 persons of lease applications under certain circumstances; defining certain  
15 terms; altering certain definitions; making technical corrections; and generally  
16 relating to aquaculture in the State.

17 BY renumbering

18 Article – Natural Resources  
19 Section 4–11A–08 through 4–11A–19, respectively  
20 to be Section 4–11A–09 through 4–11A–20, respectively  
21 Annotated Code of Maryland  
22 (2005 Replacement Volume and 2010 Supplement)

23 BY repealing and reenacting, with amendments,

24 Article – Agriculture  
25 Section 10–1301 and 10–1302  
26 Annotated Code of Maryland  
27 (2007 Replacement Volume and 2010 Supplement)

28 BY repealing and reenacting, with amendments,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Environment  
2 Section 16–107 and 16–202(h)  
3 Annotated Code of Maryland  
4 (2007 Replacement Volume and 2010 Supplement)

5 BY repealing and reenacting, without amendments,  
6 Article – Environment  
7 Section 16–202(a) and (b)  
8 Annotated Code of Maryland  
9 (2007 Replacement Volume and 2010 Supplement)

10 BY repealing and reenacting, with amendments,  
11 Article – Natural Resources  
12 Section 4–1103(d), 4–11A–01(m), 4–11A–02(a), 4–11A–06(b), and 4–11A–07(b)  
13 Annotated Code of Maryland  
14 (2005 Replacement Volume and 2010 Supplement)

15 BY repealing and reenacting, without amendments,  
16 Article – Natural Resources  
17 Section 4–11A–01(d), (g), (n), and (q)  
18 Annotated Code of Maryland  
19 (2005 Replacement Volume and 2010 Supplement)

20 BY adding to  
21 Article – Natural Resources  
22 Section 4–11A–01(r) and 4–11A–08  
23 Annotated Code of Maryland  
24 (2005 Replacement Volume and 2010 Supplement)

25 BY repealing and reenacting, with amendments,  
26 Article – Natural Resources  
27 Section 4–11A–09 and 4–11A–10(e)  
28 Annotated Code of Maryland  
29 (2005 Replacement Volume and 2010 Supplement)  
30 (As enacted by Section 1 of this Act)

31 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
32 MARYLAND, That Section(s) 4–11A–08 through 4–11A–19, respectively, of Article –  
33 Natural Resources of the Annotated Code of Maryland be renumbered to be Section(s)  
34 4–11A–09 through 4–11A–20, respectively.

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

37 **Article – Agriculture**

38 10–1301.

1 (a) (1) The General Assembly defines aquaculture as an agricultural AND  
2 FISHERIES MANAGEMENT activity.

3 (2) "Aquaculture" includes the commercial rearing of finfish, shellfish,  
4 and aquatic plants for sale, trade, barter, or shipment.

5 (b) It is the intent of the General Assembly to create:

6 (1) An Aquaculture Review Board and an Aquaculture Coordinating  
7 Council to promote the development of an aquaculture industry in this State; and

8 (2) An Aquaculture Coordinator, **EMPLOYED BY THE DEPARTMENT**  
9 **OF NATURAL RESOURCES**, to assist persons in obtaining the permits and licenses  
10 necessary to conduct aquaculture in the State.

11 (c) The Maryland Department of Agriculture is the lead agency for[:

12 (1) Promoting, coordinating,] **PROMOTING** and marketing  
13 aquaculture and aquaculture products[; and

14 (2) Coordinating and streamlining the process of applying for a State  
15 aquaculture permit].

16 (d) The Department of Natural Resources is responsible for [enforcement]:

17 (1) **ENFORCEMENT** of laws, regulations, and rules; AND

18 (2) **COORDINATING AND STREAMLINING THE PROCESS OF**  
19 **APPLYING FOR A STATE AQUACULTURE PERMIT.**

20 (e) The University of Maryland is the lead agency for research in  
21 aquaculture production and shall be responsible for development of education and  
22 extension programs which promote aquaculture as an industry.

23 10-1302.

24 (a) There is an Aquaculture Review Board.

25 (b) (1) The Review Board shall consist of the following [5] members, each  
26 of whom shall represent one of the following State departments charged with  
27 responsibility for an aspect of the State aquaculture permitting process or oversight of  
28 permit compliance:

29 [(1)] (1) The Department of [Agriculture] **NATURAL RESOURCES**,  
30 to be represented by the Aquaculture Coordinator, who shall serve as chair;



1 located in an area where the water depth is less than 4 1/2 feet at mean low water and  
2 on a waterway without strong flushing if the development project:

3 (i) Enhances aquaculture activities or seafood operations;

4 (ii) Is located in a marina or seafood operation at a marina  
5 operated by a nonprofit organization to promote aquaculture activities or oyster  
6 restoration in the State;

7 (iii) Does not adversely impact submerged aquatic vegetation;  
8 and

9 (iv) Will further the policies of the State related to aquaculture.

10 (2) The license authorized under paragraph (1) of this subsection may  
11 authorize dredging to improve navigational access to the marina or marina facility  
12 operations.

13 (c) The Board may not issue a license under this title unless the applicant  
14 for the license has obtained the following authorizations if required by local, State, or  
15 federal law:

16 (1) Local planning or zoning authorization;

17 (2) An aquaculture lease;

18 (3) A water column lease [issued by the Board] or a submerged land  
19 lease issued by the Department of Natural Resources; and

20 (4) A permit issued by the U.S. Army Corps of Engineers under § 404  
21 of the federal Clean Water Act or under § 10 of the federal Rivers and Harbors Act.

22 16–202.

23 (a) A person may not dredge or fill on State wetlands without a license.

24 (b) To apply for a license, the applicant shall submit a delineation of the  
25 affected tidal wetlands and all other information required by the Department.

26 (h) The provisions of this section do not apply to any operation for:

27 (1) Dredging and filling being conducted as of July 1, 1970, as  
28 authorized under the terms of an appropriate permit or license granted under the  
29 provisions of existing State and federal law;

1 (2) Dredging of seafood products by any licensed operator, harvesting  
 2 of seaweed, or mosquito control and abatement as approved by the Department of  
 3 Agriculture;

4 (3) Improvement of wildlife habitat or agricultural drainage ditches as  
 5 approved by an appropriate unit;

6 (4) Routine maintenance or repair of existing bulkheads, provided that  
 7 there is no addition or channelward encroachment; or

8 (5) Aquaculture activities occurring [in Aquaculture Enterprise Zones  
 9 established under Title 4, Subtitle 11A of the Natural Resources Article under an  
 10 aquaculture] **UNDER A** lease issued by the Department of Natural Resources **UNDER**  
 11 **TITLE 4, SUBTITLE 11A OF THE NATURAL RESOURCES ARTICLE.**

## 12 Article – Natural Resources

13 4–1103.

14 (d) (1) In addition to the provisions of subsections (b) and (c) of this  
 15 section concerning the establishment of oyster seed areas and the sale of seed oysters  
 16 to a leaseholder, the Department may:

17 (i) Sell or remove seed oysters from oyster seed areas if the sale  
 18 or removal is made under disease protocols; and

19 (ii) Adopt regulations necessary to implement the provisions of  
 20 this subsection.

21 (2) The Department shall credit the proceeds of any sale of seed  
 22 oysters under this subsection to the Fisheries Research and Development Fund in the  
 23 Department.

24 (3) The Department shall:

25 (i) Sell, at prevailing market prices, seed oysters produced in  
 26 an aquaculture oyster seed area to a person who holds a valid [aquaculture or  
 27 submerged land] **ISSUED UNDER SUBTITLE 11A OF THIS TITLE**, or an  
 28 aquaculture permit to cultivate shellfish; and

29 (ii) Use any revenue derived from the sale of seed oysters to  
 30 reimburse the Fisheries Research and Development Fund for any expenditure needed  
 31 to create the aquaculture oyster seed areas under this subsection.

32 4–11A–01.

1 (d) “Aquaculture lease” means a lease of any submerged land or the water  
2 column located in an Aquaculture Enterprise Zone for cultivating oysters or other  
3 shellfish for commercial purposes.

4 (g) “Demonstration lease” means a lease of submerged land for the purpose  
5 of demonstrating the ecological benefits of growing shellfish or for research or  
6 education.

7 (m) “SAV Protection Zone” means an area of submerged aquatic vegetation  
8 [with a density greater than 10%] as mapped in aerial surveys by the Virginia  
9 Institute of Marine Sciences in 1 or more of the [3] 5 years preceding the designation  
10 of an Aquaculture Enterprise Zone or an application for [an aquaculture, submerged  
11 land, or demonstration lease] **A LEASE UNDER THIS SUBTITLE.**

12 (n) “Submerged land lease” means any land lying beneath the waters of the  
13 State leased by the State to any person for cultivating oysters and other shellfish for  
14 commercial purposes.

15 (q) “Water column lease” means a lease of the column of water on or under  
16 the surface of the water and above the surface of the submerged land.

17 **(R) “YATES BAR” MEANS ANY SUBMERGED OYSTER BAR, REEF, ROCK,**  
18 **OR AREA REPRESENTED AS AN OYSTER BAR ON THE CHARTS OF THE OYSTER**  
19 **SURVEY OF 1906 TO 1912, NOT INCLUDING ANY AMENDMENTS.**

20 4-11A-02.

21 (a) (1) The Department shall promulgate by regulation requirements that  
22 are necessary to ensure that aquaculture operations do not adversely impact wild  
23 stocks of fish, including measures for identifying fish as products of an aquaculture  
24 operation. In developing these regulations, the Department shall consult with the  
25 Aquaculture Coordinating Council, established by § 10-1303 of the Agriculture  
26 Article, and incorporate in the regulations public notice provisions in accordance with  
27 [§ 4-11A-08] **§ 4-11A-09** of this subtitle.

28 (2) The Department may not issue a permit for the raising of  
29 nonnative species, including hybrids of striped bass, or nonnative stocks unless:

30 (i) The permit limits the aquaculture operation to nontidal  
31 ponds, lakes, or impoundments; and

32 (ii) The aquaculture operation is constructed in a manner that  
33 assures that nonnative stocks are precluded from entering the tidal waters or  
34 contaminating the native species of the State.

35 (3) The Department may not issue a permit for the raising of a  
36 transgenic species or a genetically altered species, unless:

1 (i) The permit limits the aquaculture operation to waters of the  
2 State that do not flow into any other body of water; and

3 (ii) The aquaculture operation is constructed in a manner that  
4 assures that transgenic or genetically altered stocks are precluded from entering any  
5 other waters or contaminating other aquatic species of the State.

6 4-11A-06.

7 (b) (1) The Department may issue to a person a submerged land lease in  
8 waters of the Chesapeake Bay [that meet applicable water quality requirements for  
9 shellfish cultivation as determined by the Department of the Environment] **AFTER**  
10 **THE DEPARTMENT OF THE ENVIRONMENT CLASSIFIES THE WATERS AS**  
11 **APPROVED, CONDITIONALLY APPROVED, OR RESTRICTED FOR HARVEST.**

12 (2) A submerged land lease may not be located:

13 (i) Within a minimum of 50 feet of shoreline or any pier without  
14 the written permission of the riparian owner at the time of initial application for the  
15 lease;

16 (ii) Within 150 feet of the public shellfish fishery or a registered  
17 pound net site;

18 (iii) Within 150 feet of an oyster sanctuary or oyster reserve;

19 (iv) Within 150 feet of a federal navigational channel;

20 (v) In any creek, cove, bay, or inlet less than 300 feet wide at its  
21 mouth at mean low tide; or

22 (vi) In an SAV Protection Zone.

23 4-11A-07.

24 (b) The Department may issue to a person a submerged land lease in waters  
25 of the Atlantic Coastal Bays [that meet applicable water quality requirements for  
26 shellfish cultivation as determined by the Department of the Environment] **AFTER**  
27 **THE DEPARTMENT OF THE ENVIRONMENT CLASSIFIES THE WATERS AS**  
28 **APPROVED, CONDITIONALLY APPROVED, OR RESTRICTED FOR HARVEST.**

29 4-11A-08.

30 (A) **THIS SECTION APPLIES TO A WATER COLUMN LEASE IN THE WATERS**  
31 **OF THE STATE.**



1           **(B) THE DEPARTMENT MAY ISSUE TO A PERSON A WATER COLUMN**  
2 **LEASE IN WATERS OF THE STATE AFTER THE DEPARTMENT OF THE**  
3 **ENVIRONMENT CLASSIFIES THE WATERS AS APPROVED, CONDITIONALLY**  
4 **APPROVED, OR RESTRICTED FOR HARVEST.**

5           **(C) A WATER COLUMN LEASE MAY NOT BE LOCATED:**

6                   **(1) WITHIN A MINIMUM OF 50 FEET OF SHORELINE OR ANY PIER**  
7 **WITHOUT THE WRITTEN PERMISSION OF THE RIPARIAN OWNER AT THE TIME OF**  
8 **INITIAL APPLICATION FOR THE LEASE;**

9                   **(2) WITHIN 150 FEET OF THE PUBLIC SHELLFISH FISHERY OR A**  
10 **REGISTERED POUND NET SITE;**

11                   **(3) WITHIN 150 FEET OF AN OYSTER RESERVE OR ANY YATES**  
12 **BAR LOCATED IN AN OYSTER SANCTUARY;**

13                   **(4) WITHIN 150 FEET OF A FEDERAL NAVIGATIONAL CHANNEL;**

14                   **(5) IN ANY CREEK, COVE, BAY, OR INLET LESS THAN 300 FEET**  
15 **WIDE AT ITS MOUTH AT MEAN LOW TIDE;**

16                   **(6) IN AN SAV PROTECTION ZONE; OR**

17                   **(7) IN A SETBACK OR BUFFER FROM THE ASSATEAGUE ISLAND**  
18 **NATIONAL SEASHORE ESTABLISHED BY THE DEPARTMENT.**

19           **(D) A PERSON WITH A WATER COLUMN LEASE IN THE WATERS OF THE**  
20 **STATE MAY CULTIVATE SHELLFISH:**

21                   **(1) SUBJECT TO APPROVAL BY THE UNITED STATES ARMY**  
22 **CORPS OF ENGINEERS, ON OR UNDER THE SURFACE OF THE WATER IN A**  
23 **FLOATING STRUCTURE; OR**

24                   **(2) IN ANY OTHER MANNER AUTHORIZED BY THE DEPARTMENT.**

25 4-11A-09.

26           (a) (1) A person who wishes to obtain an aquaculture or submerged land  
27 lease shall pay a nonrefundable application fee established by the Department and  
28 complete and submit an application to the Department.

1           (2) A person who wishes to obtain a water column lease that does not  
2 apply in an Aquaculture Enterprise Zone shall [apply for a tidal wetlands license from  
3 the Department of the Environment] **COMPLETE AND SUBMIT AN APPLICATION TO**  
4 **THE DEPARTMENT.**

5           (b) An application for an aquaculture **LEASE, WATER COLUMN LEASE,** or  
6 submerged land lease shall include:

7           (1) A declaration that the applicant intends to actively use the leased  
8 area for commercial purposes; and

9           (2) A proposed plan for active use of the lease that shall include:

10                   (i) The lessee's source and quantity of shellfish seed;

11                   (ii) The methods and means the applicant will use to grow  
12 shellfish;

13                   (iii) The quantity of shellfish that the lessee expects to plant and  
14 harvest, and the time for planting and harvesting, during the initial 3 years of the  
15 lease; and

16                   (iv) A description of the labor, materials, and equipment to be  
17 used by the lessee.

18           (c) The requirements for active use of a lease shall include:

19           (1) Annually planting at least one-fourth of the leased area at a  
20 minimum density of 1,000,000 shellfish seed per acre; or

21           (2) Complying with any other requirements established by the  
22 Department.

23           (d) (1) The term of a lease is 20 years.

24           (2) Except for a demonstration lease under [~~§ 4-11A-10~~] **§ 4-11A-11**  
25 of this subtitle, a lease may be of any size provided that the leaseholder actively uses  
26 the area.

27           (3) The Department shall establish an annual amount of rent and an  
28 aquaculture development surcharge for an aquaculture or submerged land lease.

29           (4) The Department, as it considers necessary to protect the public  
30 health, safety, and welfare, may:

31                   (i) Deny a lease application for reasonable cause; or

1 (ii) Include any conditions in a lease.

2 (e) If an application for an aquaculture lease meets the requirements of this  
3 subtitle, the Department shall survey the leased area and issue a lease to the  
4 applicant.

5 (f) If an application for a submerged land lease in an area preapproved for  
6 leasing in the Atlantic Coastal Bays meets the requirements of this subtitle, the  
7 Department shall survey the leased area and issue a submerged land lease to the  
8 applicant.

9 (g) (1) If an application for a submerged land **OR WATER COLUMN** lease  
10 in the Chesapeake Bay or in the Atlantic Coastal Bays meets the requirements of this  
11 subtitle:

12 (i) The applicant for the lease shall mark the proposed area  
13 with a stake; and

14 (ii) The Department shall:

15 1. Advertise the application on the website of the  
16 Department and once a week for 4 successive weeks in a newspaper published in the  
17 county or counties where the proposed lease is to be located;

18 2. Notify the owners of property directly in front of the  
19 proposed activity; [and]

20 3. Notify [the] **EACH** Chair of [the] **AN** Oyster  
21 Committee in the county in which the proposed activity is located; **AND**

22 **4. NOTIFY OTHER INTERESTED PARTIES THAT THE**  
23 **DEPARTMENT DEEMS APPROPRIATE.**

24 (2) (i) Within 30 days of publication of the last advertisement  
25 under paragraph (1) of this subsection, any person who has a specific right, duty,  
26 privilege, or interest that is different from that held by the general public and may be  
27 adversely affected by the proposed lease may file a petition with the Department  
28 protesting the issuance of the lease.

29 (ii) The protest shall be heard in accordance with the  
30 requirements of the Administrative Procedure Act under Title 10, Subtitle 2 of the  
31 State Government Article.

32 (iii) The Department shall hold a public informational meeting  
33 on the issuance of a lease on the request of any person.

1 (iv) Immediately after termination of the period prescribed in  
2 subparagraph (i) of this paragraph for filing a petition or after a final decision  
3 dismissing a protest, the Department shall survey the proposed leased area and issue  
4 a [submerged land] lease to the applicant.

5 4-11A-10.

6 (e) (1) A person who wishes to renew [an aquaculture lease, a submerged  
7 land lease,] **A LEASE ISSUED UNDER THIS SUBTITLE** or an existing shellfish lease or  
8 oyster lease shall submit an application that meets the requirements for an initial  
9 application in [~~§ 4-11A-08~~] **§ 4-11A-09 OR § 4-11A-11** of this subtitle.

10 (2) Before the termination or expiration of a lease issued under this  
11 subtitle, the leaseholder shall have the right of first refusal with respect to future  
12 leases of the leased area.

13 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
14 July 1, 2011.