

SENATE BILL 847

M1, M3, M4

11r0162
CF HB 1053

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

Introduced and read first time: February 14, 2011

Assigned to: Rules

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,

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)] (I) 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] lease **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.