

SENATE BILL 847

M1, M3, M4

11r0162
CF HB 1053

By: **The President (By Request – Administration) and Senator Klausmeier**

Introduced and read first time: February 14, 2011

Assigned to: Rules

Re-referred to: Education, Health, and Environmental Affairs, February 28, 2011

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 24, 2011

CHAPTER _____

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; transferring the
6 Seafood Marketing and Aquaculture Development Program, the Division of
7 Market Development, the Seafood Marketing Fund, the Seafood Program
8 Management Team, the Innovative Seafood Technologies Program, the Seafood
9 Marketing Advisory Commission, the Aquaculture Coordinating Council, and
10 the Aquaculture Review Board from the Department of Agriculture to the
11 Department of Natural Resources; altering the membership of the Aquaculture
12 Review Board; authorizing the Department of Natural Resources to issue water
13 column leases under certain circumstances; exempting aquaculture activities in
14 certain leases from a certain wetlands license requirement; altering certain
15 provisions relating to the issuance of submerged land leases; authorizing the
16 Department of Natural Resources to issue water column leases only in waters
17 that have been classified in a certain way by the Department of the
18 Environment; prohibiting water column leases in certain areas; limiting the
19 manner in which shellfish may be cultivated from a water column lease;
20 requiring the Department of Natural Resources to notify certain persons of
21 lease applications under certain circumstances; providing for the continuity of
22 certain licenses, leases, certifications, and permits; providing that certain
23 leaseholders, license holders, permittees, and certified persons shall continue to
24 be valid leaseholders, license holders, permittees, and certified persons, and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



shall comply with certain requirements; requiring that certain pending applications be transferred to the Department of Natural Resources; requiring the publisher of the Annotated Code of Maryland, in consultation with, and subject to the approval of, the Department of Legislative Services, to correct certain cross-references and terminology; defining certain terms; altering certain definitions; making technical corrections; and generally relating to aquaculture in the State.

BY renumbering

Article – Natural Resources

Section 4–11A–08 through ~~4–11A–19~~ 4–11A–22, respectively

to be Section 4–11A–09 through ~~4–11A–20~~ 4–11A–23, respectively

Annotated Code of Maryland

(2005 Replacement Volume and 2010 Supplement)

BY repealing

Article – Agriculture

Section 10–1301 and 10–1302

Annotated Code of Maryland

(2007 Replacement Volume and 2010 Supplement)

BY transferring

Article – Agriculture

Section 10–1001 and 10–1002 and the subtitle “Subtitle 10. Seafood Marketing and Aquaculture Development Program and Division of Market Development”; 10–10A–01 and the subtitle “Subtitle 10A. Seafood Program Management Team”; 10–10B–01 and the subtitle “Subtitle 10B. Innovative Seafood Technologies Program”; 10–1101 and the subtitle “Subtitle 11. Seafood Marketing Advisory Commission”; and 10–1303, respectively

Annotated Code of Maryland

(2007 Replacement Volume and 2010 Supplement)

to be

Article – Natural Resources

Section 4–11B–01 and 4–11B–02 and the subtitle “Subtitle 11B. Seafood Marketing and Aquaculture Development Program and Division of Market Development”; 4–11C–01 and the subtitle “Subtitle 11C. Seafood Program Management Team”; 4–11D–01 and the subtitle “Subtitle 11D. Innovative Seafood Technologies Program”; 4–11E–01 and the subtitle “Subtitle 11E. Seafood Marketing Advisory Commission”; and 4–11A–03.2, respectively

Annotated Code of Maryland

(2005 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,

Article – Agriculture

Section ~~10–1301 and 10–1302~~ 2–106(a)

1 Annotated Code of Maryland
2 (2007 Replacement Volume and 2010 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article – Environment
5 Section 16–107 and 16–202(h)
6 Annotated Code of Maryland
7 (2007 Replacement Volume and 2010 Supplement)

8 BY repealing and reenacting, without amendments,
9 Article – Environment
10 Section 16–202(a) and (b)
11 Annotated Code of Maryland
12 (2007 Replacement Volume and 2010 Supplement)

13 BY repealing and reenacting, with amendments,
14 Article – Natural Resources
15 Section 4–701(e)(3), 4–1103(d), 4–11A–01(m), 4–11A–02(a), 4–11A–06(b), and
16 4–11A–07(b)
17 Annotated Code of Maryland
18 (2005 Replacement Volume and 2010 Supplement)

19 BY repealing and reenacting, without amendments,
20 Article – Natural Resources
21 Section 4–701(a) and (b) and 4–11A–01(d), (g), (n), and (q)
22 Annotated Code of Maryland
23 (2005 Replacement Volume and 2010 Supplement)

24 BY adding to
25 Article – Natural Resources
26 Section 4–11A–01(r), 4–11A–03, 4–11A–03.1, and 4–11A–08
27 Annotated Code of Maryland
28 (2005 Replacement Volume and 2010 Supplement)

29 BY repealing and reenacting, with amendments,
30 Article – Natural Resources
31 Section 4–11A–09 and 4–11A–10(e)
32 Annotated Code of Maryland
33 (2005 Replacement Volume and 2010 Supplement)
34 (As enacted by Section 1 of this Act)

35 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
36 MARYLAND, That Section(s) 4–11A–08 through ~~4–11A–19~~ 4–11A–22, respectively, of
37 Article – Natural Resources of the Annotated Code of Maryland be renumbered to be
38 Section(s) 4–11A–09 through ~~4–11A–20~~ 4–11A–23, respectively.

SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 10–1001 and 10–1002 and the subtitle “Subtitle 10. Seafood Marketing and Aquaculture Development Program and Division of Market Development”; 10–10A–01 and the subtitle “Subtitle 10A. Seafood Program Management Team”; 10–10B–01 and the subtitle “Subtitle 10B. Innovative Seafood Technologies Program”; 10–1101 and the subtitle “Subtitle 11. Seafood Marketing Advisory Commission”; and 10–1303, respectively, of Article – Agriculture of the Annotated Code of Maryland be transferred to be Section(s) 4–11B–01 and 4–11B–02 and the subtitle “Subtitle 11B. Seafood Marketing and Aquaculture Development Program and Division of Market Development”; 4–11C–01 and the subtitle “Subtitle 11C. Seafood Program Management Team”; 4–11D–01 and the subtitle “Subtitle 11D. Innovative Seafood Technologies Program”; 4–11E–01 and the subtitle “Subtitle 4–11E. Seafood Marketing Advisory Commission”; and 4–11A–03.2, respectively, of Article – Natural Resources of the Annotated Code of Maryland.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Agriculture

2–106.

(a) The following positions and units are included within the Department:

(1) The Maryland Agricultural Fair Board;

(2) The Chief of Weights and Measures;

(3) The State Chemist;

(4) The State Veterinarian;

(5) The State Board of Veterinary Medical Examiners;

(6) The State Soil Conservation Committee;

(7) The Board of Review of the Department of Agriculture;

(8) The Maryland Agricultural Commission;

(9) The Maryland Horse Industry Board;

[(10) The Seafood Marketing and Aquaculture Development Program and Division of Market Development;

(11) The Seafood Marketing Advisory Commission;]

1 ~~[(12)]~~ **(10)** The Maryland Winery and Grape Growers' Advisory Board[:

2 ~~(13)~~ The Aquaculture Review Board; and

3 ~~(14)~~ The Aquaculture Coordinating Council].

4 ~~10-1301.~~

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

7 ~~(2)~~ ~~“Aquaculture” includes the commercial rearing of finfish, shellfish,~~
8 ~~and aquatic plants for sale, trade, barter, or shipment.~~

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

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

12 ~~(2)~~ ~~An Aquaculture Coordinator, EMPLOYED BY THE DEPARTMENT~~
13 ~~OF NATURAL RESOURCES, to assist persons in obtaining the permits and licenses~~
14 ~~necessary to conduct aquaculture in the State.~~

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

16 ~~(1)~~ ~~Promoting, coordinating,] PROMOTING and marketing~~
17 ~~aquaculture and aquaculture products~~]; and

18 ~~(2)~~ ~~Coordinating and streamlining the process of applying for a State~~
19 ~~aquaculture permit~~].

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

21 ~~(1)~~ ~~ENFORCEMENT of laws, regulations, and rules; AND~~

22 ~~(2)~~ ~~COORDINATING AND STREAMLINING THE PROCESS OF~~
23 ~~APPLYING FOR A STATE AQUACULTURE PERMIT.~~

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

27 ~~10-1302.~~

28 ~~(a)~~ ~~There is an Aquaculture Review Board.~~

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

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

~~[(2)] (II) 1 representative of the Department of the Environment, designated by the Secretary of the Environment;~~

~~[(3)] (III) 1 representative of the Department of Health and Mental Hygiene, designated by the Secretary of Health and Mental Hygiene; AND~~

~~[(4)] (IV) 1 representative of the Department of [Natural Resources] AGRICULTURE, designated by the Secretary of [Natural Resources]; and~~

~~(5) 1 representative of the Board of Public Works] AGRICULTURE.~~

~~(2) THE NATIONAL MARINE FISHERIES SERVICE SHALL BE INVITED TO DESIGNATE A REPRESENTATIVE TO THE REVIEW BOARD.~~

~~(3) THE UNITED STATES ARMY CORPS OF ENGINEERS SHALL BE INVITED TO DESIGNATE A REPRESENTATIVE TO THE REVIEW BOARD.~~

~~(c) (1) The Aquaculture Coordinator shall be the single point of contact for an applicant for all permits and licenses necessary to conduct aquaculture in the State.~~

~~(2) The Review Board shall:~~

~~(i) Coordinate the development of statewide aquaculture policy and, to the maximum extent feasible, the streamlining of the application process;~~

~~(ii) Track each application as it [progresses through each department] IS PROCESSED; and~~

~~(iii) Ensure full and meaningful departmental communication with an applicant during each stage of the application process.~~

Article – Environment

16–107.

1 (a) (1) This section applies to a development project to expand a marina
2 that historically operated as a working marina for the sole purpose of supporting
3 aquaculture or seafood operations.

4 (2) This section does not apply to a development project to expand a
5 marina if the existing or expanded marina is used to allow a person to moor, dock, or
6 store recreational or pleasure vessels.

7 (b) (1) Except as provided in subsection (c) of this section, the Board may
8 issue a license under this title for a development project to expand a marina that is
9 located in an area where the water depth is less than 4 1/2 feet at mean low water and
10 on a waterway without strong flushing if the development project:

11 (i) Enhances aquaculture activities or seafood operations;

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

15 (iii) Does not adversely impact submerged aquatic vegetation;
16 and

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

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

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

24 (1) Local planning or zoning authorization;

25 (2) An aquaculture lease;

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

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

30 16–202.

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

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

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

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

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

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

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

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

Article – Natural Resources

4-701.

(a) This section applies to any person who is required under Subtitle 2, 7, 8, 9, or 10 of this title to be licensed to guide fishing parties or to catch, sell, buy, process, transport, export, or otherwise deal in fish caught in tidal waters.

(b) (1) The Department shall utilize a single, commercial license, to be known and designated as a tidal fish license.

(2) A tidal fish license authorizes a licensee:

(i) To engage in each activity indicated on the license; and

(ii) For catching crabs, to utilize the number of crew members indicated on the license.

(3) Except for a person receiving a license under subsection (i)(2)(ii) of this section, the Department may not issue a tidal fish license to an individual who is younger than 14 years of age.

1 (4) A person may not guide fishing parties or catch, sell, buy, process,
2 transport, export, or otherwise deal in fish caught in tidal waters unless licensed
3 under this section.

4 (e) (3) In addition to the normal license fees imposed under subsection
5 (d)(2)(ii)2 and 4 of this section, a licensee shall pay to the Department an annual
6 surcharge of \$10 to be credited to the Seafood Marketing Office of the Department [of
7 Agriculture] to fund seafood marketing programs which have been approved by the
8 Department.

9 4-1103.

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

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

15 (ii) Adopt regulations necessary to implement the provisions of
16 this subsection.

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

20 (3) The Department shall:

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

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

28 4-11A-01.

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

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

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

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

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

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

4–11A–02.

(a) (1) The Department shall promulgate by regulation requirements that are necessary to ensure that aquaculture operations do not adversely impact wild stocks of fish, including measures for identifying fish as products of an aquaculture operation. In developing these regulations, the Department shall consult with the Aquaculture Coordinating Council, established by ~~§ 10-1303 of the Agriculture Article~~ **§ 4–11A–03.2 OF THIS SUBTITLE**, and incorporate in the regulations public notice provisions in accordance with [§ 4–11A–08] **§ 4–11A–09** of this subtitle.

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

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

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

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

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

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

1 4-11A-03.

2 (A) (1) THE GENERAL ASSEMBLY DEFINES AQUACULTURE AS AN
3 AGRICULTURAL AND FISHERIES MANAGEMENT ACTIVITY.

4 (2) "AQUACULTURE" INCLUDES THE COMMERCIAL REARING OF
5 FINFISH, SHELLFISH, AND AQUATIC PLANTS FOR SALE, TRADE, BARTER, OR
6 SHIPMENT.

7 (B) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO CREATE:

8 (1) AN AQUACULTURE REVIEW BOARD AND AN AQUACULTURE
9 COORDINATING COUNCIL TO PROMOTE THE DEVELOPMENT OF AN
10 AQUACULTURE INDUSTRY IN THIS STATE; AND

11 (2) AN AQUACULTURE COORDINATOR, EMPLOYED BY THE
12 DEPARTMENT, TO ASSIST PERSONS IN OBTAINING THE PERMITS AND LICENSES
13 NECESSARY TO CONDUCT AQUACULTURE IN THE STATE.

14 (C) THE DEPARTMENT IS THE LEAD AGENCY FOR:

15 (1) PROMOTING, COORDINATING, AND MARKETING
16 AQUACULTURE AND AQUACULTURE PRODUCTS;

17 (2) COORDINATING AND STREAMLINING THE PROCESS OF
18 APPLYING FOR A STATE AQUACULTURE PERMIT; AND

19 (3) ENFORCING LAWS, REGULATIONS, AND RULES.

20 (D) THE UNIVERSITY OF MARYLAND IS THE LEAD AGENCY FOR
21 RESEARCH IN AQUACULTURE PRODUCTION AND SHALL BE RESPONSIBLE FOR
22 DEVELOPMENT OF EDUCATION AND EXTENSION PROGRAMS WHICH PROMOTE
23 AQUACULTURE AS AN INDUSTRY.

24 4-11A-03.1.

25 (A) THERE IS AN AQUACULTURE REVIEW BOARD.

26 (B) (1) THE REVIEW BOARD SHALL CONSIST OF THE FOLLOWING
27 MEMBERS, EACH OF WHOM SHALL REPRESENT ONE OF THE FOLLOWING STATE
28 DEPARTMENTS CHARGED WITH RESPONSIBILITY FOR AN ASPECT OF THE STATE
29 AQUACULTURE PERMITTING PROCESS OR OVERSIGHT OF PERMIT COMPLIANCE:

1 (I) THE DEPARTMENT OF NATURAL RESOURCES, TO BE
2 REPRESENTED BY THE AQUACULTURE COORDINATOR, WHO SHALL SERVE AS
3 CHAIR;

4 (II) ONE REPRESENTATIVE OF THE DEPARTMENT OF THE
5 ENVIRONMENT, DESIGNATED BY THE SECRETARY OF THE ENVIRONMENT;

6 (III) ONE REPRESENTATIVE OF THE DEPARTMENT OF
7 HEALTH AND MENTAL HYGIENE, DESIGNATED BY THE SECRETARY OF HEALTH
8 AND MENTAL HYGIENE; AND

9 (IV) ONE REPRESENTATIVE OF THE DEPARTMENT OF
10 AGRICULTURE, DESIGNATED BY THE SECRETARY OF AGRICULTURE.

11 (2) THE NATIONAL MARINE FISHERIES SERVICE SHALL BE
12 INVITED TO DESIGNATE A REPRESENTATIVE TO THE REVIEW BOARD.

13 (3) THE UNITED STATES ARMY CORPS OF ENGINEERS SHALL BE
14 INVITED TO DESIGNATE A REPRESENTATIVE TO THE REVIEW BOARD.

15 (C) (1) THE AQUACULTURE COORDINATOR SHALL BE THE SINGLE
16 POINT OF CONTACT FOR AN APPLICANT FOR ALL PERMITS AND LICENSES
17 NECESSARY TO CONDUCT AQUACULTURE IN THE STATE.

18 (2) THE REVIEW BOARD SHALL:

19 (I) COORDINATE THE DEVELOPMENT OF STATEWIDE
20 AQUACULTURE POLICY AND, TO THE MAXIMUM EXTENT FEASIBLE, THE
21 STREAMLINING OF THE APPLICATION PROCESS;

22 (II) TRACK EACH APPLICATION AS IT IS PROCESSED; AND

23 (III) ENSURE FULL AND MEANINGFUL DEPARTMENTAL
24 COMMUNICATION WITH AN APPLICANT DURING EACH STAGE OF THE
25 APPLICATION PROCESS.

26 4-11A-06.

27 (b) (1) The Department may issue to a person a submerged land lease in
28 waters of the Chesapeake Bay [that meet applicable water quality requirements for
29 shellfish cultivation as determined by the Department of the Environment] AFTER
30 THE DEPARTMENT OF THE ENVIRONMENT CLASSIFIES THE WATERS AS
31 ~~APPROVED~~;

1 **(I) APPROVED, CONDITIONALLY APPROVED, OR**
2 **RESTRICTED FOR HARVEST; OR**

3 **(II) PROHIBITED, PROVIDED THAT THE LEASE IS USED**
4 **EXCLUSIVELY FOR THE PLANTING AND GATHERING OF SEED FOR**
5 **AQUACULTURE AND THE LEASEHOLDER COMPLIES WITH THE REQUIREMENTS**
6 **OF THE NATIONAL SHELLFISH SANITATION PROGRAM AS IMPLEMENTED BY**
7 **THE DEPARTMENT.**

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

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

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

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

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

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

18 (vi) In an SAV Protection Zone.

19 4-11A-07.

20 (b) The Department may issue to a person a submerged land lease in waters
21 of the Atlantic Coastal Bays [that meet applicable water quality requirements for
22 shellfish cultivation as determined by the Department of the Environment] **AFTER**
23 **THE DEPARTMENT OF THE ENVIRONMENT CLASSIFIES THE WATERS AS**
24 **~~APPROVED;~~**

25 **(1) APPROVED, CONDITIONALLY APPROVED, OR RESTRICTED**
26 **FOR HARVEST; OR**

27 **(2) PROHIBITED, PROVIDED THAT THE LEASE IS USED**
28 **EXCLUSIVELY FOR THE PLANTING AND GATHERING OF SEED FOR**
29 **AQUACULTURE AND THE LEASEHOLDER COMPLIES WITH THE REQUIREMENTS**
30 **OF THE NATIONAL SHELLFISH SANITATION PROGRAM AS IMPLEMENTED BY**
31 **THE DEPARTMENT.**

32 4-11A-08.

1 (A) THIS SECTION APPLIES TO A WATER COLUMN LEASE IN THE WATERS
2 OF THE STATE.

3 (B) THE DEPARTMENT MAY ISSUE TO A PERSON A WATER COLUMN
4 LEASE IN WATERS OF THE STATE AFTER THE DEPARTMENT OF THE
5 ENVIRONMENT CLASSIFIES THE WATERS AS ~~APPROVED~~:

6 (1) APPROVED, CONDITIONALLY APPROVED, OR RESTRICTED
7 FOR HARVEST; OR

8 (2) PROHIBITED, PROVIDED THAT THE LEASE IS USED
9 EXCLUSIVELY FOR THE PLANTING AND GATHERING OF SEED FOR
10 AQUACULTURE AND THE LEASEHOLDER COMPLIES WITH THE REQUIREMENTS
11 OF THE NATIONAL SHELLFISH SANITATION PROGRAM AS IMPLEMENTED BY
12 THE DEPARTMENT.

13 (C) (1) A WATER COLUMN LEASE MAY NOT BE LOCATED:

14 ~~(1)~~ (I) WITHIN A MINIMUM OF 50 FEET OF SHORELINE OR ANY
15 PIER WITHOUT THE WRITTEN PERMISSION OF THE RIPARIAN OWNER AT THE
16 TIME OF INITIAL APPLICATION FOR THE LEASE;

17 ~~(2)~~ (II) WITHIN 150 FEET OF THE PUBLIC SHELLFISH FISHERY
18 OR A REGISTERED POUND NET SITE;

19 ~~(3)~~ (III) WITHIN 150 FEET OF AN OYSTER RESERVE OR ANY
20 YATES BAR LOCATED IN AN OYSTER SANCTUARY;

21 ~~(4)~~ (IV) WITHIN 150 FEET OF A FEDERAL NAVIGATIONAL
22 CHANNEL;

23 ~~(5)~~ (V) IN SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION,
24 IN ANY CREEK, COVE, BAY, OR INLET LESS THAN 300 FEET WIDE AT ITS MOUTH
25 AT MEAN LOW TIDE;

26 ~~(6)~~ (VI) IN AN SAV PROTECTION ZONE; OR

27 ~~(7)~~ (VII) IN A SETBACK OR BUFFER FROM THE ASSATEAGUE
28 ISLAND NATIONAL SEASHORE ESTABLISHED BY THE DEPARTMENT.

29 (2) THE PROVISIONS OF PARAGRAPH (1)(V) OF THIS SUBSECTION
30 DO NOT APPLY TO THE RIPARIAN OWNER OR A LAWFUL OCCUPANT OF THE
31 RIPARIAN PROPERTY.

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

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

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

7 4–11A–09.

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

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

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

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

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

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

21 (ii) The methods and means the applicant will use to grow
22 shellfish;

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

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

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

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

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

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

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

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

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

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

(ii) Include any conditions in a lease.

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

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

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

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

(ii) The Department shall:

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

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

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

1 **4. NOTIFY OTHER INTERESTED PARTIES THAT THE**
2 **DEPARTMENT DEEMS APPROPRIATE.**

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

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

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

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

17 4-11A-10.

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

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

25 SECTION 4. AND BE IT FURTHER ENACTED, That all wetlands licenses,
26 water column leases, aquaculture leases, certifications, or other permits issued by the
27 Board of Public Works for aquaculture related projects and in effect as of June 30,
28 2011, shall remain in effect under the Department of Natural Resources until
29 completed, withdrawn, canceled, modified, or otherwise changed.

30 SECTION 5. AND BE IT FURTHER ENACTED, That any person who holds a
31 valid aquaculture or water column lease, or is licensed, permitted, or certified by the
32 Board of Public Works or the Department of the Environment to use the water column
33 for an aquaculture related project, is considered for all purposes to be a valid
34 aquaculture or water column leaseholder, or licensed, authorized, permitted, or
35 certified for the duration of the term for which the lease, license, authorization,
36 permit, or certification was issued, and may renew that authorization in accordance
37 with the appropriate renewal provisions provided by the Department of Natural

1 Resources. Any person who entered into a valid lease agreement, or was originally
2 licensed, authorized, permitted, or certified under a provision of law that has been
3 repealed by this Act as obsolete or inconsistent shall continue to meet the
4 requirements to the same extent as if that provision had not been repealed, or to the
5 extent required by the Department of Natural Resources.

6 SECTION 6. AND BE IT FURTHER ENACTED, That all applications for water
7 column leases and wetlands licenses for aquaculture related projects currently
8 pending before the Department of the Environment or the Board of Public Works as of
9 the effective date of this Act shall be and hereby are transferred to the Department of
10 Natural Resources for processing in accordance with its terms and procedures.

11 SECTION 7. AND BE IT FURTHER ENACTED, That the publishers of the
12 Annotated Code of Maryland, in consultation with and subject to the approval of the
13 Department of Legislative Services, shall correct, with no further action required by
14 the General Assembly, cross-references and terminology rendered incorrect by this
15 Act or by any other Act of the General Assembly of 2011 that affects provisions
16 enacted by this Act. The publishers shall adequately describe any such correction in an
17 editor's note following the section affected.

18 SECTION ~~8~~ 8. AND BE IT FURTHER ENACTED, That this Act shall take
19 effect July 1, 2011.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.