

# SENATE BILL 1043

M1, M3

2lr3294

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By: **Senator Colburn**

Introduced and read first time: February 24, 2012

Assigned to: Rules

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## A BILL ENTITLED

1 AN ACT concerning

2 **Environment – Construction on Piers – Non-Water Dependent Structures at**  
3 **Commercial Marinas**

4 FOR the purpose of exempting a certain project involving the construction of a  
5 non-water dependent structure from the requirement to obtain a wetlands  
6 license or permit relating to construction on a pier located on State or private  
7 wetlands under certain circumstances; authorizing a local jurisdiction to issue a  
8 building permit for a certain project involving the construction of a non-water  
9 dependent structure on a pier located on State or private wetlands within the  
10 Chesapeake Bay Critical Area and the Atlantic Coastal Bays Critical Area  
11 under certain circumstances; and generally relating to the construction of  
12 non-water dependent structures on piers.

13 BY repealing and reenacting, with amendments,  
14 Article – Environment  
15 Section 16–104  
16 Annotated Code of Maryland  
17 (2007 Replacement Volume and 2011 Supplement)

18 BY repealing and reenacting, with amendments,  
19 Article – Natural Resources  
20 Section 8–1808.4  
21 Annotated Code of Maryland  
22 (2007 Replacement Volume and 2011 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
24 MARYLAND, That the Laws of Maryland read as follows:

25 **Article – Environment**

26 16–104.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) This section does not apply to [any]:

2 (1) ANY project involving the construction of a dwelling unit or other  
3 non-water dependent structure on a pier located on State or private wetlands in  
4 Prince George's County; OR

5 (2) ANY PROJECT INVOLVING THE CONSTRUCTION OF A  
6 NON-WATER DEPENDENT STRUCTURE ON A PIER LOCATED ON STATE OR  
7 PRIVATE WETLANDS IF:

8 (I) THE PROJECT IS LOCATED IN A COMMERCIAL MARINA  
9 CONTAINING AT LEAST 75 WET SLIPS;

10 (II) THE OWNER OF THE MARINA HAS A CURRENT LICENSE  
11 OR PERMIT TO DREDGE IN THE AREA WHERE THE STRUCTURAL SUPPORT FOR  
12 THE NON-WATER DEPENDENT STRUCTURE IS LOCATED; AND

13 (III) THE NON-WATER DEPENDENT STRUCTURE IS:

14 1. USED SEASONALLY;

15 2. NOT USED FOR RESIDENTIAL, RETAIL, OR  
16 COMMERCIAL PURPOSES; AND

17 3. APPROVED BY THE LOCAL JURISDICTION UNDER  
18 § 8-1808.4 OF THE NATURAL RESOURCES ARTICLE.

19 (b) (1) Except as provided in paragraphs (2), (3), and (4) of this  
20 subsection, notwithstanding any other provision of law, the Board of Public Works  
21 may not issue a license under this title for any project involving the construction of a  
22 dwelling unit or other non-water dependent structure on a pier located on State  
23 wetlands.

24 (2) This section does not prohibit or restrict the Board of Public Works  
25 from issuing a license for a project involving the construction of a dwelling unit or  
26 other non-water dependent structure on a pier located within the Critical Area that  
27 was issued a permit by the Secretary on or before January 1, 1989.

28 (3) The Board of Public Works may issue a license for a project  
29 involving the construction of a non-water dependent structure on a pier located on  
30 State wetlands if:

31 (i) The project is located in a marina owned by the State, a  
32 county, or a municipal corporation;

1                   (ii) The project will enhance maritime transportation, the  
2 preservation of historic lighthouses, or the construction of historically accurate  
3 replicas;

4                   (iii) The project is approved by local planning and zoning  
5 authorities;

6                   (iv) The project is located in a priority funding area as  
7 designated under Title 5, Subtitle 7B of the State Finance and Procurement Article;  
8 and

9                   (v) The project is located in an area that has been excluded from  
10 a local critical area program adopted or approved by the Critical Area Commission for  
11 the Chesapeake and Atlantic Coastal Bays under § 8-1807(c)(1)(i)1 of the Natural  
12 Resources Article.

13               (4) The Board of Public Works may issue a license for a project  
14 involving the construction of a dwelling unit or other non-water dependent structure  
15 on a pier located on State wetlands if:

16                   (i) The project is constructed on a pier in existence as of  
17 December 1, 1985 that can be verified by a Department of Natural Resources aerial  
18 photograph dated 1985, accompanied by a map of the area;

19                   (ii) The project does not require an expansion of the pier greater  
20 than 25% of the area of piers or dry docks removed on the same property; however,  
21 additional expansion may be allowed in the amount of 10% of the water coverage  
22 eliminated by removing complete piers from the same or other properties. If the  
23 horizontal surface area of a pier to be removed is not intact but the remaining pilings  
24 identify its previous size, that area may be used in determining the additional  
25 expansion permitted. The project expansion based on water coverage eliminated can  
26 be considered only if all nonfunctional piers on the property are removed except for the  
27 project pier. The total expansion may not exceed 35% of the original size of the piers  
28 and dry docks removed;

29                   (iii) The project is approved by local planning and zoning  
30 authorities;

31                   (iv) The project is located in an intensely developed area, as  
32 designated in programs adopted or approved by the Critical Area Commission for the  
33 Chesapeake and Atlantic Coastal Bays under Title 8, Subtitle 18 of the Natural  
34 Resources Article; and

35                   (v) The project allows public access to tidal waters, if  
36 appropriate.

1           (5) Except for projects under paragraph (2) of this subsection, and in  
2 addition to all other provisions of this section, all projects involving the construction of  
3 a dwelling unit or other non–water dependent facility on a pier located on State or  
4 private wetlands within the Chesapeake Bay Critical Area may not be issued a  
5 wetlands permit unless:

6           (i) The applicant demonstrates that the construction and  
7 operation of the project will not have a long term adverse effect on the water quality of  
8 the adjacent body of water in accordance with standards established by the local  
9 jurisdiction’s critical areas program;

10           (ii) The applicant is required to improve the water quality of  
11 existing stormwater runoff from the project site into adjoining waters in accordance  
12 with standards established by the local jurisdiction’s critical areas program; and

13           (iii) The applicant demonstrates that any sewer lines or other  
14 utility lines extended for the pier will not adversely affect the water quality of  
15 adjoining waters in accordance with standards established by the local jurisdiction’s  
16 critical areas program.

17           (c) (1) Except as provided in paragraphs (2) and (3) of this subsection,  
18 notwithstanding any other provision of law, the Secretary may not issue a permit  
19 under this title for any project involving the construction of a dwelling unit or other  
20 non–water dependent structure on a pier located on private wetlands.

21           (2) The Secretary may issue a permit for a project involving the  
22 construction of a non–water dependent structure on a pier located on private wetlands  
23 if:

24           (i) The project is located in a marina owned by the State, a  
25 county, or a municipal corporation;

26           (ii) The project will enhance maritime transportation, the  
27 preservation of historic lighthouses, or the construction of historically accurate  
28 replicas;

29           (iii) The project is approved by local planning and zoning  
30 authorities;

31           (iv) The project is located in a priority funding area as  
32 designated under Title 5, Subtitle 7B of the State Finance and Procurement Article;  
33 and

34           (v) The project is located in an area that has been excluded from  
35 a local critical area program adopted or approved by the Critical Area Commission for  
36 the Chesapeake and Atlantic Coastal Bays under § 8–1807(c)(1)(i)1 of the Natural  
37 Resources Article.



1 (1) Any other provision of this subtitle; and

2 (2) Any criteria or regulation adopted by the Commission under this  
3 subtitle.

4 (d) This section preempts any other requirement concerning piers in the  
5 Critical Area.

6 (e) (1) Except as provided in paragraphs (2), (3), [and] (4), **AND (5)** of this  
7 subsection, a local jurisdiction may not issue a building permit for any project  
8 involving the construction of a dwelling unit or other non-water dependent structure  
9 on a pier located on State or private wetlands within the Critical Area.

10 (2) This section does not prohibit or restrict a local jurisdiction from  
11 issuing a building permit for a project involving the construction of a dwelling unit or  
12 other non-water dependent structure on a pier located on State or private wetlands  
13 within the Critical Area that was issued a permit by the Secretary on or before  
14 January 1, 1989.

15 (3) A local jurisdiction may issue a building permit for a project  
16 involving the construction of a dwelling unit or other non-water dependent structure  
17 on a pier located on State or private wetlands within the Critical Area if:

18 (i) The project is constructed on a pier in existence as of  
19 December 1, 1985 that can be verified by a Department of Natural Resources aerial  
20 photograph dated 1985, accompanied by a map of the area;

21 (ii) The project does not require an expansion of the pier greater  
22 than 25% of the area of piers or dry docks removed on the same property; however,  
23 additional expansion may be allowed in the amount of 10% of the water coverage  
24 eliminated by removing complete piers from the same or other properties. If the  
25 horizontal surface area of a pier to be removed is not intact but the remaining pilings  
26 identify its previous size, that area may be used in determining the additional  
27 expansion permitted. The project expansion based on water coverage eliminated can  
28 be considered only if all nonfunctional piers on the property are removed except for the  
29 project pier. The total expansion may not exceed 35% of the original size of the piers  
30 and dry docks removed;

31 (iii) The project is approved by local planning and zoning  
32 authorities; and

33 (iv) The project is located in an intensely developed area, as  
34 designated in programs adopted or approved by the Critical Area Commission under  
35 this subtitle.

36 **(4) A LOCAL JURISDICTION MAY ISSUE A BUILDING PERMIT FOR A**  
37 **PROJECT INVOLVING THE CONSTRUCTION OF A NON-WATER DEPENDENT**

1 STRUCTURE ON A PIER LOCATED ON STATE OR PRIVATE WETLANDS WITHIN THE  
2 CRITICAL AREA IF:

3 (I) THE PROJECT IS LOCATED IN A COMMERCIAL MARINA  
4 CONTAINING AT LEAST 75 WET SLIPS;

5 (II) THE OWNER OF THE MARINA HAS A CURRENT STATE  
6 WETLANDS LICENSE OR PERMIT TO DREDGE IN THE AREA WHERE THE  
7 STRUCTURAL SUPPORT FOR THE NON-WATER DEPENDENT STRUCTURE IS  
8 LOCATED; AND

9 (III) THE NON-WATER DEPENDENT STRUCTURE IS:

10 1. USED SEASONALLY; AND

11 2. NOT USED FOR RESIDENTIAL, RETAIL, OR  
12 COMMERCIAL PURPOSES.

13 [(4)] (5) A local jurisdiction may issue a building permit for the  
14 repair of an existing dwelling unit or other non-water dependent structure on a pier  
15 located on State or private wetlands within the Critical Area.

16 [(5)] (6) Except for projects under paragraph (2) of this subsection,  
17 and in addition to all other provisions of this section, all projects involving the  
18 construction of a dwelling unit or other non-water dependent facility on a pier located  
19 on State or private wetlands within the Critical Area may not be issued a building  
20 permit unless:

21 (i) The applicant demonstrates that the construction and  
22 operation of the project will not have a long term adverse effect on the water quality of  
23 the adjacent body of water in accordance with standards established by the local  
24 jurisdiction's critical areas program;

25 (ii) The applicant is required to improve the water quality of  
26 existing stormwater runoff from the project site into adjoining waters in accordance  
27 with standards established by the local jurisdiction's critical areas program; and

28 (iii) The applicant demonstrates that any sewer lines or other  
29 utility lines extended for the pier will not adversely affect the water quality of  
30 adjoining waters in accordance with standards established by the local jurisdiction's  
31 critical areas program.

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
33 October 1, 2012.