

Chapter 492

(Senate Bill 524)

AN ACT concerning

Wetlands and Riparian Rights – Licenses and Permits for Nonwater-Dependent Projects on State or Private Wetlands

FOR the purpose of altering the requirements for the issuance of a certain license, a certain permit, and a certain building permit for certain nonwater-dependent projects located on State ~~wetlands~~ or private wetlands; specifically authorizing the issuance of a certain license, a certain permit, and a certain building permit for certain renewable energy systems under certain circumstances; requiring the Board of Public Works to establish an annual compensation rate for certain nonwater-dependent projects in accordance with certain requirements; authorizing the Board of Public Works to consider certain factors when determining a certain percentage for the calculation of the annual compensation rate for certain nonwater-dependent projects; providing for the application and construction of this Act; authorizing the Board of Public Works to require the payment of certain compensation under a certain circumstance; ~~authorizing a person to apply to the Department of the Environment for a certain license or a certain permit for certain nonwater-dependent projects that were in existence and did not have an application pending before the Board of Public Works or the Department on or before a certain date if the application is filed on or before a certain date under certain circumstances; requiring the Department to evaluate certain applications in accordance with certain requirements; requiring a person to remove unauthorized nonwater-dependent projects under certain circumstances; establishing the intent of the General Assembly; defining certain terms; and generally relating to nonwater-dependent projects on State or private wetlands.~~

BY repealing and reenacting, with amendments,
 Article – Environment
 Section 16-101, 16-104, and 16-205
 Annotated Code of Maryland
 (2007 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
 Article – Natural Resources
 Section 8-1808.4
 Annotated Code of Maryland
 (2012 Replacement Volume)

Preamble

WHEREAS, It is essential to the health and vitality of the Chesapeake and Atlantic Coastal Bays that all State waters, including State and private ~~tidal~~ wetlands, be optimally protected through the licensing and permitting programs of the Board of Public Works and the Department of the Environment; and

WHEREAS, It has been long recognized under law that the location of nonwater-dependent projects, such as restaurants, shops, offices, and other commercial uses, in, on, or over State or private ~~tidal~~ wetlands does not generally serve the preservation of Maryland's prized shoreline resources, including the Critical Area Buffer; and

WHEREAS, It has also been long recognized that the Board of Public Works and the Department of the Environment have the authority to license or permit small nonwater-dependent projects where there is a reasonable basis to anticipate little or no environmental harm; and

WHEREAS, Many of the current requirements regarding the location of nonwater-dependent projects have become outdated, leaving an ineffective statutory patchwork that no longer promotes the best interests of the State; and

~~WHEREAS, Over the course of the past two decades a number of nonwater-dependent commercially-based projects have been located on piers in State and private tidal wetlands, often without the benefit of a license or permit and the environmental expertise involved in the application and review process; and~~

WHEREAS, Given the significant evolution of modern technology within the past few years and the rise of national energy needs, the installation of small-scale renewable energy systems on piers is now feasible and productive, and the time has come to move toward accommodation of the increasing demand for private use of solar, geothermal, and wind-powered sources along the water's edge; and

WHEREAS, Rather than respond to these growing trends on a piecemeal basis, it is the shared intent of the General Assembly, the Department of the Environment, and the Critical Area Commission that the evaluation of nonwater-dependent projects be modernized and administered more consistently and comprehensively than is possible under current law; and

WHEREAS, This preservation goal is best accomplished by a balance of science-based criteria with the application of local land use discretion, all the while providing for due consideration of the State's goals regarding economic development and public access to our water resources; and

WHEREAS, It is the purpose of this legislation to establish two categories of nonwater-dependent projects, the first related to commercial use and the second

focused on small-scale renewable energy systems, both of which are designed to prevent and minimize environmental harm along the waterfront; and

WHEREAS, This legislation also establishes reasonable and appropriate compensation rates applicable to commercial operations that use State wetlands for private benefit; now, therefore,

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

Article – Environment

16–101.

- (a) In this title the following words have the meanings indicated.
- (b) “Board” means the Board of Public Works.
- (c) “County” includes Baltimore City unless otherwise indicated.
- (d) “Department” means the Department of the Environment.
- (e) “Dredging” means the removal or displacement by any means of soil, sand, gravel, shells, or other material, whether or not of intrinsic value, from any State or private wetlands.
- (f) (1) “Filling” means:
 - (i) The displacement of navigable water by the depositing into State or private wetlands of soil, sand, gravel, shells, or other materials; or
 - (ii) The artificial alteration of navigable water levels by any physical structure, drainage ditch, or otherwise.
- (2) “Filling” includes storm drain projects which flow directly into tidal waters of the State.
- (3) “Filling” does not include:
 - (i) Drainage of agricultural land;
 - (ii) In-place replacement or repair of shore erosion control structures using substantially similar materials and construction design; or
 - (iii) Planting of wetlands vegetation when no grading or fill in State or private wetlands is necessary.

(g) “Landward boundary of wetlands” means the common boundary between wetlands, as defined in this section, and lands not included within the definitions of wetlands appearing in this section.

(h) “Licensed marine contractor” has the meaning stated in Title 17, Subtitle 3 of this article.

(I) (1) “NONWATER-DEPENDENT PROJECT” MEANS A TEMPORARY OR PERMANENT STRUCTURE THAT, BY REASON OF ITS INTRINSIC NATURE, USE, OR OPERATION, DOES NOT REQUIRE LOCATION IN, ON, OR OVER STATE OR PRIVATE ~~TIDAL~~ WETLANDS.

(2) “NONWATER-DEPENDENT PROJECT” INCLUDES:

(I) A DWELLING UNIT ON A PIER;

(II) A RESTAURANT, A SHOP, AN OFFICE, OR ANY OTHER COMMERCIAL BUILDING OR USE ON A PIER;

(III) A TEMPORARY OR PERMANENT ROOF OR COVERING ON A PIER;

(IV) A PIER USED TO SUPPORT A NONWATER-DEPENDENT USE; AND

(V) A SMALL-SCALE RENEWABLE ENERGY SYSTEM ON A PIER, INCLUDING:

1. A SOLAR ENERGY SYSTEM AND ITS PHOTOVOLTAIC CELLS, SOLAR PANELS, OR OTHER NECESSARY EQUIPMENT;

2. A GEOTHERMAL ENERGY SYSTEM AND ITS GEOTHERMAL HEAT EXCHANGER OR OTHER NECESSARY EQUIPMENT; AND

3. A WIND ENERGY SYSTEM AND ITS WIND TURBINE, TOWER, BASE, OR OTHER NECESSARY EQUIPMENT.

(3) “NONWATER-DEPENDENT PROJECT” DOES NOT INCLUDE:

(I) A FUEL PUMP OR OTHER FUEL-DISPENSING EQUIPMENT ON A PIER;

(II) A SANITARY SEWAGE PUMP OR OTHER WASTEWATER REMOVAL EQUIPMENT ON A PIER; OR

(III) AN OFFICE ON A PIER FOR MANAGING MARINA OPERATIONS, INCLUDING MONITORING VESSEL TRAFFIC, REGISTERING VESSELS, PROVIDING DOCKING SERVICES, AND HOUSING ELECTRICAL OR EMERGENCY EQUIPMENT RELATED TO MARINA OPERATIONS.

[(i)] (J) “Person” means any natural person, partnership, joint-stock company, unincorporated association or society, the federal government, the State, any unit of the State, a political subdivision, or other corporation of any type.

[(j)] (K) (1) “Pier” means any pier, wharf, dock, walkway, bulkhead, breakwater, piles, or other similar structure.

(2) “Pier” does not include any structure on pilings or stilts that was originally constructed beyond the landward boundaries of State or private wetlands.

[(k)] (L) (1) “Private wetlands” means any land not considered “State wetland” bordering on or lying beneath tidal waters, which is subject to regular or periodic tidal action and supports aquatic growth.

(2) “Private wetlands” includes wetlands, transferred by the State by a valid grant, lease, patent, or grant confirmed by Article 5 of the Maryland Declaration of Rights, to the extent of the interest transferred.

[(l)] (M) (1) “Public notice” means the public notice and public informational hearing procedures established in § 5–204(b) through (e) of this article.

(2) “Public notice” does not mean notice as provided for in § 16–303 of this title.

[(m)] (N) “Regular or periodic tidal action” means the rise and fall of the sea produced by the attraction of the sun and moon uninfluenced by wind or any other circumstance.

[(n)] (O) “Secretary” means the Secretary of the Environment.

[(o)] (P) “State wetlands” means any land under the navigable waters of the State below the mean high tide, affected by the regular rise and fall of the tide. Wetlands of this category which have been transferred by the State by valid grant, lease, patent or grant confirmed by Article 5 of the Maryland Declaration of Rights shall be considered “private wetland” to the extent of the interest transferred.

(a) This section does not apply to [any] **A NONWATER-DEPENDENT** project [involving the construction of a dwelling unit or other non-water dependent structure on a pier] located on State or private wetlands in Prince George's County.

(b) (1) Except as provided in paragraphs (2)[,] **AND** (3)[, and (4)] of this subsection[,] **AND** notwithstanding any other provision of law, the Board of Public Works may not issue a license [under this title for any] **TO AUTHORIZE A NONWATER-DEPENDENT** project [involving the construction of a dwelling unit or other non-water dependent structure on a pier] located on State wetlands.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) THE BOARD OF PUBLIC WORKS MAY ISSUE A LICENSE TO AUTHORIZE A NONWATER-DEPENDENT PROJECT LOCATED ON STATE WETLANDS IF THE PROJECT:

(i) 1. INVOLVES A COMMERCIAL ACTIVITY THAT IS PERMITTED AS A SECONDARY OR ACCESSORY USE TO A PERMITTED PRIMARY COMMERCIAL USE;

2. IS NOT LOCATED ON A PIER THAT IS ATTACHED TO RESIDENTIALLY, INSTITUTIONALLY, OR INDUSTRIALLY USED PROPERTY;

3. AVOIDS AND MINIMIZES IMPACTS TO STATE OR PRIVATE WETLANDS AND OTHER AQUATIC RESOURCES;

4. IS LOCATED IN:

A. AN INTENSELY DEVELOPED AREA AND THE PROJECT IS AUTHORIZED UNDER A PROGRAM AMENDMENT TO A LOCAL JURISDICTION'S CRITICAL AREA PROGRAM APPROVED ON OR AFTER JULY 1, 2013, IF THE APPROVED PROGRAM AMENDMENT INCLUDES NECESSARY CHANGES TO THE LOCAL JURISDICTION'S ZONING, SUBDIVISION, AND OTHER ORDINANCES SO AS TO BE CONSISTENT WITH OR MORE RESTRICTIVE THAN THE REQUIREMENTS PROVIDED UNDER THIS PARAGRAPH; OR

B. AN AREA THAT HAS BEEN EXCLUDED FROM A LOCAL CRITICAL AREA PROGRAM IF THE EXCLUSION HAS BEEN ADOPTED OR APPROVED BY THE CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS;

5. IS APPROVED BY THE LOCAL PLANNING AND ZONING AUTHORITIES AFTER THE LOCAL JURISDICTION'S PROGRAM AMENDMENT UNDER ITEM 4A OF THIS ITEM, IF APPLICABLE, HAS BEEN APPROVED;

6. ALLOWS OR ENHANCES PUBLIC ACCESS TO STATE WETLANDS;

7. DOES NOT EXPAND BEYOND THE LENGTH, WIDTH, OR CHANNELWARD ENCROACHMENT OF THE PIER ON WHICH THE PROJECT IS CONSTRUCTED;

8. HAS A HEIGHT OF UP TO 18 FEET UNLESS THE PROJECT IS LOCATED AT A MARINA AND THE SECRETARY RECOMMENDS ADDITIONAL HEIGHT;

9. IS UP TO 1,000 SQUARE FEET IN TOTAL AREA;

10. IS NOT LOCATED IN, ON, OR OVER VEGETATED TIDAL WETLANDS, SUBMERGED AQUATIC VEGETATION, A NATURAL OYSTER BAR, A PUBLIC SHELLFISH FISHERY AREA, A YATES BAR, OR AN AREA WITH RARE, THREATENED, OR ENDANGERED SPECIES OR SPECIES IN NEED OF CONSERVATION; AND

11. DOES NOT ADVERSELY IMPACT A FISH SPAWNING OR NURSERY AREA OR AN HISTORIC WATERFOWL STAGING AREA; OR

(II) 1. IS LOCATED ON A PIER THAT WAS IN EXISTENCE ON OR BEFORE DECEMBER 31, 2012;

2. SATISFIES ALL OF THE REQUIREMENTS UNDER ITEM (I)1 THROUGH 8 OF THIS PARAGRAPH; AND

3. IF APPLICABLE, HAS A TEMPORARY OR PERMANENT ROOF OR COVERING THAT IS UP TO 1,000 SQUARE FEET IN TOTAL AREA.

(3) (I) THE BOARD OF PUBLIC WORKS MAY ISSUE A LICENSE TO AUTHORIZE A NONWATER-DEPENDENT PROJECT FOR A SMALL-SCALE RENEWABLE ENERGY SYSTEM ON A PIER LOCATED ON STATE WETLANDS IF THE PROJECT:

1. INVOLVES THE INSTALLATION OR PLACEMENT OF A SMALL-SCALE RENEWABLE ENERGY SYSTEM THAT IS PERMITTED AS A SECONDARY OR ACCESSORY USE ON A PIER THAT IS AUTHORIZED UNDER THIS TITLE;

2. AVOIDS AND MINIMIZES IMPACTS TO STATE OR PRIVATE WETLANDS AND OTHER AQUATIC RESOURCES;

3. IS LOCATED IN:

A. THE CHESAPEAKE AND ATLANTIC COASTAL BAYS CRITICAL AREA AND THE PROJECT IS AUTHORIZED UNDER A PROGRAM AMENDMENT TO A LOCAL JURISDICTION'S CRITICAL AREA PROGRAM APPROVED ON OR AFTER JULY 1, 2013, IF THE APPROVED PROGRAM AMENDMENT

INCLUDES NECESSARY CHANGES TO THE LOCAL JURISDICTION'S ZONING, SUBDIVISION, AND OTHER ORDINANCES SO AS TO BE CONSISTENT WITH OR MORE RESTRICTIVE THAN THE REQUIREMENTS PROVIDED UNDER THIS PARAGRAPH; OR

B. AN AREA THAT HAS BEEN EXCLUDED FROM A LOCAL CRITICAL AREA PROGRAM IF THE EXCLUSION HAS BEEN ADOPTED OR APPROVED BY THE CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS;

4. IS APPROVED BY THE LOCAL PLANNING AND ZONING AUTHORITIES AFTER THE LOCAL JURISDICTION'S PROGRAM AMENDMENT UNDER ITEM 3A OF THIS SUBPARAGRAPH, IF APPLICABLE, HAS BEEN APPROVED;

5. IS NOT LOCATED IN, ON, OR OVER VEGETATED TIDAL WETLANDS, SUBMERGED AQUATIC VEGETATION, A NATURAL OYSTER BAR, A PUBLIC SHELLFISH FISHERY AREA, A YATES BAR, OR AN AREA WITH RARE, THREATENED, OR ENDANGERED SPECIES OR SPECIES IN NEED OF CONSERVATION; AND

6. DOES NOT ADVERSELY IMPACT A FISH SPAWNING OR NURSERY AREA OR AN HISTORIC WATERFOWL STAGING AREA.

(II) A LICENSE ISSUED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY INCLUDE THE INSTALLATION OR PLACEMENT OF:

1. A SOLAR ENERGY SYSTEM ATTACHED TO A PIER IF THE DEVICE OR EQUIPMENT ASSOCIATED WITH THAT SYSTEM DOES NOT EXTEND MORE THAN:

A. 4 FEET ABOVE OR 18 INCHES BELOW THE DECK OF THE PIER; OR

B. 1 FOOT BEYOND THE LENGTH OR WIDTH OF THE PIER;

2. A SOLAR ENERGY SYSTEM ATTACHED TO A PILING IF THERE IS ONLY ONE SOLAR PANEL PER BOAT SLIP;

3. A SOLAR ENERGY SYSTEM ATTACHED TO A BOATHOUSE ROOF IF THE DEVICE OR EQUIPMENT ASSOCIATED WITH THAT

SYSTEM DOES NOT EXTEND BEYOND THE LENGTH, WIDTH, OR HEIGHT OF THE BOATHOUSE ROOF;

4. A CLOSED-LOOP GEOTHERMAL HEAT EXCHANGER UNDER A PIER IF THE GEOTHERMAL HEAT EXCHANGER OR ANY ASSOCIATED DEVICES OR EQUIPMENT DO NOT:

A. EXTEND BEYOND THE LENGTH, WIDTH, OR CHANNELWARD ENCROACHMENT OF THE PIER;

B. DELETERIOUSLY ALTER LONG SHORE DRIFT; OR

C. CAUSE SIGNIFICANT INDIVIDUAL OR CUMULATIVE THERMAL IMPACTS TO AQUATIC RESOURCES; OR

5. A WIND ENERGY SYSTEM ATTACHED TO A PIER IF THERE IS ONLY ONE WIND ENERGY SYSTEM PER PIER FOR WHICH:

A. THE HEIGHT FROM THE DECK OF THE PIER TO THE BLADE EXTENDED AT ITS HIGHEST POINT IS UP TO 12 FEET;

B. THE ROTOR DIAMETER OF THE WIND TURBINE IS UP TO 4 FEET; AND

C. THE SETBACKS OF THE WIND ENERGY SYSTEM FROM THE NEAREST PROPERTY LINE AND FROM THE CHANNELWARD EDGE OF THE PIER TO WHICH THAT SYSTEM IS ATTACHED ARE AT LEAST 1.5 TIMES THE TOTAL HEIGHT OF THE SYSTEM FROM ITS BASE TO THE BLADE EXTENDED AT ITS HIGHEST POINT.

(c) (1) Except as provided in [paragraphs (2) and (3)] **PARAGRAPH (2)** of this subsection[,] **AND** notwithstanding any other provision of law, the Secretary may not issue a permit [under this title for any] **TO AUTHORIZE A NONWATER-DEPENDENT** project [involving the construction of a dwelling unit or other non-water dependent structure on a pier] located on private wetlands.

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

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

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

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

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

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

(3) The Secretary may issue a permit for a project involving the construction of a dwelling unit or other non–water dependent structure on a pier located on private wetlands if:

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

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

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

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

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

(2) EXCEPT FOR THE PUBLIC ACCESS REQUIREMENT UNDER SUBSECTION (B)(2)(I)6 OF THIS SECTION, THE SECRETARY MAY ISSUE A PERMIT TO AUTHORIZE A NONWATER-DEPENDENT PROJECT LOCATED ON PRIVATE WETLANDS IF THE PROJECT SATISFIES ALL OF THE REQUIREMENTS UNDER SUBSECTION (B)(2) OR (3) OF THIS SECTION.

16-205.

(a) The Board may require as a condition to issuance of a wetlands license that compensation be made to the State, of a kind and in an amount deemed appropriate by the Board.

(b) (1) The Board shall establish a compensation rate for cables, pipelines, or similar structures in accordance with this subsection.

(2) The minimum compensation rate:

(i) Is \$2.50 per linear foot per year for cables, pipelines, or similar structures;

(ii) Applies to each individual cable, pipeline, or similar structure; and

(iii) Applies to all new and existing authorizations beginning July 2, 2012.

(3) The Board may:

(i) Increase the compensation rate as considered appropriate; and

(ii) Adjust the compensation rate to reflect changes in the Consumer Price Index as published by the Bureau of Labor Statistics of the U.S. Department of Labor or by an appropriate method selected by the Board.

(C) (1) THE BOARD SHALL ESTABLISH AN ANNUAL COMPENSATION RATE FOR NONWATER-DEPENDENT PROJECTS AUTHORIZED UNDER § 16-104(B)(2) OF THIS TITLE.

(2) THE BOARD:

(1) ~~1.~~ SHALL ASSESS A MINIMUM AN ANNUAL COMPENSATION RATE FOR A NONWATER-DEPENDENT PROJECT THAT IS:

~~A.~~ (I) BASED ON THE MOST RECENT DATA PROVIDED BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION IN THE ASSESSMENT RECORD FOR THE REAL PROPERTY TO WHICH THE NONWATER-DEPENDENT PROJECT IS ATTACHED; AND

~~B.~~ (II) COMPUTED BY ~~MULTIPLYING~~:

1. MULTIPLYING THE TOTAL SQUARE FOOTAGE OF THE NONWATER-DEPENDENT PROJECT BY A FRACTION, THE DENOMINATOR OF WHICH IS THE TOTAL SQUARE FOOTAGE OF THE LAND AREA OF THE REAL PROPERTY TO WHICH THE NONWATER-DEPENDENT PROJECT IS ATTACHED, AND THE NUMERATOR OF WHICH IS THE ASSESSED LAND VALUE OF THE REAL PROPERTY TO WHICH THE NONWATER-DEPENDENT PROJECT IS ATTACHED; AND

2. MULTIPLYING THE RATE CALCULATED UNDER ITEM 1 OF THIS ITEM BY A PERCENTAGE CONSIDERED APPROPRIATE BY THE BOARD NOT TO EXCEED 100%.

(3) IN DETERMINING THE APPROPRIATE PERCENTAGE UNDER PARAGRAPH (2)(II)2 OF THIS SUBSECTION, THE BOARD MAY CONSIDER:

(I) THE EXTENT TO WHICH THE NONWATER-DEPENDENT PROJECT IS USED ON A SEASONAL OR YEAR-ROUND BASIS;

(II) THE EXTENT OF THE ECONOMIC IMPACT OF THE NONWATER-DEPENDENT PROJECT ON THE LOCAL JURISDICTION;

(III) THE NATURE AND EXTENT OF THE ENVIRONMENTAL IMPACT OF THE NONWATER-DEPENDENT PROJECT;

(IV) THE EXTENT TO WHICH THE NONWATER-DEPENDENT PROJECT AND, IF APPLICABLE, ITS ROOF OR COVERING, ARE PERMANENT OR TEMPORARY;

(V) ANY HISTORY OF VIOLATION OF THIS TITLE BY THE LICENSEE;

(VI) ANY REAL PROPERTY LEASE RATES FOR THE AREA FOR A COMMERCIAL ACTIVITY SIMILAR TO THE LICENSEE'S OR ANY REAL PROPERTY APPRAISALS OBTAINED BY THE LICENSEE; AND

(VII) ANY OTHER FACTOR THAT THE BOARD CONSIDERS RELEVANT.

~~(4) MAY THE BOARD MAY PERIODICALLY RECALCULATE THE MINIMUM ANNUAL COMPENSATION RATE TO REFLECT ANY;~~

~~(I) ANY CHANGE TO THE DATA PROVIDED BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION UNDER ITEM 1 OF THIS ITEM; OR PARAGRAPH (2)(I) OF THIS SUBSECTION; OR~~

~~(II) A CHANGE IN ANY FACTOR THE BOARD CONSIDERS UNDER PARAGRAPH (3) OF THIS SUBSECTION~~

~~(II) SHALL ASSESS AN ANNUAL COMPENSATION RATE FOR A NONWATER DEPENDENT PROJECT THAT IS MORE THAN THE MINIMUM RATE CALCULATED UNDER ITEM (I) 1 OF THIS PARAGRAPH.~~

[(c)] (D) Monetary compensation received by the State in conjunction with a wetlands license may not be applied to the State Annuity Bond Fund Account.

[(d)] (E) (1) There is created a special fund, known as the Tidal Wetlands Compensation Fund.

(2) The following money shall be deposited in the Tidal Wetlands Compensation Fund:

(i) Any monetary payment by a licensee in lieu of creating, restoring, or enhancing tidal wetlands that is required by the Department or the Board as a condition of a permit or license;

(ii) Any penalty imposed by a court in accordance with this title; and

(iii) Any penalty imposed by the Department under this title.

[(e)] (F) Funds in the Tidal Wetlands Compensation Fund may be appropriated only for the creation, restoration, or enhancement of tidal wetlands, including:

- (1) Acquisition of land or easements;
- (2) Maintenance of mitigation sites;
- (3) Purchase of credits in mitigation banks;

(4) Management of invasive or nuisance species identified by the Department;

(5) Cost sharing assistance to landowners in the management and control of phragmites under Title 8, Subtitle 21 of the Natural Resources Article; and

(6) Contractual services necessary to accomplish the intent of this subsection.

[(f)] (G) Funds credited and any interest accrued to the Fund:

(1) Shall remain available until expended; and

(2) May not revert to the General Fund under any other provision of law.

[(g)] (H) All monetary compensation paid to the State in conjunction with a wetlands license other than that specified under subsection **[(d)(2)] (E)(2)** of this section shall be deposited in the Wetlands and Waterways Program Fund established under § 5–203.1 of this article.

Article – Natural Resources

8–1808.4.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) “NONWATER-DEPENDENT PROJECT” MEANS A TEMPORARY OR PERMANENT STRUCTURE THAT, BY REASON OF ITS INTRINSIC NATURE, USE, OR OPERATION, DOES NOT REQUIRE LOCATION IN, ON, OR OVER STATE OR PRIVATE WETLANDS.

(II) “NONWATER-DEPENDENT PROJECT” INCLUDES:

(I) 1. A DWELLING UNIT ON A PIER;

(II) 2. A RESTAURANT, A SHOP, AN OFFICE, OR ANY OTHER COMMERCIAL BUILDING OR USE ON A PIER;

(III) 3. A TEMPORARY OR PERMANENT ROOF OR COVERING ON A PIER;

(IV) 4. A PIER USED TO SUPPORT A NONWATER-DEPENDENT USE; AND

~~(v)~~ **5. A SMALL-SCALE RENEWABLE ENERGY SYSTEM ON A PIER, INCLUDING:**

~~1.~~ **A. A SOLAR ENERGY SYSTEM AND ITS PHOTOVOLTAIC CELLS, SOLAR PANELS, OR OTHER NECESSARY EQUIPMENT;**

~~2.~~ **B. A GEOTHERMAL ENERGY SYSTEM AND ITS GEOTHERMAL HEAT EXCHANGER OR OTHER NECESSARY EQUIPMENT; AND**

~~3.~~ **C. A WIND ENERGY SYSTEM AND ITS WIND TURBINE, TOWER, BASE, OR OTHER NECESSARY EQUIPMENT.**

(III) “NONWATER-DEPENDENT PROJECT” DOES NOT INCLUDE:

1. A FUEL PUMP OR OTHER FUEL-DISPENSING EQUIPMENT ON A PIER;

2. A SANITARY SEWAGE PUMP OR OTHER WASTEWATER REMOVAL EQUIPMENT ON A PIER; OR

3. AN OFFICE ON A PIER FOR MANAGING MARINA OPERATIONS, INCLUDING MONITORING VESSEL TRAFFIC, REGISTERING VESSELS, PROVIDING DOCKING SERVICES, AND HOUSING ELECTRICAL OR EMERGENCY EQUIPMENT RELATED TO MARINA OPERATIONS.

(3) (I) “PIER” MEANS ANY PIER, WHARF, DOCK, WALKWAY, BULKHEAD, BREAKWATER, PILES, OR OTHER SIMILAR STRUCTURE.

(II) “PIER” DOES NOT INCLUDE ANY STRUCTURE ON PILINGS OR STILTS THAT WAS ORIGINALLY CONSTRUCTED BEYOND THE LANDWARD BOUNDARIES OF STATE OR PRIVATE WETLANDS.

[(a)] (B) This section does not apply to [any] A NONWATER-DEPENDENT project [involving the construction of a dwelling unit or other non-water dependent structure on a pier] located on State or private wetlands within the Critical Area in Prince George’s County.

(b) (1) In this section, “pier” means any pier, wharf, dock, walkway, bulkhead, breakwater, piles, or other similar structure.

(2) “Pier” does not include any structure on pilings or stilts that was originally constructed beyond the landward boundaries of State or private wetlands.

(c) This section applies notwithstanding:

- (1) Any other provision of this subtitle; and
- (2) Any criteria or regulation adopted by the Commission under this subtitle.

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

(e) **(C)** (1) Except as provided in paragraphs (2)[,] **AND** (3)[, and (4)] of this subsection **AND NOTWITHSTANDING ANY OTHER PROVISION OF LAW**, a local jurisdiction may not issue a building permit [for any] **OR ANY OTHER APPROVAL UNDER THIS SUBTITLE TO AUTHORIZE A NONWATER-DEPENDENT** project [involving the construction of a dwelling unit or other non-water dependent structure on a pier] located on State or private wetlands within the Critical Area.

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

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

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

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

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

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

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

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

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

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

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

(2) A LOCAL JURISDICTION MAY ISSUE A BUILDING PERMIT OR ANY OTHER APPROVAL UNDER THIS SUBTITLE TO AUTHORIZE A NONWATER-DEPENDENT PROJECT LOCATED ON STATE OR PRIVATE WETLANDS WITHIN THE CRITICAL AREA IF THE PROJECT:

(I) 1. INVOLVES A COMMERCIAL ACTIVITY THAT IS PERMITTED AS A SECONDARY OR ACCESSORY USE TO A PERMITTED PRIMARY COMMERCIAL USE;

2. IS NOT LOCATED ON A PIER THAT IS ATTACHED TO RESIDENTIALLY, INSTITUTIONALLY, OR INDUSTRIALLY USED PROPERTY;

3. IS LOCATED IN:

A. AN INTENSELY DEVELOPED AREA AND THE PROJECT IS AUTHORIZED UNDER A PROGRAM AMENDMENT TO A LOCAL JURISDICTION'S CRITICAL AREA PROGRAM APPROVED ON OR AFTER JULY 1,

2013, IF THE APPROVED PROGRAM AMENDMENT INCLUDES NECESSARY CHANGES TO THE LOCAL JURISDICTION'S ZONING, SUBDIVISION, AND OTHER ORDINANCES SO AS TO BE CONSISTENT WITH OR MORE RESTRICTIVE THAN THE REQUIREMENTS PROVIDED UNDER THIS PARAGRAPH; OR

B. AN AREA THAT HAS BEEN EXCLUDED FROM A LOCAL CRITICAL AREA PROGRAM IF THE EXCLUSION HAS BEEN ADOPTED OR APPROVED BY THE CRITICAL AREA COMMISSION;

4. IS APPROVED BY THE LOCAL PLANNING AND ZONING AUTHORITIES AFTER THE LOCAL JURISDICTION'S PROGRAM AMENDMENT UNDER ITEM 3A OF THIS ITEM, IF APPLICABLE, HAS BEEN APPROVED;

5. ALLOWS OR ENHANCES PUBLIC ACCESS TO STATE WETLANDS, IF APPLICABLE;

6. DOES NOT EXPAND BEYOND THE LENGTH, WIDTH, OR CHANNELWARD ENCROACHMENT OF THE PIER ON WHICH THE PROJECT IS CONSTRUCTED;

7. HAS A HEIGHT OF UP TO 18 FEET UNLESS THE PROJECT IS LOCATED AT A MARINA; AND

8. IS UP TO 1,000 SQUARE FEET IN TOTAL AREA; OR

(II) 1. IS LOCATED ON A PIER THAT WAS IN EXISTENCE ON OR BEFORE DECEMBER 31, 2012;

2. SATISFIES ALL OF THE REQUIREMENTS UNDER ITEM (I)1 THROUGH 7 OF THIS PARAGRAPH; AND

3. IF APPLICABLE, HAS A TEMPORARY OR PERMANENT ROOF OR COVERING THAT IS UP TO 1,000 SQUARE FEET IN TOTAL AREA.

(3) (I) A LOCAL JURISDICTION MAY ISSUE A BUILDING PERMIT OR OTHER APPROVAL UNDER THIS SUBTITLE TO AUTHORIZE A NONWATER-DEPENDENT PROJECT FOR A SMALL-SCALE RENEWABLE ENERGY SYSTEM ON A PIER LOCATED ON STATE OR PRIVATE WETLANDS WITHIN THE CRITICAL AREA IF THE PROJECT:

1. INVOLVES THE INSTALLATION OR PLACEMENT OF A SMALL-SCALE RENEWABLE ENERGY SYSTEM THAT IS PERMITTED AS A SECONDARY OR ACCESSORY USE ON A PIER THAT IS AUTHORIZED UNDER TITLE 16 OF THE ENVIRONMENT ARTICLE;

2. IS LOCATED IN:

A. THE CRITICAL AREA AND THE PROJECT IS AUTHORIZED UNDER A PROGRAM AMENDMENT TO A LOCAL JURISDICTION'S CRITICAL AREA PROGRAM APPROVED ON OR AFTER JULY 1, 2013, IF THE APPROVED PROGRAM AMENDMENT INCLUDES NECESSARY CHANGES TO THE LOCAL JURISDICTION'S ZONING, SUBDIVISION, AND OTHER ORDINANCES SO AS TO BE CONSISTENT WITH OR MORE RESTRICTIVE THAN THE REQUIREMENTS PROVIDED UNDER THIS PARAGRAPH; OR

B. AN AREA THAT HAS BEEN EXCLUDED FROM A LOCAL CRITICAL AREA PROGRAM IF THE EXCLUSION HAS BEEN ADOPTED OR APPROVED BY THE CRITICAL AREA COMMISSION; AND

3. IS APPROVED BY THE LOCAL PLANNING AND ZONING AUTHORITIES AFTER THE LOCAL JURISDICTION'S PROGRAM AMENDMENT UNDER ITEM 2A OF THIS SUBPARAGRAPH, IF APPLICABLE, HAS BEEN APPROVED.

(II) A BUILDING PERMIT OR OTHER APPROVAL ISSUED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY INCLUDE THE INSTALLATION OR PLACEMENT OF:

1. A SOLAR ENERGY SYSTEM ATTACHED TO A PIER IF THE DEVICE OR EQUIPMENT ASSOCIATED WITH THAT SYSTEM DOES NOT EXTEND MORE THAN:

A. 4 FEET ABOVE OR 18 INCHES BELOW THE DECK OF THE PIER; OR

B. 1 FOOT BEYOND THE LENGTH OR WIDTH OF THE PIER;

2. A SOLAR ENERGY SYSTEM ATTACHED TO A PILING IF THERE IS ONLY ONE SOLAR PANEL PER BOAT SLIP;

3. A SOLAR ENERGY SYSTEM ATTACHED TO A BOATHOUSE ROOF IF THE DEVICE OR EQUIPMENT ASSOCIATED WITH THAT

SYSTEM DOES NOT EXTEND BEYOND THE LENGTH, WIDTH, OR HEIGHT OF THE BOATHOUSE ROOF;

4. A CLOSED-LOOP GEOTHERMAL HEAT EXCHANGER UNDER A PIER IF THE GEOTHERMAL HEAT EXCHANGER OR ANY ASSOCIATED DEVICES OR EQUIPMENT DO NOT:

A. EXTEND BEYOND THE LENGTH, WIDTH, OR CHANNELWARD ENCROACHMENT OF THE PIER;

B. DELETERIOUSLY ALTER LONG SHORE DRIFT; OR

C. CAUSE SIGNIFICANT INDIVIDUAL OR CUMULATIVE THERMAL IMPACTS TO AQUATIC RESOURCES; OR

5. A WIND ENERGY SYSTEM ATTACHED TO A PIER IF THERE IS ONLY ONE WIND ENERGY SYSTEM PER PIER FOR WHICH:

A. THE HEIGHT FROM THE DECK OF THE PIER TO THE BLADE EXTENDED AT ITS HIGHEST POINT IS UP TO 12 FEET;

B. THE ROTOR DIAMETER OF THE WIND TURBINE IS UP TO 4 FEET; AND

C. THE SETBACKS OF THE WIND ENERGY SYSTEM FROM THE NEAREST PROPERTY LINE AND FROM THE CHANNELWARD EDGE OF THE PIER TO WHICH THAT SYSTEM IS ATTACHED ARE AT LEAST 1.5 TIMES THE TOTAL HEIGHT OF THE SYSTEM FROM ITS BASE TO THE BLADE EXTENDED AT ITS HIGHEST POINT.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(1) ~~Section 1 of this Act may not be construed to amend the terms or conditions of a State tidal wetlands license or private wetlands permit that expires on or before July 1, 2013, or is in effect as of on or before July 1, 2013; Section 1 of this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any State wetlands license or private wetlands permit issued by the Board of Public Works or the Department of the Environment or any building permit or other approval issued by a local jurisdiction before the effective date of this Act;~~

(2) Except for the provisions under paragraph (3) of this section, § 16-205(c) of the Environment Article, as enacted under Section 1 of this Act, may not

be construed to require the payment of compensation for a State ~~tidal~~ wetlands license that expires on or before July 1, 2013, or is in effect on or before July 1, 2013; and

(3) If the payment of a particular amount of compensation operated as a specific term or condition for the issuance of a State ~~tidal~~ wetlands license in effect on or before July 1, 2013, and the licensee can demonstrate to the Board of Public Works that payment of that compensation has been fully satisfied, the Board of Public Works may require the payment of additional compensation under the provisions of this Act only if the licensee applies for a new State ~~tidal~~ wetlands license for a project that would materially alter the nature or expand the magnitude of an already existing, licensed nonwater-dependent project.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) Except as provided in subsection (b) of this section, Section 1 of this Act may not be construed to apply to:

(1) A State wetlands license application or a private wetlands permit application that was pending before the Board of Public Works or the Department of the Environment on or before December 31, 2012;

(2) A State wetlands license application or a private wetlands permit application submitted to the Department of the Environment between July 1, 2013, and June 30, 2016, inclusive, if the application is for authorization of a nonwater-dependent project that is the same or substantially similar to a proposed nonwater-dependent project that:

(i) Is the subject of an application pending before the Board of Public Works or the Department of the Environment on or before December 31, 2012; and

(ii) 1. The Board of Public Works or the Department of the Environment denied; or

2. The applicant withdrew; or

(3) A ~~pier or a~~ nonwater-dependent ~~structure on a pier~~ project that was in existence on or before June 30, 1989.

(b) Section 1 of this Act shall apply if, on or after ~~July 1, 1989~~ January 1, 2013:

(1) A nonwater-dependent structure was added on a pier without the appropriate State wetlands license or private wetlands permit; or

(2) The length, width, or channelward encroachment of a pier or a nonwater-dependent structure on a pier was increased without the appropriate State wetlands license or private wetlands permit.

~~SECTION 3. 4. AND BE IT FURTHER ENACTED, That for a nonwater-dependent project in existence on or before December 31, 2012, for which a State tidal wetlands license application was not pending before the Board of Public Works or the Department of the Environment on or before December 31, 2012, and for which a State wetlands license has not been issued:~~

~~(1) A person may apply to the Department of the Environment for an after the fact State tidal wetlands license if the application is filed on or before July January 1, 2014, unless the Department authorizes an extension of time for filing of the application;~~

~~(2) The Department shall evaluate an application filed under this Section in accordance with:~~

~~(i) § 16-104(b)(2)(i)1 through 3 and 6 through 8 of the Environment Article, as enacted under Section 1 of this Act;~~

~~(ii) § 16-104(b)(2)(ii)3 of the Environment Article, as enacted under Section 1 of this Act; and~~

~~(iii) All other applicable State and local laws in effect on the date that the application is filed;~~

~~(3) If the Board of Public Works issues an after the fact State tidal wetlands license, compensation shall be in accordance with the rate established under § 16-205 of the Environment Article, as enacted under Section 1 of this Act, and any regulations adopted under the authority of this Act; and~~

~~(4) If a person does not apply for a State tidal wetlands license by July January 1, 2014, or within an extension of time authorized by the Department, or if the Board of Public Works denies an after the fact State tidal wetlands license and that denial is upheld on final appeal, then the person shall remove the unauthorized nonwater-dependent project.~~

~~SECTION 4. 5. AND BE IT FURTHER ENACTED, That for a nonwater-dependent project in existence on or before December 31, 2012, for which a private tidal wetlands permit application was not pending before the Department of the Environment on or before December 31, 2012, and for which a private wetlands permit has not been issued:~~

~~(1) A person may apply to the Department of the Environment for an after the fact private tidal wetlands permit if the application is filed on or before July~~

~~January 1, 2014, unless the Department authorizes an extension of time for filing of the application;~~

~~(2) The Department shall evaluate an application filed under this section in accordance with:~~

~~(i) § 16-104(b)(2)(i)1 through 3, 7, and 8 of the Environment Article, as enacted under Section 1 of this Act;~~

~~(ii) § 16-104(b)(2)(ii)3 of the Environment Article, as enacted under Section 1 of this Act; and~~

~~(iii) All other applicable State and local laws in effect on the date that the application is filed; and~~

~~(3) If a person does not apply for a private tidal wetlands permit by July January 1, 2014, or within an extension of time authorized by the Department, or if the Department denies an after the fact private tidal wetlands permit and that denial is upheld on final appeal, then the person shall remove the unauthorized nonwater dependent project.~~

SECTION ~~5~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2013.

Approved by the Governor, May 16, 2013.