

SENATE BILL 524

M3, M1

(3lr2480)

ENROLLED BILL

— *Education, Health, and Environmental Affairs/Environmental Matters* —

Introduced by **Senator Colburn**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

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

4 FOR the purpose of altering the requirements for the issuance of a certain license, a
5 certain permit, and a certain building permit for certain nonwater-dependent
6 projects located on State ~~wetlands~~ or private wetlands; specifically authorizing
7 the issuance of a certain license, a certain permit, and a certain building permit
8 for certain renewable energy systems under certain circumstances; requiring
9 the Board of Public Works to establish an annual compensation rate for certain
10 nonwater-dependent projects in accordance with certain requirements;
11 authorizing the Board of Public Works to consider certain factors when
12 determining a certain percentage for the calculation of the annual compensation
13 rate for certain nonwater-dependent projects; providing for the application and
14 construction of this Act; authorizing the Board of Public Works to require the
15 payment of certain compensation under a certain circumstance; ~~authorizing a~~

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.

Italics indicate opposite chamber/conference committee amendments.



1 ~~person to apply to the Department of the Environment for a certain license or a~~
 2 ~~certain permit for certain nonwater-dependent projects that were in existence~~
 3 ~~and did not have an application pending before the Board of Public Works or the~~
 4 ~~Department on or before a certain date if the application is filed on or before a~~
 5 ~~certain date under certain circumstances; requiring the Department to evaluate~~
 6 ~~certain applications in accordance with certain requirements; requiring a~~
 7 ~~person to remove unauthorized nonwater-dependent projects under certain~~
 8 ~~circumstances; establishing the intent of the General Assembly; defining certain~~
 9 ~~terms; and generally relating to nonwater-dependent projects on State or~~
 10 ~~private wetlands.~~

11 BY repealing and reenacting, with amendments,
 12 Article – Environment
 13 Section 16–101, 16–104, and 16–205
 14 Annotated Code of Maryland
 15 (2007 Replacement Volume and 2012 Supplement)

16 BY repealing and reenacting, with amendments,
 17 Article – Natural Resources
 18 Section 8–1808.4
 19 Annotated Code of Maryland
 20 (2012 Replacement Volume)

21 Preamble

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

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

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

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

38 ~~WHEREAS, Over the course of the past two decades a number of~~
 39 ~~nonwater-dependent commercially based projects have been located on piers in State~~

1 ~~and private tidal wetlands, often without the benefit of a license or permit and the~~
2 ~~environmental expertise involved in the application and review process; and~~

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

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

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

17 WHEREAS, It is the purpose of this legislation to establish two categories of
18 nonwater-dependent projects, the first related to commercial use and the second
19 focused on small-scale renewable energy systems, both of which are designed to
20 prevent and minimize environmental harm along the waterfront; and

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

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

26 **Article – Environment**

27 16–101.

- 28 (a) In this title the following words have the meanings indicated.
- 29 (b) “Board” means the Board of Public Works.
- 30 (c) “County” includes Baltimore City unless otherwise indicated.
- 31 (d) “Department” means the Department of the Environment.
- 32 (e) “Dredging” means the removal or displacement by any means of soil,
33 sand, gravel, shells, or other material, whether or not of intrinsic value, from any
34 State or private wetlands.

1 (f) (1) "Filling" means:

2 (i) The displacement of navigable water by the depositing into
3 State or private wetlands of soil, sand, gravel, shells, or other materials; or

4 (ii) The artificial alteration of navigable water levels by any
5 physical structure, drainage ditch, or otherwise.

6 (2) "Filling" includes storm drain projects which flow directly into tidal
7 waters of the State.

8 (3) "Filling" does not include:

9 (i) Drainage of agricultural land;

10 (ii) In-place replacement or repair of shore erosion control
11 structures using substantially similar materials and construction design; or

12 (iii) Planting of wetlands vegetation when no grading or fill in
13 State or private wetlands is necessary.

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

17 (h) "Licensed marine contractor" has the meaning stated in Title 17, Subtitle
18 3 of this article.

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

23 **(2) "NONWATER-DEPENDENT PROJECT" INCLUDES:**

24 **(I) A DWELLING UNIT ON A PIER;**

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

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

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

1 (v) A SMALL-SCALE RENEWABLE ENERGY SYSTEM ON A
2 PIER, INCLUDING:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 16–104.

15 (a) This section does not apply to **[any] A NONWATER–DEPENDENT** 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 in Prince George’s County.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **4. IS LOCATED IN:**

23 **A. AN INTENSELY DEVELOPED AREA AND THE**
24 **PROJECT IS AUTHORIZED UNDER A PROGRAM AMENDMENT TO A LOCAL**
25 **JURISDICTION'S CRITICAL AREA PROGRAM APPROVED ON OR AFTER JULY 1,**
26 **2013, IF THE APPROVED PROGRAM AMENDMENT INCLUDES NECESSARY**
27 **CHANGES TO THE LOCAL JURISDICTION'S ZONING, SUBDIVISION, AND OTHER**
28 **ORDINANCES SO AS TO BE CONSISTENT WITH OR MORE RESTRICTIVE THAN THE**
29 **REQUIREMENTS PROVIDED UNDER THIS PARAGRAPH; OR**

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

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

5 **6. ALLOWS OR ENHANCES PUBLIC ACCESS TO STATE**
6 **WETLANDS;**

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

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

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

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

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

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

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

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

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

32 **1. INVOLVES THE INSTALLATION OR PLACEMENT OF**
33 **A SMALL-SCALE RENEWABLE ENERGY SYSTEM THAT IS PERMITTED AS A**

1 SECONDARY OR ACCESSORY USE ON A PIER THAT IS AUTHORIZED UNDER THIS
2 TITLE;

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

5 3. IS LOCATED IN:

6 A. THE CHESAPEAKE AND ATLANTIC COASTAL BAYS
7 CRITICAL AREA AND THE PROJECT IS AUTHORIZED UNDER A PROGRAM
8 AMENDMENT TO A LOCAL JURISDICTION'S CRITICAL AREA PROGRAM APPROVED
9 ON OR AFTER JULY 1, 2013, IF THE APPROVED PROGRAM AMENDMENT
10 INCLUDES NECESSARY CHANGES TO THE LOCAL JURISDICTION'S ZONING,
11 SUBDIVISION, AND OTHER ORDINANCES SO AS TO BE CONSISTENT WITH OR
12 MORE RESTRICTIVE THAN THE REQUIREMENTS PROVIDED UNDER THIS
13 PARAGRAPH; OR

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

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

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

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

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

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

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

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

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

7 3. A SOLAR ENERGY SYSTEM ATTACHED TO A
8 BOATHOUSE ROOF IF THE DEVICE OR EQUIPMENT ASSOCIATED WITH THAT
9 SYSTEM DOES NOT EXTEND BEYOND THE LENGTH, WIDTH, OR HEIGHT OF THE
10 BOATHOUSE ROOF;

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

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

16 B. DELETERIOUSLY ALTER LONG SHORE DRIFT; OR

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

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

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

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

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

30 (c) (1) Except as provided in [paragraphs (2) and (3)] PARAGRAPH (2) of
31 this subsection[,] AND notwithstanding any other provision of law, the Secretary may
32 not issue a permit [under this title for any] TO AUTHORIZE A

1 ~~NONWATER-DEPENDENT~~ project [involving the construction of a dwelling unit or
2 other non-water dependent structure on a pier] located on private wetlands.

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

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

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

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

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

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

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

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

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

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

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

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

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

14 16-205.

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

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

20 (2) The minimum compensation rate:

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

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

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

27 (3) The Board may:

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

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

1 (C) (1) THE BOARD SHALL ESTABLISH AN ANNUAL COMPENSATION
 2 RATE FOR NONWATER-DEPENDENT PROJECTS AUTHORIZED UNDER §
 3 16-104(B)(2) OF THIS TITLE.

4 (2) THE BOARD:

5 ~~(1) 1. SHALL~~ SHALL ASSESS ~~A MINIMUM AN~~ AN ANNUAL
 6 COMPENSATION RATE FOR A NONWATER-DEPENDENT PROJECT THAT IS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (1) Acquisition of land or easements;
- 2 (2) Maintenance of mitigation sites;
- 3 (3) Purchase of credits in mitigation banks;
- 4 (4) Management of invasive or nuisance species identified by the
5 Department;
- 6 (5) Cost sharing assistance to landowners in the management and
7 control of phragmites under Title 8, Subtitle 21 of the Natural Resources Article; and
- 8 (6) Contractual services necessary to accomplish the intent of this
9 subsection.

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

- 11 (1) Shall remain available until expended; and
- 12 (2) May not revert to the General Fund under any other provision of
13 law.

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

18 **Article – Natural Resources**

19 8–1808.4.

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

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

26 **(II) “NONWATER-DEPENDENT PROJECT” INCLUDES:**

27 **~~(H)~~ 1. A DWELLING UNIT ON A PIER;**

28 **~~(H)~~ 2. A RESTAURANT, A SHOP, AN OFFICE, OR ANY**
29 **OTHER COMMERCIAL BUILDING OR USE ON A PIER;**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (c) This section applies notwithstanding:

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

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

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

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

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

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

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

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

1 project pier. The total expansion may not exceed 35% of the original size of the piers
2 and dry docks removed;

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

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

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

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

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

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

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

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

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

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

35 **3. IS LOCATED IN:**

1 **A. AN INTENSELY DEVELOPED AREA AND THE**
2 **PROJECT IS AUTHORIZED UNDER A PROGRAM AMENDMENT TO A LOCAL**
3 **JURISDICTION'S CRITICAL AREA PROGRAM APPROVED ON OR AFTER JULY 1,**
4 **2013, IF THE APPROVED PROGRAM AMENDMENT INCLUDES NECESSARY**
5 **CHANGES TO THE LOCAL JURISDICTION'S ZONING, SUBDIVISION, AND OTHER**
6 **ORDINANCES SO AS TO BE CONSISTENT WITH OR MORE RESTRICTIVE THAN THE**
7 **REQUIREMENTS PROVIDED UNDER THIS PARAGRAPH; OR**

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

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

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

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

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

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

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

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

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

30 **(3) (I) A LOCAL JURISDICTION MAY ISSUE A BUILDING PERMIT**
31 **OR OTHER APPROVAL UNDER THIS SUBTITLE TO AUTHORIZE A**
32 **NONWATER-DEPENDENT PROJECT FOR A SMALL-SCALE RENEWABLE ENERGY**

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

3 1. INVOLVES THE INSTALLATION OR PLACEMENT OF
4 A SMALL-SCALE RENEWABLE ENERGY SYSTEM THAT IS PERMITTED AS A
5 SECONDARY OR ACCESSORY USE ON A PIER THAT IS AUTHORIZED UNDER TITLE
6 16 OF THE ENVIRONMENT ARTICLE;

7 2. IS LOCATED IN:

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

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

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

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

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

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

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

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

1 **3. A SOLAR ENERGY SYSTEM ATTACHED TO A**
 2 **BOATHOUSE ROOF IF THE DEVICE OR EQUIPMENT ASSOCIATED WITH THAT**
 3 **SYSTEM DOES NOT EXTEND BEYOND THE LENGTH, WIDTH, OR HEIGHT OF THE**
 4 **BOATHOUSE ROOF;**

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

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

10 **B. DELETERIOUSLY ALTER LONG SHORE DRIFT; OR**

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

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

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

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

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

24 SECTION 2. AND BE IT FURTHER ENACTED, That:

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

33 (2) Except for the provisions under paragraph (3) of this section, §
 34 16-205(c) of the Environment Article, as enacted under Section 1 of this Act, may not

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

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

11 SECTION 3. AND BE IT FURTHER ENACTED, That:

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

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

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

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

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

27 2. The applicant withdrew; or

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

30 (b) Section 1 of this Act shall apply if, on or after ~~July 1, 1989~~ January 1,
31 2013:

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

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

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

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

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

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

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

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

21 (3) ~~If the Board of Public Works issues an after-the-fact State tidal~~
22 ~~wetlands license, compensation shall be in accordance with the rate established under~~
23 ~~§ 16-205 of the Environment Article, as enacted under Section 1 of this Act, and any~~
24 ~~regulations adopted under the authority of this Act; and~~

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

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

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

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

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

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

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

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

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

16 SECTION ~~5. 6.~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take
17 effect July 1, 2013.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.