

Department of Legislative Services  
 Maryland General Assembly  
 2019 Session

FISCAL AND POLICY NOTE  
 First Reader

Senate Bill 876 (Senator Bailey)  
 Education, Health, and Environmental Affairs

**Aquaculture - Leases in Water Column - Riparian Right of First Refusal**

This bill establishes that a riparian property owner or lessee has the right of first refusal to apply for and, if approved, obtain a water column lease, or an aquaculture lease for use in the water column in an Aquaculture Enterprise Zone (AEZ), in an area that fronts the riparian property. The riparian leaseholder is not subject to a requirement for active use of a lease. A person other than the riparian owner or lessee who applies for a water column lease (or an aquaculture lease for use in the water column in an AEZ) must provide specified notice to the riparian owner or lessee, and the riparian owner or lessee has 20 days after receiving the notice to exercise the right of first refusal. **The bill takes effect June 1, 2019.**

**Fiscal Summary**

**State Effect:** General/special fund expenditures may increase by \$73,900 in FY 2020 and by similar amounts in future years. Special fund revenues may increase by \$15,000 in FY 2020 and by \$16,300 annually thereafter. It is assumed that there is no effect in FY 2019.

| (in dollars) | FY 2020    | FY 2021    | FY 2022    | FY 2023    | FY 2024    |
|--------------|------------|------------|------------|------------|------------|
| SF Revenue   | \$15,000   | \$16,300   | \$16,300   | \$16,300   | \$16,300   |
| GF/SF Exp.   | \$73,900   | \$84,400   | \$86,700   | \$89,100   | \$91,700   |
| Net Effect   | (\$58,900) | (\$68,100) | (\$70,400) | (\$72,900) | (\$75,400) |

*Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

## Analysis

**Bill Summary:** The bill establishes that a riparian property owner or lessee, subject to standards and requirements of State law governing aquaculture, has the right of first refusal to apply for and, if approved, obtain (1) a water column lease that fronts the riparian property or (2) an aquaculture lease for use in the water column in an area in an AEZ that fronts the riparian property. A riparian leaseholder who obtains a water column lease through a right of first refusal is not subject to the requirement for active use of a lease.

A person other than the riparian owner or lessee who applies for a water column lease (or an aquaculture lease for use in the water column in an AEZ) for an area that is subject to a right of first refusal under the bill must provide notice of the lease application to the riparian owner or lessee by (1) certified mail, return receipt requested or (2) if the name and address of the riparian owner or lessee are unknown, posting notice for 20 days on a board fastened to a stake driven in the water directly in front of the property and within 300 feet from the shore.

If the riparian owner or lessee does not exercise the right of first refusal within 20 days after receiving the notice described above, the other person may apply for and, if approved, obtain the water column or aquaculture lease.

**Current Law:** Specified statutory restrictions are placed on the location of AEZs (defined in statute as an area of the Chesapeake Bay approved for the leasing of submerged land or the water column by the Department of Natural Resources (DNR) in consultation with the Maryland Department of the Environment and the wetlands administrator of the Board of Public Works), submerged land leases, water column leases, and demonstration leases (those leased exclusively for educational, conservation, or ecological purposes). The restrictions generally prohibit a zone or lease from being located:

- within a minimum of 50 feet of shoreline or any pier without the written permission of the riparian owner at the time of designation of the zone or initial application for the lease;
- within 150 feet of the public shellfish fishery or a registered pound net site;
- within 150 feet of an oyster reserve or any Yates Bar located in an oyster sanctuary;
- within 150 feet of a federal navigational channel;
- in any creek, cove, bay, or inlet less than 300 feet wide at its mouth at mean low tide;
- in a submerged aquatic vegetation protection zone; or
- in a setback or buffer from the Assateague Island National Seashore established by DNR.

A leaseholder must actively use the lease and comply with any standards for planting, harvesting, and use of the leased area established by DNR. DNR may waive the requirements for active use of a lease on a showing that conditions not present at the time of execution of the lease, including the unavailability of shellfish seed, prevent active use of the leased area.

## **Background:**

### *Lease Applications and Siting*

DNR and the U.S. Army Corps of Engineers began jointly accepting applications for new commercial shellfish aquaculture projects in the Chesapeake Bay, its tributaries, and the coastal bays in 2010, and a person now applies for a lease using the *Joint Application for State Commercial Shellfish Aquaculture Lease and Corps of Engineers Federal Permit*.

DNR recommends that applicants take various steps relating to siting of the lease before submitting an application, including (1) utilizing the department's Aquaculture Siting Tool, an online interactive mapping utility that can assist in identifying potential lease locations by minimizing known resource and other types of conflicts; (2) investigating a site or sites by boat to, among other things, note other uses of the site, and adjacent uses; (3) if needed, contacting DNR's Aquaculture Division to help determine if the proposed site meets statutory requirements; and (4) discussing the project with adjacent landowners to, among other things, uncover additional issues to consider, such as licensed shoreline or offshore blinds used for waterfowl hunting not readily visible during the on-site investigation. DNR indicates that all adjacent landowners also receive direct notice of the project through State and federal notification processes.

### *Aquaculture Enterprise Zones*

DNR recently eliminated the only two AEZs established in DNR regulations, indicating that subsequent to the establishment of the AEZs, the department implemented a new shellfish aquaculture leasing program that reduced the utility and function of AEZs, and as a result, no leasing program for AEZs was developed. One of the AEZs, and a portion of the other, were converted to public shellfish fishery areas.

**State Expenditures:** General/special fund expenditures may increase by \$73,910 in fiscal 2020, which reflects a 30-day start-up delay, if a significant increase in the number of lease applications results from the bill. This estimate reflects the cost of hiring a natural resources biologist to assist with customer service requests and with processing, reviewing, and reporting on additional lease applications received pursuant to the bill. DNR indicates that existing personnel currently have 125 lease applications under review and other time-sensitive tasks associated with State and federal regulatory compliance. It cannot be

reliably estimated how many additional lease applications will be received as a result of the bill, but this estimate assumes an additional 50 applications are received each year. DNR indicates that approximately 60 lease applications are currently received each year, about 30% of which are for water column leases. According to DNR, a large increase in applications occurred under a similar policy in Virginia.

|   |                 |
|---|-----------------|
| Position                                | 1               |
| Salary and Fringe Benefits              | \$68,395        |
| Other Operating Expenses                | <u>5,515</u>    |
| <b>Total FY 2020 State Expenditures</b> | <b>\$73,910</b> |

Future year expenditures reflect annual increases in the salary, employee turnover, ongoing operating expenses, and costs to survey the additional proposed lease areas and issue public notices for the additional leases.

**State Revenues:** Special fund revenues may increase by \$15,000 in fiscal 2020 and by \$16,250 annually thereafter. This estimate assumes 50 additional lease applications, for an average of one acre each, are received each fiscal year. It accounts for lease application fee revenues (\$300 per application) in fiscal 2020 and application fee revenues plus rental revenues (\$25 per acre per year) annually thereafter.

**Small Business Effect:** Shellfish aquaculture businesses may be meaningfully affected by the bill to the extent it makes it difficult for businesses to obtain lease sites. DNR indicates that the bill may negatively impact the growth in oyster aquaculture production from water column leases and result in a decrease in the establishment of new shellfish aquaculture businesses. The Maryland Aquaculture Coordinating Council’s [2018 annual report](#) indicates that as of May 2018, there were 75 water column leases covering 383 acres and 345 submerged land leases (not affected by the bill) covering 6,420 acres.

### Additional Information

**Prior Introductions:** None.

**Cross File:** HB 1309 (Delegate Crosby) - Environment and Transportation.

**Information Source(s):** Department of Natural Resources; Maryland Department of the Environment; Board of Public Works; Department of Legislative Services

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