



The Maryland Department of the Environment
Secretary Serena McIlwain

House Bill 444
Environment - Duck Nest Boxes - Wetlands License Requirements

Position: Oppose
Committee: Environment and Transportation
Date: February 14, 2024
From: Gabrielle Leach

The Maryland Department of the Environment (MDE or the Department) **OPPOSES** HB 444. This bill exempts the installation and maintenance of Duck Nest Boxes from certain wetland licensing requirements, provides that Duck Nest Boxes are water-dependent structures, and establishes criteria for installing and maintaining Duck Nest Boxes as a lawful use of private wetlands.

The Department does not concur that Duck Nest Boxes should be considered water-dependent. There are multiple ways this activity can be conducted in a secure upland location and their operation or access is not intrinsically required to be conducted in, on, or over State or Private Tidal Wetlands or Waters of the State.

To preserve tidal wetlands and prevent their degradation and loss, structures placed in, on, under or over tidal wetlands are reviewed by the Department under COMAR 26.24.02.03. This review accounts for nineteen factors, including the ecological, economic, developmental, recreational, and aesthetic values of tidal wetlands. The exemption under this bill disregards these considerations.

The Department has significant concerns regarding exempting Duck Nest Box structures from this review for the following reasons:

- Loss of the review for navigational safety of structures placed within the wetland;
 - Inability to review the project to see if it has avoided or minimized, to the maximum extent possible, impacts to submerged aquatic vegetation (SAV) and rare, threatened and endangered species (RTEs);
 - If the activity is exempt, other State agencies such as DNR, Critical Area Commission (CAC), and Maryland Historical Trust (MHT) will not have the opportunity to review and comment on the impact to important ecological or cultural resources;
 - The definition of a Duck Nest Box does not provide a limitation on the type/size/area and there is also no limit to the number of Duck Nest Boxes that can be installed;
 - Federal authorization by the Army Corps of Engineers (Corps) is also required for work in tidal wetlands and at this time it is unknown if the federal agency would authorize the structures, even if allowed under State statute; and
 - The housing of ducks over water would result in direct discharges of animal waste to the waterway with associated water quality impacts and potential disease risks to wild ducks or other species.
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For the reasons detailed above, MDE urges an **UNFAVORABLE** report for HB 444.