

# HOUSE BILL 444

M3, M4

4r2050  
CF SB 339

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By: **Delegate Otto**

Introduced and read first time: January 22, 2024

Assigned to: Environment and Transportation

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## A BILL ENTITLED

1 AN ACT concerning

2 **Environment – Duck Nest Boxes – Wetlands License Requirements**

3 FOR the purpose of exempting the installation and maintenance of certain duck nest boxes  
4 from certain wetlands license requirements; establishing that a duck nest box is not  
5 a nonwater-dependent project for the purpose of certain wetlands license  
6 requirements; establishing that installing and maintaining duck nest boxes is a  
7 lawful use of private wetlands; and generally relating to duck nest boxes.

8 BY repealing and reenacting, with amendments,

9 Article – Environment

10 Section 16–101, 16–202(h), and 16–304

11 Annotated Code of Maryland

12 (2014 Replacement Volume and 2023 Supplement)

13 BY repealing and reenacting, without amendments,

14 Article – Environment

15 Section 16–104(b)(1) and (2) and 16–202(a)

16 Annotated Code of Maryland

17 (2014 Replacement Volume and 2023 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

19 That the Laws of Maryland read as follows:

20 **Article – Environment**

21 16–101.

22 (a) In this title the following words have the meanings indicated.

23 (b) “Board” means the Board of Public Works.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (c) “County” includes Baltimore City unless otherwise indicated.

2 (d) “Department” means the Department of the Environment.

3 (e) “Dredging” means the removal or displacement by any means of soil, sand,  
4 gravel, shells, or other material, whether or not of intrinsic value, from any State or private  
5 wetlands.

6 (f) **“DUCK NEST BOX” MEANS A NESTING STRUCTURE LOCATED ON OR OVER**  
7 **WATER THAT IS PROVIDED FOR THE PURPOSE OF SHELTERING DOMESTICATED**  
8 **DUCKS.**

9 (G) (1) “Filling” means:

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

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

14 (2) “Filling” includes storm drain projects which flow directly into tidal  
15 waters of the State.

16 (3) “Filling” does not include:

17 (i) Drainage of agricultural land;

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

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

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

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

27 [(i)] (J) (1) “Nonwater-dependent project” means a temporary or permanent  
28 structure that, by reason of its intrinsic nature, use, or operation, does not require location  
29 in, on, or over State or private wetlands.

30 (2) “Nonwater-dependent project” includes:

- 1 (i) A dwelling unit on a pier;
- 2 (ii) A restaurant, a shop, an office, or any other commercial building  
3 or use on a pier;
- 4 (iii) A temporary or permanent roof or covering on a pier;
- 5 (iv) A pier used to support a nonwater-dependent use; and
- 6 (v) A small-scale renewable energy system on a pier, including:
- 7 1. A solar energy system and its photovoltaic cells, solar  
8 panels, or other necessary equipment;
- 9 2. A geothermal energy system and its geothermal heat  
10 exchanger or other necessary equipment; and
- 11 3. A wind energy system and its wind turbine, tower, base,  
12 or other necessary equipment.

13 (3) “Nonwater-dependent project” does not include:

- 14 (i) A fuel pump or other fuel-dispensing equipment on a pier;
- 15 (ii) A sanitary sewage pump or other wastewater removal equipment  
16 on a pier;
- 17 (iii) A pump, a pipe, or any other equipment attached to a pier and  
18 associated with a shellfish nursery operation under a permit issued by the Department of  
19 Natural Resources under § 4-11A-23 of the Natural Resources Article; [or]
- 20 (iv) An office on a pier for managing marina operations, including  
21 monitoring vessel traffic, registering vessels, providing docking services, and housing  
22 electrical or emergency equipment related to marina operations; **OR**

23 **(V) A DUCK NEST BOX.**

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

27 **[(k)] (L)** (1) “Pier” means any pier, wharf, dock, walkway, bulkhead,  
28 breakwater, piles, or other similar structure.

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

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

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

7           ~~[(m)]~~ **(N)**     (1)     “Public notice” means the public notice and public informational  
8 hearing procedures established in § 5–204(b) through (e) of this article.

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

11           ~~[(n)]~~ **(O)**     “Regular or periodic tidal action” means the rise and fall of the sea  
12 produced by the attraction of the sun and moon uninfluenced by wind or any other  
13 circumstance.

14           ~~[(o)]~~ **(P)**     “Secretary” means the Secretary of the Environment.

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

20 16–104.

21           (b)     (1)     Except as provided in paragraphs (2) and (3) of this subsection and  
22 notwithstanding any other provision of law, the Board of Public Works may not issue a  
23 license to authorize a nonwater–dependent project located on State wetlands.

24                   (2)     The Board of Public Works may issue a license to authorize a  
25 nonwater–dependent project located on State wetlands if the project:

26                           (i)     1.     Involves a commercial activity that is permitted as a  
27 secondary or accessory use to a permitted primary commercial use;

28                                   2.     Is not located on a pier that is attached to residentially,  
29 institutionally, or industrially used property;

30                                   3.     Avoids and minimizes impacts to State or private  
31 wetlands and other aquatic resources;

32                                   4.     Is located in:

1           A.     An intensely developed area and the project is authorized  
2 under a program amendment to a local jurisdiction's critical area program approved on or  
3 after July 1, 2013, if the approved program amendment includes necessary changes to the  
4 local jurisdiction's zoning, subdivision, and other ordinances so as to be consistent with or  
5 more restrictive than the requirements provided under this paragraph; or

6           B.     An area that has been excluded from a local critical area  
7 program if the exclusion has been adopted or approved by the Critical Area Commission for  
8 the Chesapeake and Atlantic Coastal Bays;

9           5.     Is approved by the local planning and zoning authorities  
10 after the local jurisdiction's program amendment under item 4A of this item, if applicable,  
11 has been approved;

12           6.     Allows or enhances public access to State wetlands;

13           7.     Does not expand beyond the length, width, or channelward  
14 encroachment of the pier on which the project is constructed;

15           8.     Has a height of up to 18 feet unless the project is located  
16 at a marina and the Secretary recommends additional height;

17           9.     Is up to 1,000 square feet in total area;

18           10.    Is not located in, on, or over vegetated tidal wetlands,  
19 submerged aquatic vegetation, a natural oyster bar, a public shellfish fishery area, a Yates  
20 Bar, or an area with rare, threatened, or endangered species or species in need of  
21 conservation; and

22           11.    Does not adversely impact a fish spawning or nursery area  
23 or an historic waterfowl staging area; or

24           (ii) 1.    Is located on a pier that was in existence on or before  
25 December 31, 2012;

26           2.     Satisfies all of the requirements under item (i)1 through 8  
27 of this paragraph; and

28           3.     If applicable, has a temporary or permanent roof or  
29 covering that is up to 1,000 square feet in total area.

30 16–202.

31           (a)    A person may not dredge or fill on State wetlands without a license.

32           (h)    The provisions of this section do not apply to any operation for:

1 (1) Dredging and filling being conducted as of July 1, 1970, as authorized  
2 under the terms of an appropriate permit or license granted under the provisions of existing  
3 State and federal law;

4 (2) Dredging of seafood products by any licensed operator, harvesting of  
5 seaweed, or mosquito control and abatement as approved by the Department of Agriculture;

6 (3) Improvement of wildlife habitat or agricultural drainage ditches as  
7 approved by an appropriate unit;

8 (4) Routine maintenance or repair of existing bulkheads, provided that  
9 there is no addition or channelward encroachment;

10 (5) Aquaculture activities occurring under a lease issued by the  
11 Department of Natural Resources under Title 4, Subtitle 11A of the Natural Resources  
12 Article; [or]

13 (6) Installing a pump, a pipe, or any other equipment attached to a pier for  
14 the cultivation of shellfish seed in a shellfish nursery under a permit issued by the  
15 Department of Natural Resources under § 4-11A-23 of the Natural Resources Article,  
16 provided that the pump, pipe, or other equipment does not require increasing the length,  
17 width, or channelward encroachment of the pier; **OR**

18 **(7) INSTALLING OR MAINTAINING DUCK NEST BOXES.**

19 16-304.

20 Notwithstanding any regulation adopted by the Secretary to protect private  
21 wetlands, the following uses are lawful on private wetlands:

22 (1) Conservation of soil, vegetation, water, fish, shellfish, and wildlife;

23 (2) Trapping, hunting, fishing, and catching shellfish, if otherwise legally  
24 permitted;

25 (3) Exercise of riparian rights to improve land bounding on navigable  
26 water, to preserve access to the navigable water, or to protect the shore against erosion;

27 (4) Reclamation of fast land owned by a natural person and lost during the  
28 person's ownership of the land by erosion or avulsion to the extent of provable preexisting  
29 boundaries. The right to reclaim lost fast land relates only to fast land lost after January  
30 1, 1972. The burden of proof that the loss occurred after this date is on the owner of the  
31 land;

32 (5) Routine maintenance and repair of existing bulkheads, provided that  
33 there is no addition or channelward encroachment; [and]

1           (6)     Installing a pump, a pipe, or any other equipment attached to a pier for  
2 the cultivation of shellfish seed in a shellfish nursery under a permit issued by the  
3 Department of Natural Resources under § 4–11A–23 of the Natural Resources Article,  
4 provided that the pump, pipe, or other equipment does not require increasing the length,  
5 width, or channelward encroachment of the pier; **AND**

6           **(7)     INSTALLING AND MAINTAINING DUCK NEST BOXES.**

7           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
8 October 1, 2024.