
By: **Senator Stone**

Introduced and read first time: February 3, 2006

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Wetlands - Licenses - Individual Residential and Community Piers**

3 FOR the purpose of prohibiting the Board of Public Works from requiring certain
4 compensation exceeding a certain amount for a license issued to a community
5 pier or individual residential pier; providing for the application of certain
6 provisions of this Act; defining certain terms; and generally relating to licenses
7 for dredging or filling on State wetlands.

8 BY repealing and reenacting, with amendments,
9 Article - Environment
10 Section 16-101 and 16-205
11 Annotated Code of Maryland
12 (1996 Replacement Volume and 2005 Supplement)

13 BY repealing and reenacting, without amendments,
14 Article - Environment
15 Section 16-202
16 Annotated Code of Maryland
17 (1996 Replacement Volume and 2005 Supplement)

18 BY adding to
19 Article - Environment
20 Section 16-205.1
21 Annotated Code of Maryland
22 (1996 Replacement Volume and 2005 Supplement)

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

25 **Article - Environment**

26 16-101.

27 (a) In this title the following words have the meaning indicated.

1 (b) "Board" means the Board of Public Works.

2 (C) "COMMUNITY PIER" HAS THE MEANING STATED IN § 8-1808.5 OF THE
3 NATURAL RESOURCES ARTICLE.

4 [(c)] (D) "County" includes Baltimore City unless otherwise indicated.

5 [(d)] (E) "Department" means the Department of the Environment.

6 [(e)] (F) "Dredging" means the removal or displacement by any means of soil,
7 sand, gravel, shells, or other material, whether or not of intrinsic value, from any
8 State or private wetlands.

9 [(f)] (G) (1) "Filling" means:

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

12 (ii) The artificial alteration of navigable water levels by any
13 physical 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 (H) "INDIVIDUAL RESIDENTIAL PIER" MEANS A NONCOMMERCIAL PIER THAT
23 BELONGS TO A RIPARIAN OWNER.

24 [(g)] (I) "Landward boundary of wetlands" means the common boundary
25 between wetlands, as defined in this section, and lands not included within the
26 definitions of wetlands appearing in this section.

27 [(h)] (J) (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.

31 [(i)] (K) "Person" means any natural person, partnership, joint-stock
32 company, unincorporated association or society, the State, any unit of the State, a
33 political subdivision, or other corporation of any type.

1 [(j)] (L) (1) "Private wetlands" means any land not considered "State
2 wetland" bordering on or lying beneath tidal waters, which is subject to regular or
3 periodic 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
6 of Rights, to the extent of the interest transferred.

7 [(k)] (M) (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
10 this title.

11 [(l)] (N) "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 [(m)] (O) "Secretary" means the Secretary of the Environment.

15 [(n)] (P) "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.
17 Wetlands of this category which have been transferred by the State by valid grant,
18 lease, patent or grant confirmed by Article 5 of the Maryland Declaration of Rights
19 shall be considered "private wetland" to the extent of the interest transferred.

20 16-202.

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

22 (b) The Secretary shall assist the Board in determining whether to issue a
23 license to dredge or fill State wetlands. The Secretary shall submit a report indicating
24 whether the license should be granted and, if so, the terms, conditions, and
25 consideration required after consultation with any interested federal, State, and local
26 unit, and after issuing public notice, holding any requested hearing, and taking any
27 evidence the Secretary thinks advisable.

28 (c) (1) Upon receipt of a report by the Secretary, the Board shall decide if
29 issuance of the license is in the best interest of the State, taking into account the
30 varying ecological, economic, developmental, recreational, and aesthetic values each
31 application presents. If the Board decides to issue the license, the issuance of the
32 license shall be for consideration and on terms and conditions the Board determines.
33 Every license shall be in writing.

34 (2) With respect to an application for a license to fill or construct a shore
35 erosion control structure other than riprap on State wetlands, the Board may issue
36 the license without public notice if the fill area is less than 300 feet in length parallel
37 to the fast land as close to the fast land as structurally feasible but not more than 10
38 feet channelward of the mean high water line and if after a site visit the report of the
39 Secretary recommends that the license be granted. The Board may issue a license

1 without public notice where an emergency exists caused by act of God, natural
2 disaster, catastrophe, or other similar natural event when the health, safety, or
3 welfare of the citizens of the State would be jeopardized by a delay caused by time
4 requirements for public notice. However, the license may be granted by the Board
5 only with the concurrence of the Secretary. The Secretary shall provide prompt public
6 notice of the emergency license issuance and the opportunity to submit written
7 comments or to request a hearing to determine whether the emergency license shall
8 be revoked or made permanent. If a hearing is requested, the hearing shall be
9 scheduled within 30 days of the emergency issuance of the license.

10 (3) If the report of the Secretary recommends that a license be granted,
11 the Board may issue the license without public notice:

12 (i) To fill or construct a shore erosion control structure of riprap on
13 State wetlands if the fill area is less than 500 feet in length parallel to the fast land
14 as close to the fast land as structurally feasible but not more than 10 feet
15 channelward of the mean high water line;

16 (ii) To repair or replace a bulkhead for the purpose of shore erosion
17 control where the bulkhead is presently functional, but is deteriorating or damaged,
18 provided that the repair or replacement structure does not extend more than 18
19 inches channelward of the existing structure. Repair or replacement may include
20 riprap placed along the base of the bulkhead, provided that the riprap shall not
21 extend more than 10 feet channelward of the bulkhead;

22 (iii) To fill near shore shallow water bottom extending no more than
23 35 feet channelward of the mean high water line provided the fill area is less than 500
24 feet in length parallel to the fast land for the purpose of shore erosion control by
25 landscaping and wetland plant establishment;

26 (iv) To construct or repair a private noncommercial boat ramp
27 provided the ramp does not exceed 12 feet in width and extend more than 30 feet
28 channelward of the mean high water line; or

29 (v) To maintenance dredge a mooring, private or commercial boat
30 ramp, mobile boat hoist slip, or marine railway when no more than 100 cubic yards of
31 material nor an area greater than 1,500 square feet need to be dredged.

32 (4) With respect to the maintenance dredging of projects in State
33 wetlands for which a license is to be issued, the license may include provision for
34 periodic maintenance dredging if recommended by the report of the Secretary
35 provided that the maintenance dredging be effected:

36 (i) Within the area, depth, and in conformity with other limitations
37 contained in the license;

38 (ii) That no more than 500 cubic yards of material be dredged at
39 each maintenance dredging to restore licensed works;

1 (iii) That the material from maintenance dredging be deposited
2 upon the designated or other upland site approved by the Secretary; and

3 (iv) That the Secretary be notified and approve of each maintenance
4 dredging operation.

5 (5) The provisions for periodic maintenance dredging under paragraph
6 (4) of this subsection shall be effective for no more than 6 years beyond the date of
7 issuance of the license.

8 (6) If the licensee desires to continue maintenance dredging beyond the
9 expiration date authorized in paragraph (5) of this subsection, the licensee must
10 obtain a new license by submitting an application to the Board for review in
11 accordance with the procedures of this section.

12 (d) The provisions of this section do not apply to any operation for:

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

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

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

21 (4) Routine maintenance or repair of existing bulkheads, provided that
22 there is no addition or channelward encroachment.

23 (e) (1) The Board may not approve a license or an amendment to a license
24 authorizing the dredge material deposited in the Hart-Miller Island Dredged
25 Material Containment Facility to exceed an elevation of:

26 (i) 44 feet above the mean low water mark in the north cell; and

27 (ii) 28 feet above the mean low water mark in the south cell.

28 (2) On or after January 1, 2010, the Board may not approve a license or
29 an amendment to a license authorizing the deposit of dredge material at the
30 Hart-Miller Dredged Material Containment Facility.

31 16-205.

32 (a) [The] EXCEPT AS PROVIDED IN § 16-205.1 OF THIS SUBTITLE, THE Board
33 may require as a condition to issuance of a wetlands license that compensation be
34 made to the State, of a kind and in an amount deemed appropriate by the Board.

35 (b) Monetary compensation received by the State in conjunction with a
36 wetlands license may not be applied to the State Annuity Bond Fund Account.

1 (c) (1) There is created a special fund, known as the Tidal Wetlands
2 Compensation Fund.

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

5 (i) Any monetary compensation paid to the State in conjunction
6 with a wetlands license, including compensation paid by an applicant instead of
7 engaging in the creation, restoration, or enhancement of a tidal wetland;

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

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

11 (d) Funds in the Tidal Wetlands Compensation Fund may be appropriated
12 only for acquisition and conservation of wetland areas by the State, including cost
13 sharing assistance to landowners in the management and control of phragmites
14 under Title 8, Subtitle 21 of the Natural Resources Article.

15 (e) Funds appropriated in the budget for wetlands acquisition and
16 conservation under this section:

17 (1) Shall remain available until expended; and

18 (2) May not be reverted under any other provision of law.

19 16-205.1.

20 (A) FOR A LICENSE THAT IS APPROVED IN ACCORDANCE WITH § 16-202(C) OF
21 THIS SUBTITLE, IF THE LICENSE IS FOR A COMMUNITY PIER OR INDIVIDUAL
22 RESIDENTIAL PIER AND THE ACTIVITY IS NOT INTENDED FOR A COMMERCIAL
23 ENTERPRISE:

24 (1) THE BOARD MAY REQUIRE THAT COMPENSATION BE MADE TO THE
25 STATE BEFORE ISSUING A WETLANDS LICENSE; AND

26 (2) THE LEVEL OF COMPENSATION REQUIRED BY THE BOARD MAY NOT
27 EXCEED \$50 PER LICENSE.

28 (B) THIS SECTION APPLIES REGARDLESS OF WHETHER THE LICENSED
29 ACTIVITY WILL IMPROVE NAVIGATION.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2006.