

HOUSE BILL 1463

M1

8lr0465

By: **Delegates Conway, Elmore, and Mathias**

Introduced and read first time: February 15, 2008

Assigned to: Rules and Executive Nominations

Re-referred to: Environmental Matters, February 25, 2008

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 19, 2008

CHAPTER _____

1 AN ACT concerning

2 **Natural Resources – Somers Cove Marina Commission**

3 FOR the purpose of establishing the Somers Cove Marina Commission; providing that
4 the Commission is a body politic and corporate and an instrumentality of the
5 State; ~~providing that the commission is not subject to State procurement law~~
6 ~~but is required to comply with the minority business enterprise requirements~~
7 ~~for certain purposes~~; authorizing the Commission to take certain actions under
8 certain circumstances; providing for the membership and terms of members of
9 the Commission; prohibiting a member of the Commission from receiving
10 certain compensation; authorizing a member to receive certain reimbursement;
11 providing for the election of a chair, ~~vice chair, and secretary-treasurer~~ and
12 vice-chair of the Commission; providing for the appointment of a
13 secretary-treasurer; prohibiting a secretary-treasurer who is not a member of
14 the Commission from voting on matters before the Commission; requiring the
15 Commission to meet at certain intervals; requiring written notice to be given to
16 each member of the Commission a certain period of time before each meeting;
17 establishing certain quorum and voting requirements; authorizing the Secretary
18 of Natural Resources to remove a member of the Commission upon a certain
19 vote of members; providing for the selection and evaluation of an Executive
20 Director; requiring the Secretary of Natural Resources to perform certain duties
21 under certain circumstances; requiring the Executive Director to perform
22 certain duties under certain circumstances; providing that the Marina Manager
23 is an employee of the State who has certain responsibilities; authorizing the
24 Executive Director to execute certain leases, ~~contracts, events, or concessions~~
25 and contracts under certain circumstances; providing that a lease entered into

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.



1 before the creation of the Commission shall stay in effect for a certain period of
 2 time; prohibiting the Executive Director from executing certain leases or
 3 contracts under certain circumstances; providing that certain leases and
 4 contracts executed by the Executive Director must be reviewed and approved by
 5 the Commission and the Office of the Attorney General; authorizing the
 6 Secretary of Natural Resources to approve certain matters; requiring the
 7 Secretary to respond in a certain manner to a certain request within a certain
 8 period of time; providing that certain staff are employees of the Commission;
 9 providing that the Executive Director is an employee of the State and serves at
 10 the pleasure of the Secretary; requiring the Executive Director to procure
 11 certain goods and services in accordance with certain requirements; requiring
 12 the Executive Director to adopt a certain procurement policy; requiring the
 13 Commission to perform certain duties under certain circumstances; authorizing
 14 the Commission to accept gifts, contributions, or loans of money, supplies,
 15 goods, and services; authorizing the Commission to accept appropriations,
 16 allotments, and loans of money from certain sources; altering provisions
 17 relating to the administration of the Somers Cove Improvement Fund; providing
 18 that any money obtained by the Commission from Somers Cove Marina shall be
 19 credited to the Fund; providing that moneys in the Fund are not moneys of the
 20 State; providing that moneys of the Fund are subject to certain audits;
 21 providing that moneys pledged for use by the State for Somers Cove Marina
 22 before the creation of the Commission shall be used for a certain purpose;
 23 defining certain terms; requiring the Department and the Commission to begin
 24 conducting a certain evaluation on a certain date; requiring the Department
 25 and the Commission to report certain findings and recommendations on a
 26 certain date; providing that certain State employees may remain employed at
 27 Somers Cove as State employees under certain circumstances; requiring the
 28 Commission to reimburse the Department for certain salaries under certain
 29 circumstances; requiring the State to pay the Executive Director's salary
 30 without reimbursement from the Commission until a certain determination is
 31 made; providing for a delayed effective date; and generally relating to the
 32 Somers Cove Marina Commission.

33 BY repealing and reenacting, with amendments,
 34 Article – Natural Resources
 35 Section 5–908.1
 36 Annotated Code of Maryland
 37 (2005 Replacement Volume and 2007 Supplement)

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

40 **Article – Natural Resources**

41 5–908.1.

1 (a) (1) In this section[,] THE FOLLOWING WORDS HAVE THE MEANINGS
2 INDICATED.

3 (2) "COMMISSION" MEANS THE SOMERS COVE MARINA
4 COMMISSION.

5 (3) "Fund" means the Somers Cove Marina Improvement Fund.

6 (4) "UNENCUMBERED" MEANS NOT PLEDGED FOR USE BY THE
7 STATE FOR SOMERS COVE MARINA BEFORE THE CREATION OF THE
8 COMMISSION.

9 (B) (1) (I) THERE IS A SOMERS COVE MARINA COMMISSION.

10 (II) THE COMMISSION IS A BODY POLITIC AND CORPORATE
11 AND AN INSTRUMENTALITY OF THE STATE.

12 ~~(III) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,~~
13 ~~THE COMMISSION:~~

14 ~~1. IS NOT SUBJECT TO STATE PROCUREMENT LAW;~~
15 ~~AND~~

16 ~~2. MAY CONSTRUCT DEVELOPMENTS AND PROJECTS~~
17 ~~WITHOUT OBTAINING THE CONSENT OF ANY OTHER UNIT OF STATE~~
18 ~~GOVERNMENT AND WITHOUT ANY PROCEEDING, THE SATISFACTION OF ANY~~
19 ~~CONDITION, OR THE OCCURRENCE OF ANY EVENT.~~

20 ~~(2) IN CARRYING OUT ITS DUTIES RELATING TO DEVELOPMENTS~~
21 ~~AND PROJECTS, THE COMMISSION SHALL COMPLY WITH TITLE 14, SUBTITLE 3~~
22 ~~OF THE STATE FINANCE AND PROCUREMENT ARTICLE (MINORITY BUSINESS~~
23 ~~PARTICIPATION).~~

24 ~~(3)~~ (2) THE COMMISSION CONSISTS OF THE FOLLOWING
25 MEMBERS:

26 (I) TWO MEMBERS FROM SOMERSET COUNTY, APPOINTED
27 BY THE BOARD OF COUNTY COMMISSIONERS OF SOMERSET COUNTY, ONE OF
28 WHOM SHALL BE A MEMBER OF THE SOMERSET COUNTY BUSINESS COMMUNITY;

29 (II) TWO MEMBERS FROM THE CITY OF CRISFIELD,
30 APPOINTED BY THE MAYOR OF CRISFIELD, ONE OF WHOM SHALL BE A MEMBER
31 OF THE SOMERSET COUNTY BUSINESS COMMUNITY; AND

1 (III) THREE MEMBERS APPOINTED BY THE SECRETARY, ONE
2 OF WHOM SHALL BE A CURRENT SLIP HOLDER AT SOMERS COVE MARINA.

3 ~~(4)~~ (3) (I) THE TERM OF A MEMBER IS 4 YEARS.

4 (II) A MEMBER MAY NOT SERVE MORE THAN 2
5 CONSECUTIVE TERMS.

6 (III) AT THE END OF A TERM, A MEMBER CONTINUES TO
7 SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

8 (IV) A MEMBER WHO IS APPOINTED AFTER A TERM HAS
9 BEGUN SERVES ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS
10 APPOINTED AND QUALIFIES.

11 ~~(5)~~ (4) A MEMBER IS NOT ENTITLED TO COMPENSATION
12 EXCEPT FOR REIMBURSEMENT FOR EXPENSES AS PROVIDED IN THE BUDGET OF
13 THE COMMISSION.

14 ~~(6)~~ (5) (I) THE COMMISSION SHALL ELECT A CHAIR AND A
15 VICE CHAIR OF THE COMMISSION FROM AMONG ITS MEMBERS.

16 (II) THE COMMISSION SHALL ~~ELECT~~ APPOINT A
17 SECRETARY-TREASURER WHO NEED NOT BE A MEMBER OF THE COMMISSION.

18 (III) A SECRETARY-TREASURER WHO IS NOT A MEMBER OF
19 THE COMMISSION MAY NOT VOTE ON MATTERS BEFORE THE COMMISSION.

20 ~~(7)~~ (6) (I) THE COMMISSION SHALL MEET AT LEAST EVERY 2
21 MONTHS, AS DETERMINED BY THE CHAIR.

22 (II) AT LEAST 10 DAYS BEFORE EACH MEETING, WRITTEN
23 NOTICE SHALL BE GIVEN TO EACH MEMBER OF THE COMMISSION.

24 ~~(8)~~ (7) FIVE MEMBERS OF THE COMMISSION ARE A QUORUM.

25 ~~(9)~~ (8) A MAJORITY VOTE OF THE MEMBERS PRESENT AT A
26 MEETING HAVING A QUORUM IS NEEDED FOR THE COMMISSION TO ACT.

27 ~~(10)~~ (9) (I) THE SECRETARY MAY REMOVE A MEMBER OF THE
28 COMMISSION FOR ANY REASON UPON A MAJORITY VOTE OF THE MEMBERS OF
29 THE COMMISSION.

1 (II) IF A MEMBER IS REMOVED, A NEW MEMBER SHALL
2 PROMPTLY BE APPOINTED BY THE INDIVIDUAL OR BODY THAT APPOINTED THE
3 REMOVED MEMBER.

4 ~~(11)~~ ~~(H)~~ (C) (1) THE SECRETARY SHALL:

5 ~~1. NOMINATE (I) APPOINT AN EXECUTIVE~~
6 ~~DIRECTOR TO THE COMMISSION FOR APPROVAL; AND~~

7 ~~2.;~~

8 (II) CONSULT WITH THE COMMISSION IN CONDUCTING THE
9 ANNUAL PERFORMANCE EVALUATION OF THE EXECUTIVE DIRECTOR; AND

10 (III) REVIEW AND MAKE DETERMINATIONS ON REQUESTS
11 FOR APPROVAL OF LEASES AND CONTRACTS SUBMITTED TO THE SECRETARY BY
12 THE EXECUTIVE DIRECTOR IN ACCORDANCE WITH SUBSECTION (D) OF THIS
13 SECTION.

14 ~~(H)~~ (2) THE EXECUTIVE DIRECTOR:

15 ~~1. (I) SHALL ADMINISTER THE FUND;~~

16 ~~2. (II) ON OR BEFORE MAY 1 OF EACH YEAR, AND AFTER~~
17 ~~CONSULTING WITH THE COMMISSION, SHALL PREPARE OPERATING AND~~
18 ~~CAPITAL BUDGETS FOR THE SUBSEQUENT FISCAL YEAR AND SUBMIT THE~~
19 ~~BUDGETS TO THE COMMISSION FOR REVIEW AND APPROVAL;~~

20 ~~3. (III) SHALL SUPERVISE THE MARINA MANAGER;~~
21 ~~WHO SHALL:~~

22 ~~A. BE AN EMPLOYEE OF THE STATE; AND~~

23 ~~B. WILL BE RESPONSIBLE FOR DAY TO DAY~~
24 ~~OPERATIONS OF THE MARINA;~~

25 ~~4. MUST BE FAMILIAR WITH AND FOLLOW~~
26 ~~STANDARD PROCUREMENT PROCEDURES FOR STATE AGENCIES;~~

27 ~~5. (IV) MAY EXECUTE LEASES, CONTRACTS,~~
28 ~~EVENTS, OR CONCESSIONS FOR LAND, BUILDINGS, OR FACILITIES OF LAND,~~
29 ~~BUILDINGS, OR FACILITIES AT SOMERS COVE MARINA AND EXECUTE~~
30 ~~CONTRACTS FOR EVENTS OR CONCESSIONS AT SOMERS COVE MARINA;~~
31 ~~PROVIDED THAT:~~

~~A. A LEASE OR CONTRACT EXECUTED BY THE EXECUTIVE DIRECTOR MAY NOT EXTEND LONGER THAN 5 YEARS AFTER THE CREATION OF THE COMMISSION;~~

~~B. THE LEASE OR CONTRACT EXECUTED BY THE EXECUTIVE DIRECTOR IS REVIEWED AND APPROVED BY THE COMMISSION, WITH AN ATTORNEY GENERAL FOR THE DEPARTMENT AVAILABLE FOR CONSULTATION; AND~~

~~C. A LEASE ENTERED INTO BEFORE THE CREATION OF THE COMMISSION SHALL STAY IN EFFECT;~~

~~6. MAY NOT EXECUTE A LEASE OR CONTRACT FOR IMPROVEMENTS AT THE MARINA FOR NONBOATING RELATED SERVICES OR GOODS WITHOUT THE APPROVAL OF THE SECRETARY, PROVIDED THAT THE SECRETARY SHALL RESPOND TO A REQUEST FOR APPROVAL WITHIN 30 DAYS AFTER RECEIPT IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION;~~

~~7. (V) SUBJECT TO THE APPROVAL OF THE SECRETARY, AND IN COOPERATION WITH THE COMMISSION, SHALL DEVELOP AN ANNUAL MASTER PLAN FOR THE OPERATIONS, MAINTENANCE, DEVELOPMENT, AND IMPROVEMENT OF SOMERS COVE MARINA THAT IMPROVES SERVICES TO THE GENERAL BOATING PUBLIC;~~

~~8. (VI) SHALL ADMINISTER, IN COOPERATION WITH THE COMMISSION, ALL UNENCUMBERED GRANTS;~~

~~9. A. (VII) 1. SHALL EMPLOY A STAFF TO OPERATE AND MAINTAIN SOMERS COVE MARINA, AND SET THE STAFF'S COMPENSATION; AND~~

~~B. 2. SHALL, EXCEPT FOR THE MARINA MANAGER, EMPLOY STAFF AS EMPLOYEES OF THE COMMISSION; AND~~

~~10. (VIII) BE SHALL BE AN EMPLOYEE OF THE STATE AND SERVE AT THE PLEASURE OF THE SECRETARY.~~

~~(3) (I) THE MARINA MANAGER SHALL BE AN EMPLOYEE OF THE STATE.~~

~~(II) THE MARINA MANAGER IS RESPONSIBLE FOR THE DAY-TO-DAY OPERATIONS OF THE MARINA.~~

~~(D) (1) A LEASE OF LAND, A BUILDING, OR OTHER FACILITY AT THE SOMERS COVE MARINA OR A CONTRACT FOR AN EVENT OR CONCESSION AT THE~~

1 SOMERS COVE MARINA SHALL CONFORM TO THE ANNUAL MASTER PLAN
2 APPROVED UNDER SUBSECTION (C)(2)(V) OF THIS SECTION.

3 (2) A LEASE OF LAND, A BUILDING, OR A FACILITY OR A
4 CONTRACT FOR AN EVENT OR CONCESSION THAT IS EXECUTED BY THE
5 EXECUTIVE DIRECTOR:

6 (I) MAY NOT BE FOR A TERM OF MORE THAN 5 YEARS OR BE
7 RENEWED FOR MORE THAN AN ADDITIONAL 5 YEARS; AND

8 (II) SHALL BE REVIEWED AND APPROVED BY THE
9 COMMISSION AND OFFICE OF THE ATTORNEY GENERAL.

10 (3) A LEASE ENTERED INTO BEFORE THE CREATION OF THE
11 COMMISSION SHALL REMAIN IN EFFECT FOR THE DURATION OF THE TERM OF
12 THE LEASE.

13 (4) (I) THE EXECUTIVE DIRECTOR MAY NOT EXECUTE A LEASE
14 OR CONTRACT FOR NONBOATING RELATED IMPROVEMENTS OR GOODS AT THE
15 MARINA WITHOUT THE APPROVAL OF THE SECRETARY.

16 (II) WITHIN 30 DAYS AFTER RECEIVING A REQUEST FOR
17 APPROVAL OF A LEASE OR CONTRACT, THE SECRETARY SHALL PROVIDE THE
18 EXECUTIVE DIRECTOR WITH AN INITIAL RESPONSE THAT MAY INCLUDE A
19 PROCESS OR PLAN OF ACTION FOR ADDRESSING THE MERITS OF THE REQUEST.

20 (E) (1) THE EXECUTIVE DIRECTOR SHALL PROCURE GOODS AND
21 SERVICES IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SUBSECTION.

22 (2) FOR GOODS AND SERVICES WITH AN EXPECTED VALUE OF
23 \$1,000 TO \$5,000, THE EXECUTIVE DIRECTOR SHALL:

24 (I) MAKE A WRITTEN OR TELEPHONE REQUEST FOR BIDS;

25 (II) EVALUATE THE BIDS; AND

26 (III) AWARD THE CONTRACT TO THE RESPONSIBLE BIDDER
27 THAT SUBMITS THE RESPONSIVE BID THAT IS THE LOWEST BID PRICE.

28 (3) FOR GOODS AND SERVICES WITH AN EXPECTED VALUE OF
29 MORE THAN \$5,000, THE EXECUTIVE DIRECTOR SHALL:

30 (I) ADVERTISE THE SOLICITATION IN A LOCAL NEWSPAPER
31 AND ON THE SOMERSET COUNTY WEBSITE;

1 (I) ACCEPT GIFTS, CONTRIBUTIONS, OR LOANS OF MONEY,
 2 SUPPLIES, GOODS, AND SERVICES, AND ACCEPT APPROPRIATIONS,
 3 ALLOTMENTS, AND LOANS OF MONEY FROM:

- 4 1. THE STATE OR FEDERAL GOVERNMENT;
 5 2. A FEDERAL CORPORATION;
 6 3. A UNIT OR INSTRUMENTALITY OF THE FEDERAL
 7 GOVERNMENT; OR
 8 4. A POLITICAL SUBDIVISION OR INSTRUMENTALITY
 9 OF THE STATE;

10 (II) EXERCISE A POWER USUALLY POSSESSED BY A PRIVATE
 11 CORPORATION IN PERFORMING SIMILAR FUNCTIONS UNLESS TO DO SO WOULD
 12 CONFLICT WITH STATE LAW; AND

13 (III) DO ALL THINGS NECESSARY ~~OR CONVENIENT~~ TO CARRY
 14 OUT THE MANDATES AND POWERS EXPRESSLY PROVIDED BY THIS SECTION.

15 [(b)] ~~(D)~~ (G) There is a Somers Cove Marina Improvement Fund in the
 16 [Department] COMMISSION, to be used for the operation, maintenance, development,
 17 and improvement of the Somers Cove Marina facilities in Crisfield, Maryland.

18 [(c)] ~~(E)~~ (H) Any money obtained by the [Department] COMMISSION
 19 from Somers Cove Marina shall be credited to the Fund.

20 [(d) (1)] (1) The Fund is a special, nonlapsing fund that is not subject to §
 21 7-302 of the State Finance and Procurement Article.

22 (2) Any investment earnings of the Fund may not be transferred or
 23 revert to the General Fund of the State, but shall remain in the Fund.

24 (3) Moneys in the Fund may be used for administrative costs
 25 calculated in accordance with § 1-103(b)(2) of this article.]

26 ~~(F)~~ (I)(1) THE COMMISSION SHALL:

27 (I) MAINTAIN THE FUND IN A BANK ACCOUNT SEPARATE
 28 FROM STATE FUNDS;

29 (II) TRANSFER ANY UNENCUMBERED MONEYS IN THE FUND
 30 RUN BY THE DEPARTMENT TO THE COMMISSION'S FUND; AND

1 (III) REIMBURSE THE STATE FOR THE SALARY OF THE
2 MARINA MANAGER.

3 (2) MONEYS OF THE FUND ARE:

4 (I) NOT MONEYS OF THE STATE WITHIN THE MEANING OF
5 ARTICLE VI OF THE STATE CONSTITUTION; AND

6 (II) SUBJECT TO AUDIT BY THE STATE, INCLUDING THE
7 DEPARTMENT AND THE LEGISLATIVE AUDITOR.

8 (3) MONEYS PLEDGED FOR USE BY THE STATE FOR SOMERS
9 COVE MARINA BEFORE THE CREATION OF THE COMMISSION SHALL BE USED
10 FOR THE SAME PURPOSE AS ORIGINALLY PLEDGED.

11 ~~(G)~~ (J) ON OR BEFORE OCTOBER 1 OF EACH YEAR, THE COMMISSION
12 SHALL PROVIDE TO THE DEPARTMENT AN ACCOUNTING OF REVENUES AND
13 EXPENSES FROM SOMERS COVE MARINA FOR THE PREVIOUS FISCAL YEAR.

14 ~~(H)~~ (K) (1) ON NOVEMBER 1, 2011, THE DEPARTMENT AND THE
15 COMMISSION SHALL BEGIN TO EVALUATE THE COMMISSION'S WORK SO THAT
16 THE DEPARTMENT AND THE COMMISSION MAY MAKE FINDINGS AND
17 RECOMMENDATIONS CONCERNING THE COMMISSION'S ABILITY TO:

18 (I) OPERATE, MAINTAIN, DEVELOP, AND IMPROVE SOMERS
19 COVE MARINA IN AN EFFECTIVE MANNER; AND

20 (II) AFFORD ~~AND~~ OR ASSUME THE COSTS OF OPERATING,
21 MAINTAINING, DEVELOPING, AND IMPROVING SOMERS COVE MARINA,
22 INCLUDING THE SALARIES OF:

23 1. THE EXECUTIVE DIRECTOR; AND

24 2. EMPLOYEES OF THE STATE WHO REMAIN
25 WORKING AT SOMERS COVE MARINA.

26 (2) ON NOVEMBER 1, 2013, BASED ON THE EVALUATION
27 UNDERTAKEN IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION, THE
28 DEPARTMENT AND THE COMMISSION SHALL REPORT THEIR FINDINGS AND
29 RECOMMENDATIONS, IN ACCORDANCE WITH § 2-1246 OF THE STATE
30 GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY.

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

1 (a) The terms of the initial members of the Somers Cove Commission shall
2 begin on January 1, 2009, and shall expire as follows:

3 (1) of the two members appointed by the Board of County
4 Commissioners of Somerset County, one member on December 31, 2010, and one
5 member on December 31, 2012;

6 (2) of the two members appointed by the Mayor of Crisfield, one
7 member on December 31, 2010, and one member on December 31, 2012; and

8 (3) of the three members appointed by the Secretary, one member in
9 2010, one member in 2011, and one member in 2012.

10 (b) (1) A State employee, other than the Executive Director, who is in an
11 appointed or full-time equivalent ~~position or full-time contractual position,~~ and who is
12 employed at Somers Cove Marina on June 1, 2008, may remain employed as a State
13 employee at the Marina subject to the authority of the Secretary under Title 1,
14 Subtitle 1 of the Natural Resources Article and the provisions of the State Personnel
15 Management System.

16 (2) ~~If the Department and the Commission determine that the~~
17 ~~Commission is financially able, the~~ The Somers Cove Marina Commission shall
18 reimburse the Department of Natural Resources for the salary of ~~the Executive~~
19 ~~Director and any other~~ a State employee at the Marina who remains employed in
20 accordance with subsection (b)(1) of this section.

21 (3) The State shall pay the Executive Director's salary without
22 reimbursement from the Somers Cove Marina Commission until the Secretary of
23 Natural Resources and the Somers Cove Marina Commission determine that the
24 Commission is financially able to reimburse the State for the cost of the Executive
25 Director's salary.

26 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 November 1, 2008.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.