

## CHAPTER 209

(House Bill 1266)

AN ACT concerning

### **Wetlands – Construction of Structure on Pier – ~~Dorchester County~~ Exception**

FOR the purpose of ~~exempting Dorchester County from certain provisions limiting~~ authorizing the Board of Public Works to issue a license for the construction of a dwelling unit or other non–water dependent structure on a pier located on State or private wetlands in Dorchester County under certain circumstances; authorizing the Secretary of the Environment to issue a ~~license~~ permit for the construction of a dwelling unit or other non–water dependent structure on a pier located on State private wetlands under certain circumstances; and generally relating to construction of dwelling units or other non–water dependent structures on piers.

BY repealing and reenacting, with amendments,

Article – Environment

Section 16–104

Annotated Code of Maryland

(2007 Replacement Volume and 2007 Supplement)

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

#### **Article – Environment**

16–104.

(a) This section does not apply to any project involving the construction of a dwelling unit or other non–water dependent structure on a pier located on State or private wetlands in ~~DORCHESTER AND~~ Prince George’s ~~{County} COUNTIES~~.

(b) (1) Except as provided in paragraphs (2) ~~and~~, (3), and (4) of this subsection, notwithstanding any other provision of law, the Board of Public Works may not issue a license under this title for any project involving the construction of a dwelling unit or other non–water dependent structure on a pier located on State wetlands.

(2) This section does not prohibit or restrict the Board of Public Works from issuing a license for a project involving the construction of a dwelling unit or other non–water dependent structure on a pier located within the Critical Area that was issued a permit by the Secretary on or before January 1, 1989.

**(3) THE BOARD OF PUBLIC WORKS MAY ISSUE A LICENSE FOR A PROJECT INVOLVING THE CONSTRUCTION OF A NON-WATER DEPENDENT STRUCTURE ON A PIER LOCATED ON STATE WETLANDS IF:**

**(I) THE PROJECT IS LOCATED IN A MARINA OWNED BY THE STATE, A COUNTY, OR A MUNICIPAL CORPORATION;**

**(II) THE PROJECT WILL ENHANCE MARITIME TRANSPORTATION, THE PRESERVATION OF HISTORIC LIGHTHOUSES, OR THE CONSTRUCTION OF HISTORICALLY ACCURATE REPLICAS;**

**(III) THE PROJECT IS APPROVED BY LOCAL PLANNING AND ZONING AUTHORITIES;**

**(IV) THE PROJECT IS LOCATED IN A PRIORITY FUNDING AREA AS DESIGNATED UNDER TITLE 5, SUBTITLE 7B OF THE STATE FINANCE AND PROCUREMENT ARTICLE; AND**

**(V) THE PROJECT IS LOCATED IN AN AREA THAT HAS BEEN EXCLUDED FROM A LOCAL CRITICAL AREA PROGRAM ADOPTED OR APPROVED BY THE CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS UNDER § 8-1807(C)(1)(I)1 OF THE NATURAL RESOURCES ARTICLE.**

~~(3)~~ **(4)** The Board of Public Works may issue a license for a project involving the construction of a dwelling unit or other non-water dependent structure on a pier located on State wetlands if:

(i) The project is constructed on a pier in existence as of December 1, 1985 that can be verified by a Department of Natural Resources aerial photograph dated 1985, accompanied by a map of the area;

(ii) The project does not require an expansion of the pier greater than 25% of the area of piers or dry docks removed on the same property; however, additional expansion may be allowed in the amount of 10% of the water coverage eliminated by removing complete piers from the same or other properties. If the horizontal surface area of a pier to be removed is not intact but the remaining pilings identify its previous size, that area may be used in determining the additional expansion permitted. The project expansion based on water coverage eliminated can be considered only if all nonfunctional piers on the property are removed except for the project pier. The total expansion may not exceed 35% of the original size of the piers and dry docks removed;

(iii) The project is approved by local planning and zoning authorities;

(iv) The project is located in an intensely developed area, as designated in programs adopted or approved by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays under Title 8, Subtitle 18 of the Natural Resources Article; and

(v) The project allows public access to tidal waters, if appropriate.

~~(4)~~ **(5)** Except for projects under paragraph (2) of this subsection, and in addition to all other provisions of this section, all projects involving the construction of a dwelling unit or other non-water dependent facility on a pier located on State or private wetlands within the Chesapeake Bay Critical Area may not be issued a wetlands permit unless:

(i) The applicant demonstrates that the construction and operation of the project will not have a long term adverse effect on the water quality of the adjacent body of water in accordance with standards established by the local jurisdiction's critical areas program;

(ii) The applicant is required to improve the water quality of existing stormwater runoff from the project site into adjoining waters in accordance with standards established by the local jurisdiction's critical areas program; and

(iii) The applicant demonstrates that any sewer lines or other utility lines extended for the pier will not adversely affect the water quality of adjoining waters in accordance with standards established by the local jurisdiction's critical areas program.

(c) (1) Except as provided in ~~paragraph~~ **PARAGRAPHS (2) AND (3)** of this subsection, notwithstanding any other provision of law, the Secretary may not issue a permit under this title for any project involving the construction of a dwelling unit or other non-water dependent structure on a pier located on private wetlands.

**(2) THE SECRETARY MAY ISSUE A ~~LICENSE~~ PERMIT FOR A PROJECT INVOLVING THE CONSTRUCTION OF A NON-WATER DEPENDENT STRUCTURE ON A PIER LOCATED ON PRIVATE WETLANDS IF:**

**(I) THE PROJECT IS LOCATED IN A MARINA OWNED BY THE STATE, A COUNTY, OR A MUNICIPAL CORPORATION;**

**(II) THE PROJECT WILL ENHANCE MARITIME TRANSPORTATION, THE PRESERVATION OF HISTORIC LIGHTHOUSES, OR THE CONSTRUCTION OF HISTORICALLY ACCURATE REPLICAS;**

**(III) THE PROJECT IS APPROVED BY LOCAL PLANNING AND ZONING AUTHORITIES;**

**(IV) THE PROJECT IS LOCATED IN A PRIORITY FUNDING AREA AS DESIGNATED UNDER TITLE 5, SUBTITLE 7B OF THE STATE FINANCE AND PROCUREMENT ARTICLE; AND**

**(V) THE PROJECT IS LOCATED IN AN AREA THAT HAS BEEN EXCLUDED FROM A LOCAL CRITICAL AREA PROGRAM ADOPTED OR APPROVED BY THE CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS UNDER § 8-1807(C)(1)(I)1 OF THE NATURAL RESOURCES ARTICLE.**

~~(2)~~ **(3)** The Secretary may issue a permit for a project involving the construction of a dwelling unit or other non-water dependent structure on a pier located on private wetlands if:

(i) The project is constructed on a pier in existence as of December 1, 1985 that can be verified by a Department of Natural Resources aerial photograph dated 1985, accompanied by a map of the area;

(ii) The project does not require an expansion of the pier greater than 25% of the area of piers or dry docks removed on the same property; however, additional expansion may be allowed in the amount of 10% of the water coverage eliminated by removing complete piers from the same or other properties. If the horizontal surface area of a pier to be removed is not intact but the remaining pilings identify its previous size, that area may be used in determining the additional expansion permitted. The project expansion based on water coverage eliminated can be considered only if all nonfunctional piers on the property are removed except for the project pier. The total expansion may not exceed 35% of the original size of the piers and dry docks removed;

(iii) The project is approved by local planning and zoning authorities;

(iv) The project is located in an intensely developed area, as designated in programs adopted or approved by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays under Title 8, Subtitle 18 of the Natural Resources Article; and

(v) The project allows public access to tidal waters, if appropriate.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ June 1, 2008.

**Approved by the Governor, April 24, 2008.**