

# HOUSE BILL 1373

P1, P2, M1

EMERGENCY BILL

9lr3069

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

Introduced and read first time: February 20, 2009

Assigned to: Rules and Executive Nominations

Re-referred to: Environmental Matters, March 2, 2009

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 24, 2009

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

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

3 FOR the purpose of including the Somers Cove Marina Commission as State personnel  
4 under the Maryland Tort Claims Act; specifying that Commission members who  
5 are not employees of the Department of Natural Resources may use certain  
6 vehicles and equipment under certain circumstances; authorizing the  
7 Department to transfer vehicles and other inventory to the Commission under  
8 certain circumstances; authorizing the Executive Director of the Commission to  
9 engage in emergency procurement under certain circumstances; requiring the  
10 Executive Director to submit a report to the Commission including certain  
11 information after use of the emergency procurement procedure; providing for  
12 the application of certain provisions relating to the purchase of items for direct  
13 resale or remanufacture; making this Act an emergency measure; and generally  
14 relating to the Somers Cove Marina Commission.

15 BY repealing and reenacting, with amendments,  
16 Article – Natural Resources  
17 Section 5–908.1  
18 Annotated Code of Maryland  
19 (2005 Replacement Volume and 2008 Supplement)

20 BY repealing and reenacting, with amendments,  
21 Article – State Government  
22 Section 12–101  
23 Annotated Code of Maryland

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**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 (2004 Replacement Volume and 2008 Supplement)

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

4 **Article - Natural Resources**

5 5-908.1.

6 (a) (1) In this section the following words have the meanings indicated.

7 (2) "Commission" means the Somers Cove Marina Commission.

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

9 (4) "Unencumbered" means not pledged for use by the State for  
10 Somers Cove Marina before the creation of the Commission.

11 (b) (1) (i) There is a Somers Cove Marina Commission.

12 (ii) The Commission is a body politic and corporate and an  
13 instrumentality of the State.

14 (2) The Commission consists of the following members:

15 (i) Two members from Somerset County, appointed by the  
16 Board of County Commissioners of Somerset County, one of whom shall be a member  
17 of the Somerset County business community;

18 (ii) Two members from the City of Crisfield, appointed by the  
19 Mayor of Crisfield, one of whom shall be a member of the Somerset County business  
20 community; and

21 (iii) Three members appointed by the Secretary, one of whom  
22 shall be a current slip holder at Somers Cove Marina.

23 (3) (i) The term of a member is 4 years.

24 (ii) A member may not serve more than 2 consecutive terms.

25 (iii) At the end of a term, a member continues to serve until a  
26 successor is appointed and qualifies.

27 (iv) A member who is appointed after a term has begun serves  
28 only for the rest of the term and until a successor is appointed and qualifies.

29 (4) A member is not entitled to compensation except for  
30 reimbursement for expenses as provided in the budget of the Commission.

1           (5) (i) The Commission shall elect a chair and a vice chair of the  
2 Commission from among its members.

3           (ii) The Commission shall appoint a secretary–treasurer who  
4 need not be a member of the Commission.

5           (iii) A secretary–treasurer who is not a member of the  
6 Commission may not vote on matters before the Commission.

7           (6) (i) The Commission shall meet at least every 2 months, as  
8 determined by the chair.

9           (ii) At least 10 days before each meeting, written notice shall be  
10 given to each member of the Commission.

11           (7) Five members of the Commission are a quorum.

12           (8) A majority vote of the members present at a meeting having a  
13 quorum is needed for the Commission to act.

14           (9) (i) The Secretary may remove a member of the Commission for  
15 any reason upon a majority vote of the members of the Commission.

16           (ii) If a member is removed, a new member shall promptly be  
17 appointed by the individual or body that appointed the removed member.

18           (c) (1) The Secretary shall:

19                   (i) Appoint an Executive Director;

20                   (ii) Consult with the Commission in conducting the annual  
21 performance evaluation of the Executive Director; and

22                   (iii) Review and make determinations on requests for approval of  
23 leases and contracts submitted to the Secretary by the Executive Director in  
24 accordance with subsection (d) of this section.

25           (2) The Executive Director:

26                   (i) Shall administer the Fund;

27                   (ii) On or before May 1 of each year, and after consulting with  
28 the Commission, shall prepare operating and capital budgets for the subsequent fiscal  
29 year and submit the budgets to the Commission for review and approval;

30                   (iii) Shall supervise the marina manager;

1 (iv) May execute leases of land, buildings, or facilities at Somers  
2 Cove Marina and execute contracts for events or concessions at Somers Cove Marina  
3 in accordance with subsection (c) of this section;

4 (v) Subject to the approval of the Secretary, and in cooperation  
5 with the Commission, shall develop an annual master plan for the operations,  
6 maintenance, development, and improvement of Somers Cove Marina that improves  
7 services to the general boating public;

8 (vi) Shall administer, in cooperation with the Commission, all  
9 unencumbered grants;

10 (vii) 1. Shall employ a staff to operate and maintain Somers  
11 Cove Marina, and set the staff's compensation; and

12 2. Shall, except for the marina manager, employ staff as  
13 employees of the Commission; and

14 (viii) Shall be an employee of the State and serve at the pleasure  
15 of the Secretary.

16 (3) (i) The marina manager shall be an employee of the State.

17 (ii) The marina manager is responsible for the day-to-day  
18 operations of the marina.

19 **(4) ON APPROVAL OF AND SUBJECT TO THE CONDITIONS THAT**  
20 **THE DEPARTMENT MAY REQUIRE, COMMISSION STAFF WHO ARE NOT**  
21 **EMPLOYEES OF THE DEPARTMENT MAY USE VEHICLES OR EQUIPMENT OF THE**  
22 **DEPARTMENT.**

23 (d) (1) A lease of land, a building, or other facility at the Somers Cove  
24 Marina or a contract for an event or concession at the Somers Cove Marina shall  
25 conform to the annual master plan approved under subsection (c)(2)(v) of this section.

26 (2) A lease of land, a building, or a facility or a contract for an event or  
27 concession that is executed by the Executive Director:

28 (i) May not be for a term of more than 5 years or be renewed for  
29 more than an additional 5 years; and

30 (ii) Shall be reviewed and approved by the Commission and  
31 Office of the Attorney General.

32 (3) A lease entered into before the creation of the Commission shall  
33 remain in effect for the duration of the term of the lease.

1           (4) (i) The Executive Director may not execute a lease or contract  
2 for nonboating related improvements or goods at the marina without the approval of  
3 the Secretary.

4           (ii) Within 30 days after receiving a request for approval of a  
5 lease or contract, the Secretary shall provide the Executive Director with an initial  
6 response that may include a process or plan of action for addressing the merits of the  
7 request.

8           **(E) ON APPROVAL OF AND SUBJECT TO THE CONDITIONS THAT THE**  
9 **SECRETARY MAY REQUIRE, THE DEPARTMENT MAY TRANSFER ANY VEHICLE,**  
10 **EQUIPMENT, OR OTHER INVENTORY TO THE COMMISSION.**

11           **[(e)] (F) (1) [The] EXCEPT AS PROVIDED IN PARAGRAPH (6) OF THIS**  
12 **SUBSECTION, THE Executive Director shall procure goods and services in accordance**  
13 **with the requirements of this subsection.**

14           (2) For goods and services with an expected value of \$1,000 to \$5,000,  
15 the Executive Director shall:

16                   (i) Make a written or telephone request for bids;

17                   (ii) Evaluate the bids; and

18                   (iii) Award the contract to the responsible bidder that submits  
19 the responsive bid that is the lowest bid price.

20           (3) For goods and services with an expected value of more than \$5,000,  
21 the Executive Director shall:

22                   (i) Advertise the solicitation in a local newspaper and on the  
23 Somerset County website;

24                   (ii) Issue invitations for bids to all known prospective vendors;

25                   (iii) Tabulate and evaluate the bids;

26                   (iv) Select for award the responsible bidder who submits the  
27 responsive bid that is the lowest bid price; and

28                   (v) Submit the proposed award to the Commission for review  
29 and approval.

30           **(4) FOR AN EMERGENCY PROCUREMENT THAT THE EXECUTIVE**  
31 **DIRECTOR DETERMINES TO BE NECESSARY TO AVOID OR MITIGATE SERIOUS**  
32 **DAMAGE TO PUBLIC HEALTH, SAFETY, OR WELFARE, THE EXECUTIVE DIRECTOR**  
33 **SHALL:**

1 (I) OBTAIN AS MUCH COMPETITION AS POSSIBLE UNDER  
2 THE CIRCUMSTANCES; AND

3 (II) AFTER AWARDING THE PROCUREMENT CONTRACT,  
4 SUBMIT TO THE COMMISSION AND THE SECRETARY A WRITTEN REPORT THAT  
5 GIVES THE JUSTIFICATION FOR THE USE OF THE EMERGENCY PROCUREMENT  
6 PROCEDURE.

7 [(4)] (5) The Executive Director shall adopt a procurement policy  
8 that includes provisions for minority- and women-owned business participation.

9 (6) THIS SUBSECTION DOES NOT APPLY TO PROCUREMENT IN  
10 SUPPORT OF ENTERPRISE ACTIVITIES FOR THE PURPOSE OF DIRECT RESALE OR  
11 REMANUFACTURE AND SUBSEQUENT RESALE.

12 [(f)] (G) (1) The Commission shall:

13 (i) Adopt an operating budget to use the Fund to implement the  
14 master plan;

15 (ii) Adopt a capital budget that may use funds from Somerset  
16 County, the City of Crisfield, the State, and other sources to implement the master  
17 plan;

18 (iii) 1. Apply for grants from the Waterway Improvement  
19 Fund in accordance with Title 8, Subtitle 7 of this article; and

20 2. Subject to the Secretary's approval, receive approved  
21 grant amounts at the time of acceptance of a bid or bids for waterway improvement  
22 work;

23 (iv) Assess slip and other fees and charges at Somers Cove  
24 Marina as necessary in order to implement the master plan;

25 (v) Set policy and provide general oversight of marina  
26 operations; and

27 (vi) Adopt rules and regulations necessary for the conduct of its  
28 own affairs.

29 (2) The Commission may:

30 (i) Accept gifts, contributions, or loans of money, supplies,  
31 goods, and services, and accept appropriations, allotments, and loans of money from:

32 1. The State or federal government;

- 1                                2.    A federal corporation;
- 2                                3.    A unit or instrumentality of the federal government;
- 3 or
- 4                                4.    A political subdivision or instrumentality of the State;
- 5                                      (ii)    Exercise a power usually possessed by a private corporation
- 6 in performing similar functions unless to do so would conflict with State law; and
- 7                                      (iii)    Do all things necessary to carry out the mandates and
- 8 powers expressly provided by this section.

9                      [(g)] (H)    There is a Somers Cove Marina Improvement Fund in the

10 Commission, to be used for the operation, maintenance, development, and

11 improvement of the Somers Cove Marina facilities in Crisfield, Maryland.

12                      [(h)] (I)    Any money obtained by the Commission from Somers Cove Marina

13 shall be credited to the Fund.

14                      [(i)] (J)    (1)    The Commission shall:

15                                      (i)    Maintain the Fund in a bank account separate from State

16 funds;

17                                      (ii)    Transfer any unencumbered moneys in the Fund run by the

18 Department to the Commission's Fund; and

19                                      (iii)    Reimburse the State for the salary of the marina manager.

20                                      (2)    Moneys of the Fund are:

21                                      (i)    Not moneys of the State within the meaning of Article VI of

22 the State Constitution; and

23                                      (ii)    Subject to audit by the State, including the Department and

24 the Legislative Auditor.

25                                      (3)    Moneys pledged for use by the State for Somers Cove Marina

26 before the creation of the Commission shall be used for the same purpose as originally

27 pledged.

28                      [(j)] (K)    On or before October 1 of each year, the Commission shall provide

29 to the Department an accounting of revenues and expenses from Somers Cove Marina

30 for the previous fiscal year.

1            [(k)] (L)    (1)    On November 1, 2011, the Department and the Commission  
2 shall begin to evaluate the Commission's work so that the Department and the  
3 Commission may make findings and recommendations concerning the Commission's  
4 ability to:

5                            (i)    Operate, maintain, develop, and improve Somers Cove  
6 Marina in an effective manner; and

7                            (ii)    Afford or assume the costs of operating, maintaining,  
8 developing, and improving Somers Cove Marina, including the salaries of:

9    1.    The Executive Director; and

10    2.    Employees of the State who remain working at  
11 Somers Cove Marina.

12                            (2)    On November 1, 2013, based on the evaluation undertaken in  
13 accordance with paragraph (1) of this subsection, the Department and the Commission  
14 shall report their findings and recommendations, in accordance with § 2-1246 of the  
15 State Government Article, to the General Assembly.

## 16    **Article – State Government**

17    12-101.

18                            (a)    In this subtitle, unless the context clearly requires otherwise, "State  
19 personnel" means:

20    (1)    a State employee or official who is paid in whole or in part by the  
21 Central Payroll Bureau in the Office of the Comptroller of the Treasury;

22    (2)    an employee or official of the:

23    (i)    Maryland Transportation Authority;

24    (ii)    Injured Workers' Insurance Fund;

25    (iii)    Maryland Stadium Authority;

26    (iv)    Maryland Environmental Service;

27    (v)    overseas programs of the University College of the  
28 University System of Maryland;

29    (vi)    Maryland Economic Development Corporation;

30    (vii)    Maryland Technology Development Corporation;



- 1 (viii) Maryland African American Museum Corporation;
- 2 (ix) Maryland Automobile Insurance Fund;
- 3 (x) Maryland Health and Higher Educational Facilities  
4 Authority; [and]
- 5 (xi) Maryland Agricultural and Resource-Based Industry  
6 Development Corporation; AND

7 **(XII) THE SOMERS COVE MARINA COMMISSION;**

- 8 (3) a person who:
- 9 (i) is a member of a State board, commission, or similar State  
10 entity; or
- 11 (ii) 1. is providing a service to or for the State;
- 12 2. is not paid in whole or in part by the State; and
- 13 3. satisfies all other requirements for designation as  
14 State personnel as may be set forth in regulations adopted by the Treasurer pursuant  
15 to Title 10 of this article;
- 16 (4) an individual who, without compensation, exercises a part of the  
17 sovereignty of the State;
- 18 (5) a student enrolled in a State educational institution:
- 19 (i) who is providing services to third parties in the course of  
20 participation in an approved clinical training or academic program;
- 21 (ii) who, as determined by the Treasurer, is required to have  
22 liability insurance covering claims arising from services to third parties performed by  
23 the student in the course of the approved clinical training or academic program;
- 24 (iii) who, as determined by the Treasurer, cannot obtain  
25 commercial liability insurance at an affordable cost; and
- 26 (iv) who, as determined by the Treasurer, may be required to  
27 contribute to an insurance program for claims arising from services to third parties  
28 performed by the student in the course of the approved clinical training or academic  
29 program;
- 30 (6) a sheriff or deputy sheriff of a county or Baltimore City;

1 (7) an employee of a county who is assigned to a local department of  
2 social services, including a Montgomery County employee who carries out State  
3 programs administered under Title 3, Subtitle 4 of the Human Services Article;

4 (8) a State's Attorney of a county or Baltimore City, or an employee of  
5 an office of a State's Attorney;

6 (9) a member of a board of license commissioners of a county or  
7 Baltimore City appointed under the provisions of Article 2B of the Code, or an  
8 employee of a board of license commissioners;

9 (10) a member of a local board of elections, or an employee of a local  
10 board of elections;

11 (11) a judge of a circuit court of a county or Baltimore City, or an  
12 employee of a circuit court;

13 (12) a judge of an orphans' court of a county or Baltimore City, or an  
14 employee of an orphans' court;

15 (13) to the extent of a nonprofit organization's activities as a third party  
16 payee, and to the extent the nonprofit organization has no other insurance for this  
17 purpose, a nonprofit organization that has been approved by the Department of  
18 Human Resources or its designee to serve as a third party payee for purposes of  
19 providing temporary cash assistance, transitional assistance, or child-specific benefits  
20 to Family Investment Program recipients; or

21 (14) a student, faculty, or staff member of an institution of higher  
22 education who is providing a service under the Family Investment Program in  
23 accordance with § 5-305, § 5-306, or § 5-317 of the Human Services Article.

24 (b) In this subtitle, a unit of the State government includes the Montgomery  
25 County government to the extent that Montgomery County administers a State  
26 program under Title 3, Subtitle 4 of the Human Services Article.

27 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect~~  
28 ~~October 1, 2009.~~

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency  
30 measure, is necessary for the immediate preservation of the public health or safety,  
31 has been passed by a yea and nay vote supported by three-fifths of all the members  
32 elected to each of the two Houses of the General Assembly, and shall take effect from  
33 the date it is enacted.