

HOUSE BILL 800

M3, M1

3lr2481
CF SB 524

By: **Delegate Frush**

Introduced and read first time: February 6, 2013

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Wetlands and Riparian Rights – Licenses and Permits for**
3 **Nonwater-Dependent Projects on State or Private Wetlands**

4 FOR the purpose of altering the requirements for the issuance of a certain license, a
5 certain permit, and a certain building permit for certain nonwater-dependent
6 projects located on State wetlands or private wetlands; specifically authorizing
7 the issuance of a certain license, a certain permit, and a certain building permit
8 for certain renewable energy systems under certain circumstances; requiring
9 the Board of Public Works to establish an annual compensation rate for certain
10 nonwater-dependent projects in accordance with certain requirements;
11 providing for the application and construction of this Act; authorizing the Board
12 of Public Works to require the payment of certain compensation under a certain
13 circumstance; authorizing a person to apply to the Department of the
14 Environment for a certain license or a certain permit for certain
15 nonwater-dependent projects in existence on or before a certain date if the
16 application is filed on or before a certain date under certain circumstances;
17 requiring the Department to evaluate certain applications in accordance with
18 certain requirements; requiring a person to remove unauthorized
19 nonwater-dependent projects under certain circumstances; establishing the
20 intent of the General Assembly; defining certain terms; and generally relating
21 to nonwater-dependent projects on State or private wetlands.

22 BY repealing and reenacting, with amendments,
23 Article – Environment
24 Section 16–101, 16–104, and 16–205
25 Annotated Code of Maryland
26 (2007 Replacement Volume and 2012 Supplement)

27 BY repealing and reenacting, with amendments,
28 Article – Natural Resources
29 Section 8–1808.4

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2012 Replacement Volume)

3 Preamble

4 WHEREAS, It is essential to the health and vitality of the Chesapeake and
5 Atlantic Coastal Bays that all State waters, including State and private tidal
6 wetlands, be optimally protected through the licensing and permitting programs of the
7 Board of Public Works and the Department of the Environment; and

8 WHEREAS, It has been long recognized under law that the location of
9 nonwater-dependent projects, such as restaurants, shops, offices, and other
10 commercial uses, in, on, or over State or private tidal wetlands does not generally
11 serve the preservation of Maryland's prized shoreline resources, including the Critical
12 Area Buffer; and

13 WHEREAS, It has also been long recognized that the Board of Public Works
14 and the Department of the Environment have the authority to license or permit small
15 nonwater-dependent projects where there is a reasonable basis to anticipate little or
16 no environmental harm; and

17 WHEREAS, Many of the current requirements regarding the location of
18 nonwater-dependent projects have become outdated, leaving an ineffective statutory
19 patchwork that no longer promotes the best interests of the State; and

20 WHEREAS, Over the course of the past two decades a number of
21 nonwater-dependent commercially based projects have been located on piers in State
22 and private tidal wetlands, often without the benefit of a license or permit and the
23 environmental expertise involved in the application and review process; and

24 WHEREAS, Given the significant evolution of modern technology within the
25 past few years and the rise of national energy needs, the installation of small-scale
26 renewable energy systems on piers is now feasible and productive, and the time has
27 come to move toward accommodation of the increasing demand for private use of solar,
28 geothermal, and wind-powered sources along the water's edge; and

29 WHEREAS, Rather than respond to these growing trends on a piecemeal basis,
30 it is the shared intent of the General Assembly, the Department of the Environment,
31 and the Critical Area Commission that the evaluation of nonwater-dependent projects
32 be modernized and administered more consistently and comprehensively than is
33 possible under current law; and

34 WHEREAS, This preservation goal is best accomplished by a balance of
35 science-based criteria with the application of local land use discretion, all the while
36 providing for due consideration of the State's goals regarding economic development
37 and public access to our water resources; and

1 WHEREAS, It is the purpose of this legislation to establish two categories of
2 nonwater-dependent projects, the first related to commercial use and the second
3 focused on small-scale renewable energy systems, both of which are designed to
4 prevent and minimize environmental harm along the waterfront; and

5 WHEREAS, This legislation also establishes reasonable and appropriate
6 compensation rates applicable to commercial operations that use State wetlands for
7 private benefit; now, therefore,

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

10 **Article – Environment**

11 16–101.

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

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

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

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

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

19 (f) (1) “Filling” means:

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

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

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

26 (3) “Filling” does not include:

27 (i) Drainage of agricultural land;

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

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

3 (g) “Landward boundary of wetlands” means the common boundary between
4 wetlands, as defined in this section, and lands not included within the definitions of
5 wetlands appearing in this section.

6 (h) “Licensed marine contractor” has the meaning stated in Title 17, Subtitle
7 3 of this article.

8 (I) (1) **“NONWATER-DEPENDENT PROJECT” MEANS A TEMPORARY**
9 **OR PERMANENT STRUCTURE THAT, BY REASON OF ITS INTRINSIC NATURE, USE,**
10 **OR OPERATION, DOES NOT REQUIRE LOCATION IN, ON, OR OVER STATE OR**
11 **PRIVATE TIDAL WETLANDS.**

12 (2) **“NONWATER-DEPENDENT PROJECT” INCLUDES:**

13 (I) **A DWELLING UNIT ON A PIER;**

14 (II) **A RESTAURANT, A SHOP, AN OFFICE, OR ANY OTHER**
15 **COMMERCIAL BUILDING OR USE ON A PIER;**

16 (III) **A TEMPORARY OR PERMANENT ROOF OR COVERING ON**
17 **A PIER;**

18 (IV) **A PIER USED TO SUPPORT A NONWATER-DEPENDENT**
19 **USE; AND**

20 (V) **A SMALL-SCALE RENEWABLE ENERGY SYSTEM ON A**
21 **PIER, INCLUDING:**

22 1. **A SOLAR ENERGY SYSTEM AND ITS**
23 **PHOTOVOLTAIC CELLS, SOLAR PANELS, OR OTHER NECESSARY EQUIPMENT;**

24 2. **A GEOTHERMAL ENERGY SYSTEM AND ITS**
25 **GEOTHERMAL HEAT EXCHANGER OR OTHER NECESSARY EQUIPMENT; AND**

26 3. **A WIND ENERGY SYSTEM AND ITS WIND TURBINE,**
27 **TOWER, BASE, OR OTHER NECESSARY EQUIPMENT.**

28 [(i)] (J) “Person” means any natural person, partnership, joint-stock
29 company, unincorporated association or society, the federal government, the State, any
30 unit of the State, a political subdivision, or other corporation of any type.

1 **[(j)] (K)** (1) “Pier” means any pier, wharf, dock, walkway, bulkhead,
2 breakwater, piles, or other similar structure.

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

5 **[(k)] (L)** (1) “Private wetlands” means any land not considered “State
6 wetland” bordering on or lying beneath tidal waters, which is subject to regular or
7 periodic tidal action and supports aquatic growth.

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

11 **[(l)] (M)** (1) “Public notice” means the public notice and public
12 informational hearing procedures established in § 5–204(b) through (e) of this article.

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

15 **[(m)] (N)** “Regular or periodic tidal action” means the rise and fall of the sea
16 produced by the attraction of the sun and moon uninfluenced by wind or any other
17 circumstance.

18 **[(n)] (O)** “Secretary” means the Secretary of the Environment.

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

24 16–104.

25 (a) This section does not apply to **[any] A NONWATER–DEPENDENT** project
26 **[involving the construction of a dwelling unit or other non–water dependent structure**
27 **on a pier]** located on State or private wetlands in Prince George’s County.

28 (b) (1) Except as provided in paragraphs (2)**[,]** **AND** (3)**[,]** and (4)**]** of this
29 subsection**[,]** **AND** notwithstanding any other provision of law, the Board of Public
30 Works may not issue a license **[under this title for any] TO AUTHORIZE A**
31 **NONWATER–DEPENDENT** project **[involving the construction of a dwelling unit or**
32 **other non–water dependent structure on a pier]** located on State wetlands.

33 **[(2)]** This section does not prohibit or restrict the Board of Public Works
34 from issuing a license for a project involving the construction of a dwelling unit or

1 other non–water dependent structure on a pier located within the Critical Area that
2 was issued a permit by the Secretary on or before January 1, 1989.

3 (3) The Board of Public Works may issue a license for a project
4 involving the construction of a non–water dependent structure on a pier located on
5 State wetlands if:

6 (i) The project is located in a marina owned by the State, a
7 county, or a municipal corporation;

8 (ii) The project will enhance maritime transportation, the
9 preservation of historic lighthouses, or the construction of historically accurate
10 replicas;

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

13 (iv) The project is located in a priority funding area as
14 designated under Title 5, Subtitle 7B of the State Finance and Procurement Article;
15 and

16 (v) The project is located in an area that has been excluded from
17 a local critical area program adopted or approved by the Critical Area Commission for
18 the Chesapeake and Atlantic Coastal Bays under § 8–1807(c)(1)(i)1 of the Natural
19 Resources Article.

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

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

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

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

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

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

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

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

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

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

23 **(2) THE BOARD OF PUBLIC WORKS MAY ISSUE A LICENSE TO**
24 **AUTHORIZE A NONWATER-DEPENDENT PROJECT LOCATED ON STATE**
25 **WETLANDS IF THE PROJECT:**

26 **(I) 1. INVOLVES A COMMERCIAL ACTIVITY THAT IS**
27 **PERMITTED AS A SECONDARY OR ACCESSORY USE TO A PERMITTED PRIMARY**
28 **COMMERCIAL USE;**

29 **2. IS NOT LOCATED ON A PIER THAT IS ATTACHED TO**
30 **RESIDENTIALLY, INSTITUTIONALLY, OR INDUSTRIALLY USED PROPERTY;**

31 **3. AVOIDS AND MINIMIZES IMPACTS TO STATE**
32 **WETLANDS AND OTHER AQUATIC RESOURCES;**

33 **4. IS LOCATED IN:**

1 **A. AN INTENSELY DEVELOPED AREA AND THE**
2 **PROJECT IS AUTHORIZED UNDER A PROGRAM AMENDMENT TO A LOCAL**
3 **JURISDICTION'S CRITICAL AREA PROGRAM APPROVED ON OR AFTER JULY 1,**
4 **2013, IF THE APPROVED PROGRAM AMENDMENT INCLUDES NECESSARY**
5 **CHANGES TO THE LOCAL JURISDICTION'S ZONING, SUBDIVISION, AND OTHER**
6 **ORDINANCES SO AS TO BE CONSISTENT WITH OR MORE RESTRICTIVE THAN THE**
7 **REQUIREMENTS PROVIDED UNDER THIS PARAGRAPH; OR**

8 **B. AN AREA THAT HAS BEEN EXCLUDED FROM A**
9 **LOCAL CRITICAL AREA PROGRAM IF THE EXCLUSION HAS BEEN ADOPTED OR**
10 **APPROVED BY THE CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND**
11 **ATLANTIC COASTAL BAYS;**

12 **5. IS APPROVED BY THE LOCAL PLANNING AND**
13 **ZONING AUTHORITIES AFTER THE LOCAL JURISDICTION'S PROGRAM**
14 **AMENDMENT UNDER ITEM 4A OF THIS ITEM, IF APPLICABLE, HAS BEEN**
15 **APPROVED;**

16 **6. ALLOWS OR ENHANCES PUBLIC ACCESS TO STATE**
17 **WETLANDS;**

18 **7. DOES NOT EXPAND BEYOND THE LENGTH, WIDTH,**
19 **OR CHANNELWARD ENCROACHMENT OF THE PIER ON WHICH THE PROJECT IS**
20 **CONSTRUCTED;**

21 **8. HAS A HEIGHT OF UP TO 18 FEET UNLESS THE**
22 **PROJECT IS LOCATED AT A MARINA AND THE SECRETARY RECOMMENDS**
23 **ADDITIONAL HEIGHT;**

24 **9. IS UP TO 1,000 SQUARE FEET IN TOTAL AREA;**

25 **10. IS NOT LOCATED IN, ON, OR OVER VEGETATED**
26 **TIDAL WETLANDS, SUBMERGED AQUATIC VEGETATION, A NATURAL OYSTER**
27 **BAR, A PUBLIC SHELLFISH FISHERY AREA, A YATES BAR, OR AN AREA WITH**
28 **RARE, THREATENED, OR ENDANGERED SPECIES OR SPECIES IN NEED OF**
29 **CONSERVATION; AND**

30 **11. DOES NOT ADVERSELY IMPACT A FISH SPAWNING**
31 **OR NURSERY AREA OR AN HISTORIC WATERFOWL STAGING AREA; OR**

32 **(II) 1. IS LOCATED ON A PIER THAT WAS IN EXISTENCE**
33 **ON OR BEFORE DECEMBER 31, 2012;**

1 2. **SATISFIES ALL OF THE REQUIREMENTS UNDER**
2 **ITEM (I)1 THROUGH 8 OF THIS PARAGRAPH; AND**

3 3. **IF APPLICABLE, HAS A TEMPORARY OR**
4 **PERMANENT ROOF OR COVERING THAT IS UP TO 1,000 SQUARE FEET IN TOTAL**
5 **AREA.**

6 **(3) (I) THE BOARD OF PUBLIC WORKS MAY ISSUE A LICENSE**
7 **TO AUTHORIZE A NONWATER-DEPENDENT PROJECT FOR A SMALL-SCALE**
8 **RENEWABLE ENERGY SYSTEM ON A PIER LOCATED ON STATE WETLANDS IF THE**
9 **PROJECT:**

10 1. **INVOLVES THE INSTALLATION OR PLACEMENT OF**
11 **A SMALL-SCALE RENEWABLE ENERGY SYSTEM THAT IS PERMITTED AS A**
12 **SECONDARY OR ACCESSORY USE ON A PIER THAT IS AUTHORIZED UNDER THIS**
13 **TITLE;**

14 2. **AVOIDS AND MINIMIZES IMPACTS TO STATE**
15 **WETLANDS AND OTHER AQUATIC RESOURCES;**

16 3. **IS LOCATED IN:**

17 **A. THE CHESAPEAKE AND ATLANTIC COASTAL BAYS**
18 **CRITICAL AREA AND THE PROJECT IS AUTHORIZED UNDER A PROGRAM**
19 **AMENDMENT TO A LOCAL JURISDICTION'S CRITICAL AREA PROGRAM APPROVED**
20 **ON OR AFTER JULY 1, 2013, IF THE APPROVED PROGRAM AMENDMENT**
21 **INCLUDES NECESSARY CHANGES TO THE LOCAL JURISDICTION'S ZONING,**
22 **SUBDIVISION, AND OTHER ORDINANCES SO AS TO BE CONSISTENT WITH OR**
23 **MORE RESTRICTIVE THAN THE REQUIREMENTS PROVIDED UNDER THIS**
24 **PARAGRAPH; OR**

25 **B. AN AREA THAT HAS BEEN EXCLUDED FROM A**
26 **LOCAL CRITICAL AREA PROGRAM IF THE EXCLUSION HAS BEEN ADOPTED OR**
27 **APPROVED BY THE CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND**
28 **ATLANTIC COASTAL BAYS;**

29 4. **IS APPROVED BY THE LOCAL PLANNING AND**
30 **ZONING AUTHORITIES AFTER THE LOCAL JURISDICTION'S PROGRAM**
31 **AMENDMENT UNDER ITEM 3A OF THIS SUBPARAGRAPH, IF APPLICABLE, HAS**
32 **BEEN APPROVED;**

33 5. **IS NOT LOCATED IN, ON, OR OVER VEGETATED**
34 **TIDAL WETLANDS, SUBMERGED AQUATIC VEGETATION, A NATURAL OYSTER**

1 BAR, A PUBLIC SHELLFISH FISHERY AREA, A YATES BAR, OR AN AREA WITH
2 RARE, THREATENED, OR ENDANGERED SPECIES OR SPECIES IN NEED OF
3 CONSERVATION; AND

4 6. DOES NOT ADVERSELY IMPACT A FISH SPAWNING
5 OR NURSERY AREA OR AN HISTORIC WATERFOWL STAGING AREA.

6 (II) A LICENSE ISSUED UNDER SUBPARAGRAPH (I) OF THIS
7 PARAGRAPH MAY INCLUDE THE INSTALLATION OR PLACEMENT OF:

8 1. A SOLAR ENERGY SYSTEM ATTACHED TO A PIER IF
9 THE DEVICE OR EQUIPMENT ASSOCIATED WITH THAT SYSTEM DOES NOT
10 EXTEND MORE THAN:

11 A. 4 FEET ABOVE OR 18 INCHES BELOW THE DECK OF
12 THE PIER; OR

13 B. 1 FOOT BEYOND THE LENGTH OR WIDTH OF THE
14 PIER;

15 2. A SOLAR ENERGY SYSTEM ATTACHED TO A PILING
16 IF THERE IS ONLY ONE SOLAR PANEL PER BOAT SLIP;

17 3. A SOLAR ENERGY SYSTEM ATTACHED TO A
18 BOATHOUSE ROOF IF THE DEVICE OR EQUIPMENT ASSOCIATED WITH THAT
19 SYSTEM DOES NOT EXTEND BEYOND THE LENGTH, WIDTH, OR HEIGHT OF THE
20 BOATHOUSE ROOF;

21 4. A CLOSED-LOOP GEOTHERMAL HEAT EXCHANGER
22 UNDER A PIER IF THE GEOTHERMAL HEAT EXCHANGER OR ANY ASSOCIATED
23 DEVICES OR EQUIPMENT DO NOT:

24 A. EXTEND BEYOND THE LENGTH, WIDTH, OR
25 CHANNELWARD ENCROACHMENT OF THE PIER;

26 B. DELETERIOUSLY ALTER LONG SHORE DRIFT; OR

27 C. CAUSE SIGNIFICANT INDIVIDUAL OR CUMULATIVE
28 THERMAL IMPACTS TO AQUATIC RESOURCES; OR

29 5. A WIND ENERGY SYSTEM ATTACHED TO A PIER IF
30 THERE IS ONLY ONE WIND ENERGY SYSTEM PER PIER FOR WHICH:

1 **A. THE HEIGHT FROM THE DECK OF THE PIER TO**
2 **THE BLADE EXTENDED AT ITS HIGHEST POINT IS UP TO 12 FEET;**

3 **B. THE ROTOR DIAMETER OF THE WIND TURBINE IS**
4 **UP TO 4 FEET; AND**

5 **C. THE SETBACKS OF THE WIND ENERGY SYSTEM**
6 **FROM THE NEAREST PROPERTY LINE AND FROM THE CHANNELWARD EDGE OF**
7 **THE PIER TO WHICH THAT SYSTEM IS ATTACHED ARE AT LEAST 1.5 TIMES THE**
8 **TOTAL HEIGHT OF THE SYSTEM FROM ITS BASE TO THE BLADE EXTENDED AT ITS**
9 **HIGHEST POINT.**

10 (c) (1) Except as provided in [paragraphs (2) and (3)] **PARAGRAPH (2)** of
11 this subsection[,] **AND** notwithstanding any other provision of law, the Secretary may
12 not issue a permit [under this title for any] **TO AUTHORIZE A**
13 **NONWATER-DEPENDENT** project [involving the construction of a dwelling unit or
14 other non-water dependent structure on a pier] located on private wetlands.

15 [(2) The Secretary may issue a permit for a project involving the
16 construction of a non-water dependent structure on a pier located on private wetlands
17 if:

18 (i) The project is located in a marina owned by the State, a
19 county, or a municipal corporation;

20 (ii) The project will enhance maritime transportation, the
21 preservation of historic lighthouses, or the construction of historically accurate
22 replicas;

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

25 (iv) The project is located in a priority funding area as
26 designated under Title 5, Subtitle 7B of the State Finance and Procurement Article;
27 and

28 (v) The project is located in an area that has been excluded from
29 a local critical area program adopted or approved by the Critical Area Commission for
30 the Chesapeake and Atlantic Coastal Bays under § 8-1807(c)(1)(i)1 of the Natural
31 Resources Article.

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

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

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

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

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

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

22 **(2) EXCEPT FOR THE PUBLIC ACCESS REQUIREMENT UNDER**
23 **SUBSECTION (B)(2)(I)6 OF THIS SECTION, THE SECRETARY MAY ISSUE A PERMIT**
24 **TO AUTHORIZE A NONWATER-DEPENDENT PROJECT LOCATED ON PRIVATE**
25 **WETLANDS IF THE PROJECT SATISFIES ALL OF THE REQUIREMENTS UNDER**
26 **SUBSECTION (B)(2) OR (3) OF THIS SECTION.**

27 16-205.

28 (a) The Board may require as a condition to issuance of a wetlands license
29 that compensation be made to the State, of a kind and in an amount deemed
30 appropriate by the Board.

31 (b) (1) The Board shall establish a compensation rate for cables, pipelines,
32 or similar structures in accordance with this subsection.

33 (2) The minimum compensation rate:

34 (i) Is \$2.50 per linear foot per year for cables, pipelines, or
35 similar structures;

1 (ii) Applies to each individual cable, pipeline, or similar
2 structure; and

3 (iii) Applies to all new and existing authorizations beginning
4 July 2, 2012.

5 (3) The Board may:

6 (i) Increase the compensation rate as considered appropriate;
7 and

8 (ii) Adjust the compensation rate to reflect changes in the
9 Consumer Price Index as published by the Bureau of Labor Statistics of the U.S.
10 Department of Labor or by an appropriate method selected by the Board.

11 **(C) (1) THE BOARD SHALL ESTABLISH AN ANNUAL COMPENSATION**
12 **RATE FOR NONWATER-DEPENDENT PROJECTS AUTHORIZED UNDER §**
13 **16-104(B)(2) OF THIS TITLE.**

14 **(2) THE BOARD:**

15 **(I) 1. SHALL ASSESS A MINIMUM ANNUAL**
16 **COMPENSATION RATE FOR A NONWATER-DEPENDENT PROJECT THAT IS:**

17 **A. BASED ON THE MOST RECENT DATA PROVIDED BY**
18 **THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION IN THE**
19 **ASSESSMENT RECORD FOR THE REAL PROPERTY TO WHICH THE**
20 **NONWATER-DEPENDENT PROJECT IS ATTACHED; AND**

21 **B. COMPUTED BY MULTIPLYING THE TOTAL SQUARE**
22 **FOOTAGE OF THE NONWATER-DEPENDENT PROJECT BY A FRACTION, THE**
23 **DENOMINATOR OF WHICH IS THE TOTAL SQUARE FOOTAGE OF THE LAND AREA**
24 **OF THE REAL PROPERTY TO WHICH THE NONWATER-DEPENDENT PROJECT IS**
25 **ATTACHED, AND THE NUMERATOR OF WHICH IS THE ASSESSED LAND VALUE OF**
26 **THE REAL PROPERTY TO WHICH THE NONWATER-DEPENDENT PROJECT IS**
27 **ATTACHED; AND**

28 **2. MAY PERIODICALLY RECALCULATE THE MINIMUM**
29 **ANNUAL COMPENSATION RATE TO REFLECT ANY CHANGE TO THE DATA**
30 **PROVIDED BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION**
31 **UNDER ITEM 1 OF THIS ITEM; OR**

1 **(II) SHALL ASSESS AN ANNUAL COMPENSATION RATE FOR A**
2 **NONWATER-DEPENDENT PROJECT THAT IS MORE THAN THE MINIMUM RATE**
3 **CALCULATED UNDER ITEM (I)1 OF THIS PARAGRAPH.**

4 **[(c)] (D)** Monetary compensation received by the State in conjunction with a
5 wetlands license may not be applied to the State Annuity Bond Fund Account.

6 **[(d)] (E)** (1) There is created a special fund, known as the Tidal
7 Wetlands Compensation Fund.

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

10 (i) Any monetary payment by a licensee in lieu of creating,
11 restoring, or enhancing tidal wetlands that is required by the Department or the
12 Board as a condition of a permit or license;

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

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

16 **[(e)] (F)** Funds in the Tidal Wetlands Compensation Fund may be
17 appropriated only for the creation, restoration, or enhancement of tidal wetlands,
18 including:

19 (1) Acquisition of land or easements;

20 (2) Maintenance of mitigation sites;

21 (3) Purchase of credits in mitigation banks;

22 (4) Management of invasive or nuisance species identified by the
23 Department;

24 (5) Cost sharing assistance to landowners in the management and
25 control of phragmites under Title 8, Subtitle 21 of the Natural Resources Article; and

26 (6) Contractual services necessary to accomplish the intent of this
27 subsection.

28 **[(f)] (G)** Funds credited and any interest accrued to the Fund:

29 (1) Shall remain available until expended; and

1 **(II) “PIER” DOES NOT INCLUDE ANY STRUCTURE ON**
2 **PILINGS OR STILTS THAT WAS ORIGINALLY CONSTRUCTED BEYOND THE**
3 **LANDWARD BOUNDARIES OF STATE OR PRIVATE WETLANDS.**

4 **[(a)] (B)** This section does not apply to [any] **A NONWATER-DEPENDENT**
5 project [involving the construction of a dwelling unit or other non-water dependent
6 structure on a pier] located on State or private wetlands within the Critical Area in
7 Prince George’s County.

8 **(b) (1)** In this section, “pier” means any pier, wharf, dock, walkway,
9 bulkhead, breakwater, piles, or other similar structure.

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

12 **(c)** This section applies notwithstanding:

13 **(1)** Any other provision of this subtitle; and

14 **(2)** Any criteria or regulation adopted by the Commission under this
15 subtitle.

16 **(d)** This section preempts any other requirement concerning piers in the
17 Critical Area.

18 **(e)] (C)** **(1)** Except as provided in paragraphs (2)[,] **AND (3)[, and (4)]** of
19 this subsection **AND NOTWITHSTANDING ANY OTHER PROVISION OF LAW**, a local
20 jurisdiction may not issue a building permit [for any] **OR ANY OTHER APPROVAL**
21 **UNDER THIS SUBTITLE TO AUTHORIZE A NONWATER-DEPENDENT** project
22 [involving the construction of a dwelling unit or other non-water dependent structure
23 on a pier] located on State or private wetlands within the Critical Area.

24 **[(2)** This section does not prohibit or restrict a local jurisdiction from
25 issuing a building permit for a project involving the construction of a dwelling unit or
26 other non-water dependent structure on a pier located on State or private wetlands
27 within the Critical Area that was issued a permit by the Secretary on or before
28 January 1, 1989.

29 **(3)** A local jurisdiction may issue a building permit for a project
30 involving the construction of a dwelling unit or other non-water dependent structure
31 on a pier located on State or private wetlands within the Critical Area if:

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

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

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

13 (iv) The project is located in an intensely developed area, as
14 designated in programs adopted or approved by the Critical Area Commission under
15 this subtitle.

16 (4) A local jurisdiction may issue a building permit for the repair of an
17 existing dwelling unit or other non-water dependent structure on a pier located on
18 State or private wetlands within the Critical Area.

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

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

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

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

34 **(2) A LOCAL JURISDICTION MAY ISSUE A BUILDING PERMIT OR**
35 **ANY OTHER APPROVAL UNDER THIS SUBTITLE TO AUTHORIZE A**
36 **NONWATER-DEPENDENT PROJECT LOCATED ON STATE OR PRIVATE WETLANDS**
37 **WITHIN THE CRITICAL AREA IF THE PROJECT:**

1 **(i) 1. INVOLVES A COMMERCIAL ACTIVITY THAT IS**
2 **PERMITTED AS A SECONDARY OR ACCESSORY USE TO A PERMITTED PRIMARY**
3 **COMMERCIAL USE;**

4 **2. IS NOT LOCATED ON A PIER THAT IS ATTACHED TO**
5 **RESIDENTIALLY, INSTITUTIONALLY, OR INDUSTRIALLY USED PROPERTY;**

6 **3. IS LOCATED IN:**

7 **A. AN INTENSELY DEVELOPED AREA AND THE**
8 **PROJECT IS AUTHORIZED UNDER A PROGRAM AMENDMENT TO A LOCAL**
9 **JURISDICTION'S CRITICAL AREA PROGRAM APPROVED ON OR AFTER JULY 1,**
10 **2013, IF THE APPROVED PROGRAM AMENDMENT INCLUDES NECESSARY**
11 **CHANGES TO THE LOCAL JURISDICTION'S ZONING, SUBDIVISION, AND OTHER**
12 **ORDINANCES SO AS TO BE CONSISTENT WITH OR MORE RESTRICTIVE THAN THE**
13 **REQUIREMENTS PROVIDED UNDER THIS PARAGRAPH; OR**

14 **B. AN AREA THAT HAS BEEN EXCLUDED FROM A**
15 **LOCAL CRITICAL AREA PROGRAM IF THE EXCLUSION HAS BEEN ADOPTED OR**
16 **APPROVED BY THE CRITICAL AREA COMMISSION;**

17 **4. IS APPROVED BY THE LOCAL PLANNING AND**
18 **ZONING AUTHORITIES AFTER THE LOCAL JURISDICTION'S PROGRAM**
19 **AMENDMENT UNDER ITEM 3A OF THIS ITEM, IF APPLICABLE, HAS BEEN**
20 **APPROVED;**

21 **5. ALLOWS OR ENHANCES PUBLIC ACCESS TO STATE**
22 **WETLANDS, IF APPLICABLE;**

23 **6. DOES NOT EXPAND BEYOND THE LENGTH, WIDTH,**
24 **OR CHANNELWARD ENCROACHMENT OF THE PIER ON WHICH THE PROJECT IS**
25 **CONSTRUCTED;**

26 **7. HAS A HEIGHT OF UP TO 18 FEET UNLESS THE**
27 **PROJECT IS LOCATED AT A MARINA; AND**

28 **8. IS UP TO 1,000 SQUARE FEET IN TOTAL AREA; OR**

29 **(ii) 1. IS LOCATED ON A PIER THAT WAS IN EXISTENCE**
30 **ON OR BEFORE DECEMBER 31, 2012;**

31 **2. SATISFIES ALL OF THE REQUIREMENTS UNDER**
32 **ITEM (i)1 THROUGH 7 OF THIS PARAGRAPH; AND**

1 **3. IF APPLICABLE, HAS A TEMPORARY OR**
2 **PERMANENT ROOF OR COVERING THAT IS UP TO 1,000 SQUARE FEET IN TOTAL**
3 **AREA.**

4 **(3) (I) A LOCAL JURISDICTION MAY ISSUE A BUILDING PERMIT**
5 **OR OTHER APPROVAL UNDER THIS SUBTITLE TO AUTHORIZE A**
6 **NONWATER-DEPENDENT PROJECT FOR A SMALL-SCALE RENEWABLE ENERGY**
7 **SYSTEM ON A PIER LOCATED ON STATE OR PRIVATE WETLANDS WITHIN THE**
8 **CRITICAL AREA IF THE PROJECT:**

9 **1. INVOLVES THE INSTALLATION OR PLACEMENT OF**
10 **A SMALL-SCALE RENEWABLE ENERGY SYSTEM THAT IS PERMITTED AS A**
11 **SECONDARY OR ACCESSORY USE ON A PIER THAT IS AUTHORIZED UNDER TITLE**
12 **16 OF THE ENVIRONMENT ARTICLE;**

13 **2. IS LOCATED IN:**

14 **A. THE CRITICAL AREA AND THE PROJECT IS**
15 **AUTHORIZED UNDER A PROGRAM AMENDMENT TO A LOCAL JURISDICTION'S**
16 **CRITICAL AREA PROGRAM APPROVED ON OR AFTER JULY 1, 2013, IF THE**
17 **APPROVED PROGRAM AMENDMENT INCLUDES NECESSARY CHANGES TO THE**
18 **LOCAL JURISDICTION'S ZONING, SUBDIVISION, AND OTHER ORDINANCES SO AS**
19 **TO BE CONSISTENT WITH OR MORE RESTRICTIVE THAN THE REQUIREMENTS**
20 **PROVIDED UNDER THIS PARAGRAPH; OR**

21 **B. AN AREA THAT HAS BEEN EXCLUDED FROM A**
22 **LOCAL CRITICAL AREA PROGRAM IF THE EXCLUSION HAS BEEN ADOPTED OR**
23 **APPROVED BY THE CRITICAL AREA COMMISSION; AND**

24 **3. IS APPROVED BY THE LOCAL PLANNING AND**
25 **ZONING AUTHORITIES AFTER THE LOCAL JURISDICTION'S PROGRAM**
26 **AMENDMENT UNDER ITEM 2A OF THIS SUBPARAGRAPH, IF APPLICABLE, HAS**
27 **BEEN APPROVED.**

28 **(II) A BUILDING PERMIT OR OTHER APPROVAL ISSUED**
29 **UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY INCLUDE THE**
30 **INSTALLATION OR PLACEMENT OF:**

31 **1. A SOLAR ENERGY SYSTEM ATTACHED TO A PIER IF**
32 **THE DEVICE OR EQUIPMENT ASSOCIATED WITH THAT SYSTEM DOES NOT**
33 **EXTEND MORE THAN:**

1 A. 4 FEET ABOVE OR 18 INCHES BELOW THE DECK OF
2 THE PIER; OR

3 B. 1 FOOT BEYOND THE LENGTH OR WIDTH OF THE
4 PIER;

5 2. A SOLAR ENERGY SYSTEM ATTACHED TO A PILING
6 IF THERE IS ONLY ONE SOLAR PANEL PER BOAT SLIP;

7 3. A SOLAR ENERGY SYSTEM ATTACHED TO A
8 BOATHOUSE ROOF IF THE DEVICE OR EQUIPMENT ASSOCIATED WITH THAT
9 SYSTEM DOES NOT EXTEND BEYOND THE LENGTH, WIDTH, OR HEIGHT OF THE
10 BOATHOUSE ROOF;

11 4. A CLOSED-LOOP GEOTHERMAL HEAT EXCHANGER
12 UNDER A PIER IF THE GEOTHERMAL HEAT EXCHANGER OR ANY ASSOCIATED
13 DEVICES OR EQUIPMENT DO NOT:

14 A. EXTEND BEYOND THE LENGTH, WIDTH, OR
15 CHANNELWARD ENCROACHMENT OF THE PIER;

16 B. DELETERIOUSLY ALTER LONG SHORE DRIFT; OR

17 C. CAUSE SIGNIFICANT INDIVIDUAL OR CUMULATIVE
18 THERMAL IMPACTS TO AQUATIC RESOURCES; OR

19 5. A WIND ENERGY SYSTEM ATTACHED TO A PIER IF
20 THERE IS ONLY ONE WIND ENERGY SYSTEM PER PIER FOR WHICH:

21 A. THE HEIGHT FROM THE DECK OF THE PIER TO
22 THE BLADE EXTENDED AT ITS HIGHEST POINT IS UP TO 12 FEET;

23 B. THE ROTOR DIAMETER OF THE WIND TURBINE IS
24 UP TO 4 FEET; AND

25 C. THE SETBACKS OF THE WIND ENERGY SYSTEM
26 FROM THE NEAREST PROPERTY LINE AND FROM THE CHANNELWARD EDGE OF
27 THE PIER TO WHICH THAT SYSTEM IS ATTACHED ARE AT LEAST 1.5 TIMES THE
28 TOTAL HEIGHT OF THE SYSTEM FROM ITS BASE TO THE BLADE EXTENDED AT ITS
29 HIGHEST POINT.

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

1 (1) Section 1 of this Act may not be construed to amend the terms or
2 conditions of a State tidal wetlands license or private wetlands permit that is in effect
3 as of July 1, 2013;

4 (2) Except for the provisions under paragraph (3) of this section, §
5 16–205(c) of the Environment Article, as enacted under Section 1 of this Act, may not
6 be construed to require the payment of compensation for a State tidal wetlands license
7 that expires on or before July 1, 2013, or is in effect on or before July 1, 2013; and

8 (3) If the payment of a particular amount of compensation operated as
9 a specific term or condition for the issuance of a State tidal wetlands license in effect
10 on or before July 1, 2013, and the licensee can demonstrate to the Board of Public
11 Works that payment of that compensation has been fully satisfied, the Board of Public
12 Works may require the payment of additional compensation under the provisions of
13 this Act only if the licensee applies for a new State tidal wetlands license for a project
14 that would materially alter the nature or expand the magnitude of an already existing,
15 licensed nonwater–dependent project.

16 SECTION 3. AND BE IT FURTHER ENACTED, That for a
17 nonwater–dependent project in existence on or before December 31, 2012, for which a
18 State tidal wetlands license has not been issued:

19 (1) A person may apply to the Department of the Environment for an
20 after–the–fact State tidal wetlands license if the application is filed on or before July
21 1, 2014, unless the Department authorizes an extension of time for filing of the
22 application;

23 (2) The Department shall evaluate an application filed under this
24 Section in accordance with:

25 (i) § 16–104(b)(2)(i)1 through 3 and 6 through 8 of the
26 Environment Article, as enacted under Section 1 of this Act;

27 (ii) § 16–104(b)(2)(ii)3 of the Environment Article, as enacted
28 under Section 1 of this Act; and

29 (iii) All other applicable State and local laws in effect on the date
30 that the application is filed;

31 (3) If the Board of Public Works issues an after–the–fact State tidal
32 wetlands license, compensation shall be in accordance with the rate established under
33 § 16–205 of the Environment Article, as enacted under Section 1 of this Act, and any
34 regulations adopted under the authority of this Act; and

35 (4) If a person does not apply for a State tidal wetlands license by July
36 1, 2014, or within an extension of time authorized by the Department, or if the Board
37 of Public Works denies an after–the–fact State tidal wetlands license and that denial

1 is upheld on final appeal, then the person shall remove the unauthorized
2 nonwater-dependent project.

3 SECTION 4. AND BE IT FURTHER ENACTED, That for a
4 nonwater-dependent project in existence on or before December 31, 2012, for which a
5 private tidal wetlands permit has not been issued:

6 (1) A person may apply to the Department of the Environment for an
7 after-the-fact private tidal wetlands permit if the application is filed on or before July
8 1, 2014, unless the Department authorizes an extension of time for filing of the
9 application;

10 (2) The Department shall evaluate an application filed under this
11 section in accordance with:

12 (i) § 16-104(b)(2)(i)1 through 3, 7, and 8 of the Environment
13 Article, as enacted under Section 1 of this Act;

14 (ii) § 16-104(b)(2)(ii)3 of the Environment Article, as enacted
15 under Section 1 of this Act; and

16 (iii) All other applicable State and local laws in effect on the date
17 that the application is filed; and

18 (3) If a person does not apply for a private tidal wetlands permit by
19 July 1, 2014, or within an extension of time authorized by the Department, or if the
20 Department denies an after-the-fact private tidal wetlands permit and that denial is
21 upheld on final appeal, then the person shall remove the unauthorized
22 nonwater-dependent project.

23 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 July 1, 2013.