

# SENATE BILL 524

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3lr2480  
CF HB 800

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By: **Senator Colburn**

Introduced and read first time: January 31, 2013

Assigned to: Education, Health, and Environmental Affairs

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 15, 2013

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

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 authorizing the Board of Public Works to consider certain factors when  
12 determining a certain percentage for the calculation of the annual compensation  
13 rate for certain nonwater–dependent projects; providing for the application and  
14 construction of this Act; authorizing the Board of Public Works to require the  
15 payment of certain compensation under a certain circumstance; authorizing a  
16 person to apply to the Department of the Environment for a certain license or a  
17 certain permit for certain nonwater–dependent projects that were in existence  
18 and did not have an application pending before the Board of Public Works or the  
19 Department on or before a certain date if the application is filed on or before a  
20 certain date under certain circumstances; requiring the Department to evaluate  
21 certain applications in accordance with certain requirements; requiring a  
22 person to remove unauthorized nonwater–dependent projects under certain  
23 circumstances; establishing the intent of the General Assembly; defining certain  
24 terms; and generally relating to nonwater–dependent projects on State or  
25 private wetlands.

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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 BY repealing and reenacting, with amendments,  
2 Article – Environment  
3 Section 16–101, 16–104, and 16–205  
4 Annotated Code of Maryland  
5 (2007 Replacement Volume and 2012 Supplement)

6 BY repealing and reenacting, with amendments,  
7 Article – Natural Resources  
8 Section 8–1808.4  
9 Annotated Code of Maryland  
10 (2012 Replacement Volume)

11 Preamble

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

16 WHEREAS, It has been long recognized under law that the location of  
17 nonwater–dependent projects, such as restaurants, shops, offices, and other  
18 commercial uses, in, on, or over State or private ~~tidal~~ wetlands does not generally  
19 serve the preservation of Maryland’s prized shoreline resources, including the Critical  
20 Area Buffer; and

21 WHEREAS, It has also been long recognized that the Board of Public Works  
22 and the Department of the Environment have the authority to license or permit small  
23 nonwater–dependent projects where there is a reasonable basis to anticipate little or  
24 no environmental harm; and

25 WHEREAS, Many of the current requirements regarding the location of  
26 nonwater–dependent projects have become outdated, leaving an ineffective statutory  
27 patchwork that no longer promotes the best interests of the State; and

28 WHEREAS, Over the course of the past two decades a number of  
29 nonwater–dependent commercially based projects have been located on piers in State  
30 and private ~~tidal~~ wetlands, often without the benefit of a license or permit and the  
31 environmental expertise involved in the application and review process; and

32 WHEREAS, Given the significant evolution of modern technology within the  
33 past few years and the rise of national energy needs, the installation of small–scale  
34 renewable energy systems on piers is now feasible and productive, and the time has  
35 come to move toward accommodation of the increasing demand for private use of solar,  
36 geothermal, and wind–powered sources along the water’s edge; and

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

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

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

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

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

19 **Article – Environment**

20 16–101.

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

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

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

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

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

28 (f) (1) “Filling” means:

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

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

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

3           (3)   “Filling” does not include:

4                   (i)    Drainage of agricultural land;

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

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

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

12           (h)   “Licensed marine contractor” has the meaning stated in Title 17, Subtitle  
13 3 of this article.

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

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

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

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

22                           **(III)   A TEMPORARY OR PERMANENT ROOF OR COVERING ON**  
23 **A PIER;**

24                           **(IV)   A PIER USED TO SUPPORT A NONWATER-DEPENDENT**  
25 **USE; AND**

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

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

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

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

5                   **(3) “NONWATER-DEPENDENT PROJECT” DOES NOT INCLUDE:**

6                   **(I) A FUEL PUMP OR OTHER FUEL-DISPENSING**  
7 **EQUIPMENT ON A PIER;**

8                   **(II) A SANITARY SEWAGE PUMP OR OTHER WASTEWATER**  
9 **REMOVAL EQUIPMENT ON A PIER; OR**

10                   **(III) AN OFFICE ON A PIER FOR MANAGING MARINA**  
11 **OPERATIONS, INCLUDING MONITORING VESSEL TRAFFIC, REGISTERING**  
12 **VESSELS, PROVIDING DOCKING SERVICES, AND HOUSING ELECTRICAL OR**  
13 **EMERGENCY EQUIPMENT RELATED TO MARINA OPERATIONS.**

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

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

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

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

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

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

29                   (2) “Public notice” does not mean notice as provided for in § 16-303 of  
30 this title.

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

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

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

10    16–104.

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

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

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

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

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

28                    (ii)    The project will enhance maritime transportation, the  
29 preservation of historic lighthouses, or the construction of historically accurate  
30 replicas;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **3. AVOIDS AND MINIMIZES IMPACTS TO STATE OR**  
17 **PRIVATE WETLANDS AND OTHER AQUATIC RESOURCES;**

18 **4. IS LOCATED IN:**

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

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

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

34 **6. ALLOWS OR ENHANCES PUBLIC ACCESS TO STATE**  
35 **WETLANDS;**



1                   7.     **DOES NOT EXPAND BEYOND THE LENGTH, WIDTH,  
2 OR CHANNELWARD ENCROACHMENT OF THE PIER ON WHICH THE PROJECT IS  
3 CONSTRUCTED;**

4                   8.     **HAS A HEIGHT OF UP TO 18 FEET UNLESS THE  
5 PROJECT IS LOCATED AT A MARINA AND THE SECRETARY RECOMMENDS  
6 ADDITIONAL HEIGHT;**

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

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

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

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

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

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

22                   (3)  (i)   **THE BOARD OF PUBLIC WORKS MAY ISSUE A LICENSE  
23 TO AUTHORIZE A NONWATER-DEPENDENT PROJECT FOR A SMALL-SCALE  
24 RENEWABLE ENERGY SYSTEM ON A PIER LOCATED ON STATE WETLANDS IF THE  
25 PROJECT:**

26                   1.    **INVOLVES THE INSTALLATION OR PLACEMENT OF  
27 A SMALL-SCALE RENEWABLE ENERGY SYSTEM THAT IS PERMITTED AS A  
28 SECONDARY OR ACCESSORY USE ON A PIER THAT IS AUTHORIZED UNDER THIS  
29 TITLE;**

30                   2.    **AVOIDS AND MINIMIZES IMPACTS TO STATE OR  
31 PRIVATE WETLANDS AND OTHER AQUATIC RESOURCES;**

32                   3.    **IS LOCATED IN:**

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

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

13           **4. IS APPROVED BY THE LOCAL PLANNING AND**  
14 **ZONING AUTHORITIES AFTER THE LOCAL JURISDICTION'S PROGRAM**  
15 **AMENDMENT UNDER ITEM 3A OF THIS SUBPARAGRAPH, IF APPLICABLE, HAS**  
16 **BEEN APPROVED;**

17           **5. IS NOT LOCATED IN, ON, OR OVER VEGETATED**  
18 **TIDAL WETLANDS, SUBMERGED AQUATIC VEGETATION, A NATURAL OYSTER**  
19 **BAR, A PUBLIC SHELLFISH FISHERY AREA, A YATES BAR, OR AN AREA WITH**  
20 **RARE, THREATENED, OR ENDANGERED SPECIES OR SPECIES IN NEED OF**  
21 **CONSERVATION; AND**

22           **6. DOES NOT ADVERSELY IMPACT A FISH SPAWNING**  
23 **OR NURSERY AREA OR AN HISTORIC WATERFOWL STAGING AREA.**

24           **(II) A LICENSE ISSUED UNDER SUBPARAGRAPH (I) OF THIS**  
25 **PARAGRAPH MAY INCLUDE THE INSTALLATION OR PLACEMENT OF:**

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

29           **A. 4 FEET ABOVE OR 18 INCHES BELOW THE DECK OF**  
30 **THE PIER; OR**

31           **B. 1 FOOT BEYOND THE LENGTH OR WIDTH OF THE**  
32 **PIER;**

33           **2. A SOLAR ENERGY SYSTEM ATTACHED TO A PILING**  
34 **IF THERE IS ONLY ONE SOLAR PANEL PER BOAT SLIP;**

1                   **3. A SOLAR ENERGY SYSTEM ATTACHED TO A**  
2 **BOATHOUSE ROOF IF THE DEVICE OR EQUIPMENT ASSOCIATED WITH THAT**  
3 **SYSTEM DOES NOT EXTEND BEYOND THE LENGTH, WIDTH, OR HEIGHT OF THE**  
4 **BOATHOUSE ROOF;**

5                   **4. A CLOSED-LOOP GEOTHERMAL HEAT EXCHANGER**  
6 **UNDER A PIER IF THE GEOTHERMAL HEAT EXCHANGER OR ANY ASSOCIATED**  
7 **DEVICES OR EQUIPMENT DO NOT:**

8                   **A. EXTEND BEYOND THE LENGTH, WIDTH, OR**  
9 **CHANNELWARD ENCROACHMENT OF THE PIER;**

10                   **B. DELETERIOUSLY ALTER LONG SHORE DRIFT; OR**

11                   **C. CAUSE SIGNIFICANT INDIVIDUAL OR CUMULATIVE**  
12 **THERMAL IMPACTS TO AQUATIC RESOURCES; OR**

13                   **5. A WIND ENERGY SYSTEM ATTACHED TO A PIER IF**  
14 **THERE IS ONLY ONE WIND ENERGY SYSTEM PER PIER FOR WHICH:**

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

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

19                   **C. THE SETBACKS OF THE WIND ENERGY SYSTEM**  
20 **FROM THE NEAREST PROPERTY LINE AND FROM THE CHANNELWARD EDGE OF**  
21 **THE PIER TO WHICH THAT SYSTEM IS ATTACHED ARE AT LEAST 1.5 TIMES THE**  
22 **TOTAL HEIGHT OF THE SYSTEM FROM ITS BASE TO THE BLADE EXTENDED AT ITS**  
23 **HIGHEST POINT.**

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

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

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

1                   (ii) The project will enhance maritime transportation, the  
2 preservation of historic lighthouses, or the construction of historically accurate  
3 replicas;

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

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

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

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

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

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

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

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

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

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

6 16-205.

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

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

12                   (2) The minimum compensation rate:

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

15                           (ii) Applies to each individual cable, pipeline, or similar  
 16 structure; and

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

19                   (3) The Board may:

20                           (i) Increase the compensation rate as considered appropriate;  
 21 and

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

25           **(C) (1) THE BOARD SHALL ESTABLISH AN ANNUAL COMPENSATION**  
 26 **RATE FOR NONWATER-DEPENDENT PROJECTS AUTHORIZED UNDER §**  
 27 **16-104(B)(2) OF THIS TITLE.**

28                   **(2) THE BOARD:**

29                           ~~(1) 1. SHALL~~ SHALL ~~ASSESS A MINIMUM AN ANNUAL~~  
 30 **COMPENSATION RATE FOR A NONWATER-DEPENDENT PROJECT THAT IS:**

31                           ~~A~~ (1) **BASED ON THE MOST RECENT DATA**  
 32 **PROVIDED BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION IN**

1 THE ASSESSMENT RECORD FOR THE REAL PROPERTY TO WHICH THE  
2 NONWATER-DEPENDENT PROJECT IS ATTACHED; AND

3 ~~B.~~ (II) COMPUTED BY MULTIPLYING:

4 1. MULTIPLYING THE TOTAL SQUARE FOOTAGE OF  
5 THE NONWATER-DEPENDENT PROJECT BY A FRACTION, THE DENOMINATOR OF  
6 WHICH IS THE TOTAL SQUARE FOOTAGE OF THE LAND AREA OF THE REAL  
7 PROPERTY TO WHICH THE NONWATER-DEPENDENT PROJECT IS ATTACHED,  
8 AND THE NUMERATOR OF WHICH IS THE ASSESSED LAND VALUE OF THE REAL  
9 PROPERTY TO WHICH THE NONWATER-DEPENDENT PROJECT IS ATTACHED;  
10 AND

11 2. MULTIPLYING THE RATE CALCULATED UNDER  
12 ITEM 1 OF THIS ITEM BY A PERCENTAGE CONSIDERED APPROPRIATE BY THE  
13 BOARD NOT TO EXCEED 100%.

14 (3) IN DETERMINING THE APPROPRIATE PERCENTAGE UNDER  
15 PARAGRAPH (2)(II)2 OF THIS SUBSECTION, THE BOARD MAY CONSIDER:

16 (I) THE EXTENT TO WHICH THE NONWATER-DEPENDENT  
17 PROJECT IS USED ON A SEASONAL OR YEAR-ROUND BASIS;

18 (II) THE EXTENT OF THE ECONOMIC IMPACT OF THE  
19 NONWATER-DEPENDENT PROJECT ON THE LOCAL JURISDICTION;

20 (III) THE NATURE AND EXTENT OF THE ENVIRONMENTAL  
21 IMPACT OF THE NONWATER-DEPENDENT PROJECT;

22 (IV) THE EXTENT TO WHICH THE NONWATER-DEPENDENT  
23 PROJECT AND, IF APPLICABLE, ITS ROOF OR COVERING, ARE PERMANENT OR  
24 TEMPORARY;

25 (V) ANY HISTORY OF VIOLATION OF THIS TITLE BY THE  
26 LICENSEE;

27 (VI) ANY REAL PROPERTY LEASE RATES FOR THE AREA FOR  
28 A COMMERCIAL ACTIVITY SIMILAR TO THE LICENSEE'S OR ANY REAL PROPERTY  
29 APPRAISALS OBTAINED BY THE LICENSEE; AND

30 (VII) ANY OTHER FACTOR THAT THE BOARD CONSIDERS  
31 RELEVANT.

1           **(4) ~~MAY~~ THE BOARD MAY PERIODICALLY RECALCULATE THE**  
 2 **~~MINIMUM~~ ANNUAL COMPENSATION RATE TO REFLECT ~~ANY~~;**

3                   **(I) ANY CHANGE TO THE DATA PROVIDED BY THE STATE**  
 4 **DEPARTMENT OF ASSESSMENTS AND TAXATION UNDER ~~ITEM 1 OF THIS ITEM;~~**  
 5 **~~OR PARAGRAPH (2)(I) OF THIS SUBSECTION; OR~~**

6                   **(II) A CHANGE IN ANY FACTOR THE BOARD CONSIDERS**  
 7 **UNDER PARAGRAPH (3) OF THIS SUBSECTION**

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

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

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

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

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

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

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

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

26                   (1) Acquisition of land or easements;

27                   (2) Maintenance of mitigation sites;

28                   (3) Purchase of credits in mitigation banks;

29                   (4) Management of invasive or nuisance species identified by the  
 30 Department;

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

3 (6) Contractual services necessary to accomplish the intent of this  
4 subsection.

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

6 (1) Shall remain available until expended; and

7 (2) May not revert to the General Fund under any other provision of  
8 law.

9 ~~[(g)]~~ (H) All monetary compensation paid to the State in conjunction with a  
10 wetlands license other than that specified under subsection ~~[(d)(2)]~~ (E)(2) of this  
11 section shall be deposited in the Wetlands and Waterways Program Fund established  
12 under § 5–203.1 of this article.

13 **Article – Natural Resources**

14 8–1808.4.

15 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
16 MEANINGS INDICATED.

17 (2) (I) “NONWATER-DEPENDENT PROJECT” MEANS A  
18 TEMPORARY OR PERMANENT STRUCTURE THAT, BY REASON OF ITS INTRINSIC  
19 NATURE, USE, OR OPERATION, DOES NOT REQUIRE LOCATION IN, ON, OR OVER  
20 STATE OR PRIVATE WETLANDS.

21 (II) “NONWATER-DEPENDENT PROJECT” INCLUDES:

22 ~~(I)~~ 1. A DWELLING UNIT ON A PIER;

23 ~~(II)~~ 2. A RESTAURANT, A SHOP, AN OFFICE, OR ANY  
24 OTHER COMMERCIAL BUILDING OR USE ON A PIER;

25 ~~(III)~~ 3. A TEMPORARY OR PERMANENT ROOF OR  
26 COVERING ON A PIER;

27 ~~(IV)~~ 4. A PIER USED TO SUPPORT A  
28 NONWATER-DEPENDENT USE; AND

29 ~~(V)~~ 5. A SMALL-SCALE RENEWABLE ENERGY SYSTEM ON  
30 A PIER, INCLUDING:



1                   ~~1.~~ A. A SOLAR ENERGY SYSTEM AND ITS  
2 PHOTOVOLTAIC CELLS, SOLAR PANELS, OR OTHER NECESSARY EQUIPMENT;

3                   ~~2.~~ B. A GEOTHERMAL ENERGY SYSTEM AND ITS  
4 GEOTHERMAL HEAT EXCHANGER OR OTHER NECESSARY EQUIPMENT; AND

5                   ~~3.~~ C. A WIND ENERGY SYSTEM AND ITS WIND  
6 TURBINE, TOWER, BASE, OR OTHER NECESSARY EQUIPMENT.

7                   (III) “NONWATER-DEPENDENT PROJECT” DOES NOT  
8 INCLUDE:

9                   1. A FUEL PUMP OR OTHER FUEL-DISPENSING  
10 EQUIPMENT ON A PIER;

11                   2. A SANITARY SEWAGE PUMP OR OTHER  
12 WASTEWATER REMOVAL EQUIPMENT ON A PIER; OR

13                   3. AN OFFICE ON A PIER FOR MANAGING MARINA  
14 OPERATIONS, INCLUDING MONITORING VESSEL TRAFFIC, REGISTERING  
15 VESSELS, PROVIDING DOCKING SERVICES, AND HOUSING ELECTRICAL OR  
16 EMERGENCY EQUIPMENT RELATED TO MARINA OPERATIONS.

17                   (3) (I) “PIER” MEANS ANY PIER, WHARF, DOCK, WALKWAY,  
18 BULKHEAD, BREAKWATER, PILES, OR OTHER SIMILAR STRUCTURE.

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

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

26                   [(b)] (1) In this section, “pier” means any pier, wharf, dock, walkway,  
27 bulkhead, breakwater, piles, or other similar structure.

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

30                   (c) This section applies notwithstanding:

31                   (1) Any other provision of this subtitle; and

1                   (2) Any criteria or regulation adopted by the Commission under this  
2 subtitle.

3                   (d) This section preempts any other requirement concerning piers in the  
4 Critical Area.

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

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

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

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

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

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

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

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

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

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

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

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

19           **(2) A LOCAL JURISDICTION MAY ISSUE A BUILDING PERMIT OR**  
20 **ANY OTHER APPROVAL UNDER THIS SUBTITLE TO AUTHORIZE A**  
21 **NONWATER–DEPENDENT PROJECT LOCATED ON STATE OR PRIVATE WETLANDS**  
22 **WITHIN THE CRITICAL AREA IF THE PROJECT:**

23           **(I) 1. INVOLVES A COMMERCIAL ACTIVITY THAT IS**  
24 **PERMITTED AS A SECONDARY OR ACCESSORY USE TO A PERMITTED PRIMARY**  
25 **COMMERCIAL USE;**

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

28                           **3. IS LOCATED IN:**

29                                   **A. AN INTENSELY DEVELOPED AREA AND THE**  
30 **PROJECT IS AUTHORIZED UNDER A PROGRAM AMENDMENT TO A LOCAL**  
31 **JURISDICTION’S CRITICAL AREA PROGRAM APPROVED ON OR AFTER JULY 1,**  
32 **2013, IF THE APPROVED PROGRAM AMENDMENT INCLUDES NECESSARY**  
33 **CHANGES TO THE LOCAL JURISDICTION’S ZONING, SUBDIVISION, AND OTHER**  
34 **ORDINANCES SO AS TO BE CONSISTENT WITH OR MORE RESTRICTIVE THAN THE**  
35 **REQUIREMENTS PROVIDED UNDER THIS PARAGRAPH; OR**

1                   **B. AN AREA THAT HAS BEEN EXCLUDED FROM A**  
2 **LOCAL CRITICAL AREA PROGRAM IF THE EXCLUSION HAS BEEN ADOPTED OR**  
3 **APPROVED BY THE CRITICAL AREA COMMISSION;**

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

8                   **5. ALLOWS OR ENHANCES PUBLIC ACCESS TO STATE**  
9 **WETLANDS, IF APPLICABLE;**

10                  **6. DOES NOT EXPAND BEYOND THE LENGTH, WIDTH,**  
11 **OR CHANNELWARD ENCROACHMENT OF THE PIER ON WHICH THE PROJECT IS**  
12 **CONSTRUCTED;**

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

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

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

18                   **2. SATISFIES ALL OF THE REQUIREMENTS UNDER**  
19 **ITEM (I)1 THROUGH 7 OF THIS PARAGRAPH; AND**

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

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

28                   **1. INVOLVES THE INSTALLATION OR PLACEMENT OF**  
29 **A SMALL-SCALE RENEWABLE ENERGY SYSTEM THAT IS PERMITTED AS A**  
30 **SECONDARY OR ACCESSORY USE ON A PIER THAT IS AUTHORIZED UNDER TITLE**  
31 **16 OF THE ENVIRONMENT ARTICLE;**

32                   **2. IS LOCATED IN:**

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

11           **3. IS APPROVED BY THE LOCAL PLANNING AND**  
12 **ZONING AUTHORITIES AFTER THE LOCAL JURISDICTION'S PROGRAM**  
13 **AMENDMENT UNDER ITEM 2A OF THIS SUBPARAGRAPH, IF APPLICABLE, HAS**  
14 **BEEN APPROVED.**

15           **(II) A BUILDING PERMIT OR OTHER APPROVAL ISSUED**  
16 **UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY INCLUDE THE**  
17 **INSTALLATION OR PLACEMENT OF:**

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

21           **A. 4 FEET ABOVE OR 18 INCHES BELOW THE DECK OF**  
22 **THE PIER; OR**

23           **B. 1 FOOT BEYOND THE LENGTH OR WIDTH OF THE**  
24 **PIER;**

25           **2. A SOLAR ENERGY SYSTEM ATTACHED TO A PILING**  
26 **IF THERE IS ONLY ONE SOLAR PANEL PER BOAT SLIP;**

27           **3. A SOLAR ENERGY SYSTEM ATTACHED TO A**  
28 **BOATHOUSE ROOF IF THE DEVICE OR EQUIPMENT ASSOCIATED WITH THAT**  
29 **SYSTEM DOES NOT EXTEND BEYOND THE LENGTH, WIDTH, OR HEIGHT OF THE**  
30 **BOATHOUSE ROOF;**

31           **4. A CLOSED-LOOP GEOTHERMAL HEAT EXCHANGER**  
32 **UNDER A PIER IF THE GEOTHERMAL HEAT EXCHANGER OR ANY ASSOCIATED**  
33 **DEVICES OR EQUIPMENT DO NOT:**

1                   A.    EXTEND BEYOND THE LENGTH, WIDTH, OR  
2 CHANNELWARD ENCROACHMENT OF THE PIER;

3                   B.    DELETERIOUSLY ALTER LONG SHORE DRIFT; OR

4                   C.    CAUSE SIGNIFICANT INDIVIDUAL OR CUMULATIVE  
5 THERMAL IMPACTS TO AQUATIC RESOURCES; OR

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

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

10                  B.    THE ROTOR DIAMETER OF THE WIND TURBINE IS  
11 UP TO 4 FEET; AND

12                  C.    THE SETBACKS OF THE WIND ENERGY SYSTEM  
13 FROM THE NEAREST PROPERTY LINE AND FROM THE CHANNELWARD EDGE OF  
14 THE PIER TO WHICH THAT SYSTEM IS ATTACHED ARE AT LEAST 1.5 TIMES THE  
15 TOTAL HEIGHT OF THE SYSTEM FROM ITS BASE TO THE BLADE EXTENDED AT ITS  
16 HIGHEST POINT.

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

18                   (1)   Section 1 of this Act may not be construed to amend the terms or  
19 conditions of a State ~~tidal~~ wetlands license or private wetlands permit that expires on  
20 or before July 1, 2013, or is in effect as of on or before July 1, 2013;

21                   (2)   Except for the provisions under paragraph (3) of this section, §  
22 16–205(c) of the Environment Article, as enacted under Section 1 of this Act, may not  
23 be construed to require the payment of compensation for a State ~~tidal~~ wetlands license  
24 that expires on or before July 1, 2013, or is in effect on or before July 1, 2013; and

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

33           SECTION 3. AND BE IT FURTHER ENACTED, That:

1           (a) Except as provided in subsection (b) of this section, Section 1 of this Act  
2 may not be construed to apply to:

3           (1) A State wetlands license application or a private wetlands permit  
4 application that was pending before the Board of Public Works or the Department of  
5 the Environment on or before December 31, 2012;

6           (2) A State wetlands license application or a private wetlands permit  
7 application submitted to the Department of the Environment between July 1, 2013,  
8 and June 30, 2016, inclusive, if the application is for authorization of a  
9 nonwater-dependent project that is the same or substantially similar to a proposed  
10 nonwater-dependent project that:

11           (i) Is the subject of an application pending before the Board of  
12 Public Works or the Department of the Environment on or before December 31, 2012;  
13 and

14           (ii) 1. The Board of Public Works or the Department of the  
15 Environment denied; or

16                           2. The applicant withdrew; or

17           (3) A pier or a nonwater-dependent structure on a pier that was in  
18 existence on or before June 30, 1989.

19           (b) Section 1 of this Act shall apply if, on or after July 1, 1989:

20           (1) A nonwater-dependent structure was added on a pier without the  
21 appropriate State wetlands license or private wetlands permit; or

22           (2) The length, width, or channelward encroachment of a pier or a  
23 nonwater-dependent structure on a pier was increased without the appropriate State  
24 wetlands license or private wetlands permit.

25           SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That for a  
26 nonwater-dependent project in existence on or before December 31, 2012, for which a  
27 State ~~tidal~~ wetlands license application was not pending before the Board of Public  
28 Works or the Department of the Environment on or before December 31, 2012, and for  
29 which a State wetlands license has not been issued:

30           (1) A person may apply to the Department of the Environment for an  
31 after-the-fact State ~~tidal~~ wetlands license if the application is filed on or before ~~July~~  
32 January 1, 2014, unless the Department authorizes an extension of time for filing of  
33 the application;

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

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

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

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

7 (3) If the Board of Public Works issues an after–the–fact State ~~tidal~~  
8 wetlands license, compensation shall be in accordance with the rate established under  
9 § 16–205 of the Environment Article, as enacted under Section 1 of this Act, and any  
10 regulations adopted under the authority of this Act; and

11 (4) If a person does not apply for a State ~~tidal~~ wetlands license by ~~July~~  
12 January 1, 2014, or within an extension of time authorized by the Department, or if  
13 the Board of Public Works denies an after–the–fact State ~~tidal~~ wetlands license and  
14 that denial is upheld on final appeal, then the person shall remove the unauthorized  
15 nonwater–dependent project.

16 SECTION ~~4~~ 5. AND BE IT FURTHER ENACTED, That for a  
17 nonwater–dependent project in existence on or before December 31, 2012, for which a  
18 private ~~tidal~~ wetlands permit application was not pending before the Department of  
19 the Environment on or before December 31, 2012, and for which a private wetlands  
20 permit has not been issued:

21 (1) A person may apply to the Department of the Environment for an  
22 after–the–fact private ~~tidal~~ wetlands permit if the application is filed on or before ~~July~~  
23 January 1, 2014, unless the Department authorizes an extension of time for filing of  
24 the application;

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

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

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

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

33 (3) If a person does not apply for a private ~~tidal~~ wetlands permit by  
34 ~~July~~ January 1, 2014, or within an extension of time authorized by the Department, or  
35 if the Department denies an after–the–fact private ~~tidal~~ wetlands permit and that



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

3 SECTION ~~5~~ 6. AND BE IT FURTHER ENACTED, That this Act shall take  
4 effect July 1, 2013.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.