

SENATE BILL 876

M2

9lr1686
CF 9lr2940

By: **Senator Bailey**

Introduced and read first time: February 8, 2019

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Aquaculture – Leases in Water Column – Riparian Right of First Refusal**

3 FOR the purpose of establishing that a riparian property owner or lessee shall have the
4 right of first refusal to apply for and, if approved, obtain a water column lease, or an
5 aquaculture lease for use in the water column in an Aquaculture Enterprise Zone, in
6 an area that fronts the riparian property, subject to certain standards and
7 requirements; requiring a person other than the riparian owner or lessee who applies
8 for a water column lease or an aquaculture lease for use in the water column in an
9 area that is subject to a certain right of first refusal to provide notice of the lease
10 application to the riparian owner or lessee in certain manners under certain
11 circumstances; authorizing a person other than the riparian owner or lessee to apply
12 for and, if approved, obtain a water column lease or an aquaculture lease for use in
13 the water column if the riparian owner or lessee does not exercise the right of first
14 refusal within a certain time after receiving notice; establishing that the
15 requirement for active use of a lease does not apply to a riparian leaseholder who
16 obtains a water column lease through a right of first refusal; and generally relating
17 to a right of first refusal for riparian owners and lessees over aquaculture leases in
18 the water column.

19 BY repealing and reenacting, with amendments,
20 Article – Natural Resources
21 Section 4–11A–05, 4–11A–08, and 4–11A–10(b)
22 Annotated Code of Maryland
23 (2018 Replacement Volume)

24 BY repealing and reenacting, without amendments,
25 Article – Natural Resources
26 Section 4–11A–10(a)
27 Annotated Code of Maryland
28 (2018 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Natural Resources**

4 4–11A–05.

5 (a) This section applies to leasing in an Aquaculture Enterprise Zone in the
6 Chesapeake Bay.

7 (b) (1) In consultation with the Department of the Environment and the
8 Wetlands Administrator of the Board of Public Works, the Department shall establish
9 Aquaculture Enterprise Zones in the Chesapeake Bay.

10 (2) An Aquaculture Enterprise Zone may not be located:

11 (i) Within a minimum of 50 feet of shoreline or any pier without the
12 written permission of the riparian owner at the time of designation of the Aquaculture
13 Enterprise Zone;

14 (ii) Within 150 feet of the public shellfish fishery or a registered
15 pound net site;

16 (iii) Within 150 feet of an oyster reserve or any Yates Bar located in
17 an oyster sanctuary;

18 (iv) Within 150 feet of a federal navigational channel;

19 (v) In any creek, cove, bay, or inlet less than 300 feet wide at its
20 mouth at mean low tide; or

21 (vi) In an SAV Protection Zone.

22 (3) In determining the location of an Aquaculture Enterprise Zone, the
23 Department shall consider potential conflicts presented by other uses of the proposed area,
24 to include navigation, recreation, and commercial fishing.

25 (4) Before adopting regulations establishing an Aquaculture Enterprise
26 Zone, the Department shall hold a public hearing in the county or counties immediately
27 adjacent to the proposed location of the Aquaculture Enterprise Zone.

28 (c) (1) Subject to [paragraph (2)] **PARAGRAPHS (2) THROUGH (4)** of this
29 subsection, the Department may issue to any person an aquaculture lease in an
30 Aquaculture Enterprise Zone.

31 (2) (i) 1. The Department shall set aside 25% of each Aquaculture
32 Enterprise Zone for leasing to persons who hold tidal fish licenses under Subtitle 7 of this

1 title and who have actively used those licenses during the 3 years preceding June 1, 2009.

2 2. An applicant for a lease under this subparagraph shall
3 comply with the provisions for leasing set forth in this subtitle.

4 3. The set-aside provided for in subparagraph 1 of this
5 subparagraph shall expire June 1, 2011.

6 (ii) The Department may issue an aquaculture lease to a corporation
7 only if:

8 1. The corporation is organized under the laws of the State;
9 and

10 2. More than 50% of the stock in the corporation is owned by
11 residents of the State.

12 (3) The Department may establish a buffer between leased areas within an
13 Aquaculture Enterprise Zone.

14 **(4) (I) A RIPARIAN PROPERTY OWNER OR LESSEE SHALL HAVE THE**
15 **RIGHT OF FIRST REFUSAL TO APPLY FOR AND, IF APPROVED, OBTAIN AN**
16 **AQUACULTURE LEASE FOR USE IN THE WATER COLUMN IN AN AREA IN AN**
17 **AQUACULTURE ENTERPRISE ZONE THAT FRONTS THE RIPARIAN PROPERTY,**
18 **SUBJECT TO THE STANDARDS AND REQUIREMENTS OF THIS SUBTITLE.**

19 **(II) A PERSON OTHER THAN THE RIPARIAN OWNER OR LESSEE**
20 **WHO APPLIES FOR AN AQUACULTURE LEASE FOR USE IN THE WATER COLUMN FOR**
21 **AN AREA THAT IS SUBJECT TO A RIGHT OF FIRST REFUSAL UNDER THIS PARAGRAPH**
22 **SHALL PROVIDE NOTICE OF THE LEASE APPLICATION TO THE RIPARIAN OWNER OR**
23 **LESSEE BY:**

24 **1. CERTIFIED MAIL, RETURN RECEIPT REQUESTED; OR**

25 **2. IF THE NAME AND ADDRESS OF THE RIPARIAN OWNER**
26 **OR LESSEE ARE UNKNOWN, POSTING NOTICE FOR 20 DAYS ON A BOARD FASTENED**
27 **TO A STAKE DRIVEN IN THE WATER DIRECTLY IN FRONT OF THE PROPERTY AND**
28 **WITHIN 300 FEET OF THE SHORE.**

29 **(III) IF THE RIPARIAN OWNER OR LESSEE DOES NOT EXERCISE**
30 **THE RIGHT OF FIRST REFUSAL WITHIN 20 DAYS AFTER RECEIVING NOTICE UNDER**
31 **SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE OTHER PERSON MAY APPLY FOR**
32 **AND, IF APPROVED, OBTAIN THE AQUACULTURE LEASE.**

33 (d) A person who leases an area in an Aquaculture Enterprise Zone may cultivate

1 shellfish:

2 (1) On the submerged land;

3 (2) In temporary protective enclosures approved by the Department on the
4 surface of the submerged land;

5 (3) Subject to approval by the United States Army Corps of Engineers, on
6 or under the surface of the water in a floating structure or in a structure on the submerged
7 bottom, except that the height of the structure may not exceed 18 inches; or

8 (4) In any other manner authorized by the Department.

9 (e) Notwithstanding any other provision of this subtitle, an Aquaculture
10 Enterprise Zone located within a sanctuary must be compatible with oyster restoration and
11 must satisfy the criteria for permissible leasing within a sanctuary as provided in
12 regulations adopted under this subtitle.

13 4-11A-08.

14 (a) This section applies to a water column lease in the waters of the State.

15 (b) The Department may issue to a person a water column lease in waters of the
16 State after the Department of the Environment classifies the waters as:

17 (1) Approved, conditionally approved, or restricted for harvest; or

18 (2) Prohibited, provided that the lease is used exclusively for the planting
19 and gathering of seed for aquaculture and the leaseholder complies with the requirements
20 of the National Shellfish Sanitation Program as implemented by the Department.

21 (c) (1) A water column lease may not be located:

22 (i) Within a minimum of 50 feet of shoreline or any pier without the
23 written permission of the riparian owner at the time of initial application for the lease;

24 (ii) Within 150 feet of the public shellfish fishery or a registered
25 pound net site;

26 (iii) Within 150 feet of an oyster reserve or any Yates Bar located in
27 an oyster sanctuary;

28 (iv) Except as provided in paragraph (3) of this subsection, within
29 150 feet of a federal navigational channel;

30 (v) Subject to paragraph (2) of this subsection, in any creek, cove,
31 bay, or inlet less than 300 feet wide at its mouth at mean low tide;

1 (vi) In an SAV Protection Zone; or

2 (vii) In a setback or buffer from the Assateague Island National
3 Seashore established by the Department.

4 (2) The provisions of paragraph (1)(v) of this subsection do not apply to the
5 riparian owner or a lawful occupant of the riparian property.

6 (3) A water column lease of a riparian owner or a lawful occupant of the
7 riparian property may be located in Herring Creek in St. Mary's County.

8 **(4) (I) A RIPARIAN PROPERTY OWNER OR LESSEE SHALL HAVE THE**
9 **RIGHT OF FIRST REFUSAL TO APPLY FOR AND, IF APPROVED, OBTAIN A WATER**
10 **COLUMN LEASE THAT FRONTS THE RIPARIAN PROPERTY, SUBJECT TO THE**
11 **STANDARDS AND REQUIREMENTS OF THIS SUBTITLE.**

12 **(II) A PERSON OTHER THAN THE RIPARIAN OWNER OR LESSEE**
13 **WHO APPLIES FOR A WATER COLUMN LEASE FOR AN AREA THAT IS SUBJECT TO A**
14 **RIGHT OF FIRST REFUSAL UNDER THIS PARAGRAPH SHALL PROVIDE NOTICE OF THE**
15 **LEASE APPLICATION TO THE RIPARIAN OWNER OR LESSEE BY:**

16 **1. CERTIFIED MAIL, RETURN RECEIPT REQUESTED; OR**

17 **2. IF THE NAME AND ADDRESS OF THE RIPARIAN OWNER**
18 **OR LESSEE ARE UNKNOWN, POSTING NOTICE FOR 20 DAYS ON A BOARD FASTENED**
19 **TO A STAKE DRIVEN IN THE WATER DIRECTLY IN FRONT OF THE PROPERTY AND**
20 **WITHIN 300 FEET OF THE SHORE.**

21 **(III) IF THE RIPARIAN OWNER OR LESSEE DOES NOT EXERCISE**
22 **THE RIGHT OF FIRST REFUSAL WITHIN 20 DAYS AFTER RECEIVING NOTICE UNDER**
23 **SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE OTHER PERSON MAY APPLY FOR**
24 **AND, IF APPROVED, OBTAIN THE WATER COLUMN LEASE.**

25 (d) A person with a water column lease in the waters of the State may cultivate
26 shellfish:

27 (1) Subject to approval by the United States Army Corps of Engineers, on
28 or under the surface of the water in a floating structure; or

29 (2) In any other manner authorized by the Department.

30 4-11A-10.

31 (a) A leaseholder shall:

1 (1) Subject to subsection (b) of this section, actively use the lease and
2 comply with any standards for planting, harvesting, and use of the leased area established
3 by the Department;

4 (2) Mark each lease area with an 8–inch by 12–inch marker displaying the
5 initials of the leaseholder and posted on a minimum of four poles;

6 (3) Comply with any other marking requirements established by the
7 Department for the protection of navigation;

8 (4) Comply with the regulations established by the Maryland Department
9 of Health in consultation with the Department of the Environment to carry out the mandate
10 of the National Shellfish Sanitation Program; and

11 (5) Pay the rent and the aquaculture development surcharge for the lease
12 at the time established by the Department.

13 (b) **(1)** The Department may waive the requirements for active use of a lease
14 on a showing that conditions not present at the time of execution of the lease, including the
15 unavailability of shellfish seed, prevent active use of the leased area.

16 **(2) THE REQUIREMENT FOR ACTIVE USE OF A LEASE DOES NOT APPLY**
17 **TO A RIPARIAN LEASEHOLDER WHO OBTAINS A WATER COLUMN LEASE THROUGH A**
18 **RIGHT OF FIRST REFUSAL UNDER § 4–11A–05(C)(4) OR § 4–11A–08(C)(4) OF THIS**
19 **SUBTITLE.**

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
21 1, 2019.