

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 210 (Delegate Crosby)
Environment and Transportation

Aquaculture - Leases in Water Column - Riparian Right of First Refusal

This bill establishes that a riparian property owner or lessee has the right of first refusal to apply for and, if approved, obtain a water column lease, or an aquaculture lease for use in the water column in an Aquaculture Enterprise Zone (AEZ), in a specified area that fronts the riparian property. A person other than the riparian owner or lessee who applies for a water column lease (or an aquaculture lease for use in the water column in an AEZ) must provide specified notice to the riparian owner or lessee, and the riparian owner or lessee has 20 days after receiving the notice to exercise the right of first refusal. **The bill takes effect June 1, 2020.**

Fiscal Summary

State Effect: Special fund revenues may be affected minimally, as discussed below. Expenditures are not expected to be affected, provided the bill does not result in a significant increase in lease applications.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill establishes that a riparian property owner or lessee, subject to standards and requirements of State law governing aquaculture, has the right of first refusal to apply for and, if approved, obtain (1) a water column lease that fronts the riparian property or (2) an aquaculture lease for use in the water column in an area in an AEZ that fronts the riparian property. A water column lease obtained by a riparian right of first

refusal (1) must directly front the riparian shoreline and (2) may not extend further than the lesser of 300 feet off the shoreline or the center of a river, creek, cove, bay, or inlet.

A person other than the riparian owner or lessee who applies for a water column lease (or an aquaculture lease for use in the water column in an AEZ) for an area that is subject to a right of first refusal under the bill must provide notice of the lease application to the riparian owner or lessee by (1) certified mail, return receipt requested or (2) if the name and address of the riparian owner or lessee are unknown, posting notice for 20 days on a board fastened to a stake driven in the water directly in front of the property and within 300 feet from the shore.

If the riparian owner or lessee does not exercise the right of first refusal within 20 days after receiving the notice described above, the other person may apply for and, if approved, obtain the water column or aquaculture lease.

Current Law: Specified statutory restrictions are placed on the location of AEZs (defined in statute as an area of the Chesapeake Bay approved for the leasing of submerged land or the water column by the Department of Natural Resources (DNR) in consultation with the Maryland Department of the Environment and the wetlands administrator of the Board of Public Works), submerged land leases, water column leases, and demonstration leases (those leased exclusively for educational, conservation, or ecological purposes). The restrictions generally prohibit a zone or lease from being located:

- within a minimum of 50 feet of shoreline or any pier without the written permission of the riparian owner at the time of designation of the zone or initial application for the lease;
- within 150 feet of the public shellfish fishery or a registered pound net site;
- within 150 feet of an oyster reserve or any Yates Bar located in an oyster sanctuary;
- within 150 feet of a federal navigational channel;
- in any creek, cove, bay, or inlet less than 300 feet wide at its mouth at mean low tide;
- in a submerged aquatic vegetation protection zone; or
- in a setback or buffer from the Assateague Island National Seashore established by DNR.

A leaseholder must actively use the lease and comply with any standards for planting, harvesting, and use of the leased area established by DNR. DNR may waive the requirements for active use of a lease on a showing that conditions not present at the time of execution of the lease, including the unavailability of shellfish seed, prevent active use of the leased area.

Background:

Lease Applications and Siting

DNR and the U.S. Army Corps of Engineers began jointly accepting applications for new commercial shellfish aquaculture projects in the Chesapeake Bay, its tributaries, and the coastal bays in 2010, and a person now applies for a lease using the *Joint Application for State Commercial Shellfish Aquaculture Lease and Corps of Engineers Federal Permit*.

DNR recommends that applicants take various steps relating to siting of the lease before submitting an application, including (1) utilizing the department's Aquaculture Siting Tool, an online interactive mapping utility that can assist in identifying potential lease locations by minimizing known resource and other types of conflicts; (2) investigating a site or sites by boat to, among other things, note other uses of the site, and adjacent uses; (3) if needed, contacting DNR's Aquaculture Division to help determine if the proposed site meets statutory requirements; and (4) discussing the project with adjacent landowners to, among other things, uncover additional issues to consider, such as licensed shoreline or offshore blinds used for waterfowl hunting not readily visible during the on-site investigation. DNR indicates that all adjacent landowners also receive direct notice of the project through State and federal notification processes.

Aquaculture Enterprise Zones

DNR recently eliminated, in February 2019, the only two AEZs established in DNR regulations, indicating that subsequent to the establishment of the AEZs, the department implemented a new shellfish aquaculture leasing program that reduced the utility and function of AEZs and, as a result, no leasing program for AEZs was developed. One of the AEZs, and a portion of the other, were converted to public shellfish fishery areas.

State Revenues: Special fund revenues may be affected by the bill; however, it appears any impact is likely minimal.

DNR indicates that there are currently 101 water column leases on 567 acres. The department received six water column lease applications in calendar 2019. In calendar 2019, DNR received \$1,800 in lease application fee (\$300) revenues from those six lease applications and \$11,665 in lease rent from all water column leases.

It cannot be reliably estimated whether the bill may result in any increase or decrease in water column lease applications, which would depend on the extent to which the right of first refusal is exercised by riparian property owners or lessees and the extent to which other lease applicants are deterred to any extent (from ultimately applying for and obtaining a lease) by the bill's requirements.

Small Business Effect: Shellfish aquaculture businesses may be meaningfully affected by the bill to the extent it makes it difficult for businesses to obtain lease sites. The fact that a riparian property owner or lessee who exercises the right of first refusal needs to actively use the lease, however, may limit the number of instances where the right is exercised.

Additional Information

Prior Introductions: SB 876 of 2019 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, HB 1309, received an unfavorable report from the House Environment and Transportation Committee.

Designated Cross File: SB 342 (Senator Bailey) - Education, Health, and Environmental Affairs.

Information Source(s): Department of Natural Resources; Maryland Department of Health; Maryland Department of the Environment; Board of Public Works; Department of Legislative Services

Fiscal Note History: First Reader - February 7, 2020
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