

SENATE BILL 442

M2, M3

EMERGENCY BILL

11r1961
CF HB 799

By: **Senator Klausmeier**

Introduced and read first time: January 20, 2021

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 18, 2021

CHAPTER _____

1 AN ACT concerning

2 ~~**Aquaculture Leases and Shellfish Nursery Operations – Wetlands**~~
3 **Aquaculture Coordinating Council – Application of Tidal Wetlands Permit**
4 **Requirements to Aquaculture Operations – Study**

5 FOR the purpose of ~~exempting under certain circumstances certain activities and the use~~
6 ~~of certain equipment associated with an aquaculture lease or a shellfish nursery~~
7 ~~operation from the requirement to obtain certain licenses from the Department of~~
8 ~~the Environment or the Board of Public Works; establishing that the use of certain~~
9 ~~equipment on or attached to a pier and associated with an aquaculture lease or a~~
10 ~~shellfish nursery operation is not included as a nonwater dependent project for the~~
11 ~~purposes of the requirement to obtain a State or tidal wetlands license; establishing~~
12 ~~that certain aquaculture activity and the installation of certain equipment on a pier~~
13 ~~for the cultivation of shellfish seed under a certain permit are lawful uses on private~~
14 ~~wetlands; making certain conforming changes; altering a certain definition;~~
15 requiring the Aquaculture Coordinating Council, in coordination with the
16 Department of the Environment, to review certain policies and submit its findings
17 and recommendations to the Governor and the General Assembly on or before a
18 certain date; making this Act an emergency measure; providing for the termination
19 of this Act; and generally relating to wetlands license or the application of tidal
20 wetlands permit requirements for to aquaculture leases and shellfish nursery
21 operations in the State.

22 ~~BY repealing and reenacting, without amendments,~~
23 ~~Article – Environment~~
24 ~~Section 16-101(a), 16-104(b)(1), and 16-202(a)~~

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 ~~Annotated Code of Maryland~~
 2 ~~(2014 Replacement Volume and 2020 Supplement)~~

3 ~~BY repealing and reenacting, with amendments,~~
 4 ~~Article — Environment~~
 5 ~~Section 16-101(i), 16-202(h), and 16-304~~
 6 ~~Annotated Code of Maryland~~
 7 ~~(2014 Replacement Volume and 2020 Supplement)~~

8 ~~BY repealing and reenacting, without amendments,~~
 9 ~~Article — Natural Resources~~
 10 ~~Section 4-11A-09(a), 4-11A-10(a), and 4-11A-23(a) and (b)~~
 11 ~~Annotated Code of Maryland~~
 12 ~~(2018 Replacement Volume and 2020 Supplement)~~

13 ~~BY adding to~~
 14 ~~Article — Natural Resources~~
 15 ~~Section 4-11A-10(d-1)~~
 16 ~~Annotated Code of Maryland~~
 17 ~~(2018 Replacement Volume and 2020 Supplement)~~

18 ~~BY repealing and reenacting, with amendments,~~
 19 ~~Article — Natural Resources~~
 20 ~~Section 4-11A-23(d)~~
 21 ~~Annotated Code of Maryland~~
 22 ~~(2018 Replacement Volume and 2020 Supplement)~~

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 24 That the Aquaculture Coordinating Council, in consultation with the Department of the
 25 Environment, shall:

26 (1) review the policies of the Department of the Environment regarding the
 27 application of tidal wetlands permit requirements to aquaculture operations in the State;
 28 and

29 (2) in addition to the reporting requirement under § 4-11A-03.2 of the
 30 Natural Resources Article, and on or before December 1, 2021, report to the Governor and,
 31 in accordance with § 2-1257 of the State Government Article, the General Assembly its
 32 findings and recommendations, including any proposed legislation, on changes necessary
 33 to eliminate conflicts or redundancies in the oversight of aquaculture operations by the
 34 Department of the Environment and the Department of Natural Resources. ~~Laws of~~
 35 Maryland read as follows:

36 ~~Article — Environment~~

37 ~~16-101.~~

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

2 ~~(i) (1) "Nonwater dependent project" means a temporary or permanent~~
 3 ~~structure that, by reason of its intrinsic nature, use, or operation, does not require location~~
 4 ~~in, on, or over State or private wetlands.~~

5 ~~(2) "Nonwater dependent project" includes:~~

6 ~~(i) A dwelling unit on a pier;~~

7 ~~(ii) A restaurant, a shop, an office, or any other commercial building~~
 8 ~~or use on a pier;~~

9 ~~(iii) A temporary or permanent roof or covering on a pier;~~

10 ~~(iv) A pier used to support a nonwater dependent use; and~~

11 ~~(v) A small scale renewable energy system on a pier, including:~~

12 ~~1. A solar energy system and its photovoltaic cells, solar~~
 13 ~~panels, or other necessary equipment;~~

14 ~~2. A geothermal energy system and its geothermal heat~~
 15 ~~exchanger or other necessary equipment; and~~

16 ~~3. A wind energy system and its wind turbine, tower, base,~~
 17 ~~or other necessary equipment.~~

18 ~~(3) "Nonwater dependent project" does not include:~~

19 ~~(i) A fuel pump or other fuel dispensing equipment on a pier;~~

20 ~~(ii) A sanitary sewage pump or other wastewater removal equipment~~
 21 ~~on a pier;~~

22 ~~(iii) A pump, a pipe, or any other equipment ON OR attached to a pier~~
 23 ~~and associated with [a];~~

24 ~~1. AN AQUACULTURE LEASE ISSUED BY THE~~
 25 ~~DEPARTMENT OF NATURAL RESOURCES UNDER TITLE 4, SUBTITLE 11A OF THE~~
 26 ~~NATURAL RESOURCES ARTICLE; OR~~

27 ~~2. A shellfish nursery operation under a permit issued by the~~
 28 ~~Department of Natural Resources under § 4-11A-23 of the Natural Resources Article; or~~

~~(iv) An office on a pier for managing marina operations, including monitoring vessel traffic, registering vessels, providing docking services, and housing electrical or emergency equipment related to marina operations.~~

~~16-104.~~

~~(b) (1) Except as provided in paragraphs (2) and (3) of this subsection and notwithstanding any other provision of law, the Board of Public Works may not issue a license to authorize a nonwater-dependent project located on State wetlands.~~

~~16-202.~~

~~(a) A person may not dredge or fill on State wetlands without a license.~~

~~(h) The provisions of this section do not apply to any operation for:~~

~~(1) Dredging and filling being conducted as of July 1, 1970, as authorized under the terms of an appropriate permit or license granted under the provisions of existing State and federal law;~~

~~(2) Dredging of seafood products by any licensed operator, harvesting of seaweed, or mosquito control and abatement as approved by the Department of Agriculture;~~

~~(3) Improvement of wildlife habitat or agricultural drainage ditches as approved by an appropriate unit;~~

~~(4) Routine maintenance or repair of existing bulkheads, provided that there is no addition or channelward encroachment;~~

~~(5) [Aquaculture activities occurring under a] **ACTIVITY AND THE USE OF EQUIPMENT ASSOCIATED WITH AN AQUACULTURE** lease issued by the Department of Natural Resources under Title 4, Subtitle 11A of the Natural Resources Article; or~~

~~(6) Installing a pump, a pipe, or any other equipment **ON OR** attached to a pier for the cultivation of shellfish seed in a shellfish nursery under a permit issued by the Department of Natural Resources under § 4-11A-23 of the Natural Resources Article, provided that the pump, pipe, or other equipment does not require increasing the length, width, or channelward encroachment of the pier.~~

~~16-304.~~

~~Notwithstanding any regulation adopted by the Secretary to protect private wetlands, the following uses are lawful on private wetlands:~~

~~(1) Conservation of soil, vegetation, water, fish, shellfish, and wildlife;~~

1 ~~(2) Trapping, hunting, fishing, and catching shellfish, if otherwise legally~~
2 ~~permitted;~~

3 ~~(3) Exercise of riparian rights to improve land bounding on navigable~~
4 ~~water, to preserve access to the navigable water, or to protect the shore against erosion;~~

5 ~~(4) Reclamation of fast land owned by a natural person and lost during the~~
6 ~~person's ownership of the land by erosion or avulsion to the extent of provable preexisting~~
7 ~~boundaries. The right to reclaim lost fast land relates only to fast land lost after January~~
8 ~~1, 1972. The burden of proof that the loss occurred after this date is on the owner of the~~
9 ~~land;~~

10 ~~(5) Routine maintenance and repair of existing bulkheads, provided that~~
11 ~~there is no addition or channelward encroachment; [and]~~

12 ~~(6) ACTIVITY AND THE USE OF EQUIPMENT ASSOCIATED WITH AN~~
13 ~~AQUACULTURE LEASE ISSUED BY THE DEPARTMENT OF NATURAL RESOURCES~~
14 ~~UNDER TITLE 4, SUBTITLE 11A OF THE NATURAL RESOURCES ARTICLE; AND~~

15 ~~(7) Installing a pump, a pipe, or any other equipment ON OR attached to a~~
16 ~~pier for the cultivation of shellfish seed in a shellfish nursery under a permit issued by the~~
17 ~~Department of Natural Resources under § 4-11A-23 of the Natural Resources Article,~~
18 ~~provided that the pump, pipe, or other equipment does not require increasing the length,~~
19 ~~width, or channelward encroachment of the pier.~~

~~Article Natural Resources~~

20 ~~4-11A-09.~~

21 ~~(a) A person who wishes to obtain an aquaculture, water column, or submerged~~
22 ~~land lease shall pay a nonrefundable application fee established by the Department, in~~
23 ~~consultation with the Aquaculture Coordinating Council, and complete and submit an~~
24 ~~application to the Department.~~

25 ~~4-11A-10.~~

26 ~~(a) A leaseholder shall:~~

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

30 ~~(2) Mark each lease area with an 8-inch by 12-inch marker displaying the~~
31 ~~initials of the leaseholder and posted on a minimum of four poles;~~

32 ~~(3) Comply with any other marking requirements established by the~~
33 ~~Department for the protection of navigation;~~

1 ~~(4) Comply with the regulations established by the Maryland Department~~
 2 ~~of Health in consultation with the Department of the Environment to carry out the mandate~~
 3 ~~of the National Shellfish Sanitation Program; and~~

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

6 ~~(D-1) A LEASEHOLDER IS NOT REQUIRED TO OBTAIN A TIDAL WETLANDS~~
 7 ~~LICENSE OR PERMIT FROM THE DEPARTMENT OF THE ENVIRONMENT OR A STATE~~
 8 ~~WETLANDS LICENSE FROM THE BOARD OF PUBLIC WORKS UNDER TITLE 16 OF THE~~
 9 ~~ENVIRONMENT ARTICLE FOR ACTIVITY AND THE USE OF EQUIPMENT ASSOCIATED~~
 10 ~~WITH A LEASE ISSUED UNDER THIS SUBTITLE.~~

11 ~~4-11A-23.~~

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

13 ~~(2) "Permit" means a shellfish nursery permit.~~

14 ~~(3) "Pier" has the meaning stated in § 16-101 of the Environment Article.~~

15 ~~(b) A person may not engage in the commercial rearing of shellfish seed outside~~
 16 ~~an area leased under this subtitle without first obtaining a permit from the Department.~~

17 ~~(d) (1) For a shellfish nursery to be located in waters of the State outside a~~
 18 ~~leased area, the Department may issue a permit only:~~

19 ~~(i) To the owner of a pier or other structure constructed on or about~~
 20 ~~the water and approved by the U.S. Army Corps of Engineers, or to a person with the~~
 21 ~~permission of the owner of the pier or other structure; and~~

22 ~~(ii) For the cultivation of shellfish seed within 20 feet of the pier or~~
 23 ~~other structure, in an area of water not exceeding 200 square feet.~~

24 ~~(2) A person is not required to obtain a water column lease or a submerged~~
 25 ~~land lease for a permitted in-water shellfish nursery operation.~~

26 ~~(3) Shellfish nursery products are exempt from water quality~~
 27 ~~classifications and restrictions established by the Department of the Environment under~~
 28 ~~the National Shellfish Sanitation Program.~~

29 ~~(4) A person cultivating shellfish seed using a pump, a pipe, or any other~~
 30 ~~equipment ON OR attached to a pier in accordance with a permit issued under this section~~
 31 ~~is not required to obtain a tidal wetlands license or permit from the Department of the~~
 32 ~~Environment or a State wetlands license from the Board of Public Works under Title 16 of~~

1 ~~the Environment Article, provided that the pump, pipe, or other equipment does not require~~
2 ~~increasing the length, width, or channelward encroachment of the pier.~~

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act ~~shall take effect~~
4 ~~October 1, 2021~~ is an emergency measure, is necessary for the immediate preservation of
5 the public health or safety, has been passed by a yea and nay vote supported by three-fifths
6 of all the members elected to each of the two Houses of the General Assembly, and shall
7 take effect from the date it is enacted. It shall remain effective through May 31, 2022, and,
8 at the end of May 31, 2022, this Act, with no further action required by the General
9 Assembly, shall be abrogated and of no further force and effect.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.