



Larry Hogan, Governor  
Boyd Rutherford, Lt. Governor  
Jeannie Haddaway-Riccio, Secretary

February 10, 2021

The Honorable Paul G. Pinsky  
Chair, Education, Health and Environmental Affairs Committee  
2 West Miller Senate Office Building  
Annapolis, MD 21401

The Honorable Cheryl C. Kagan  
Vice Chair, Education, Health and Environmental Affairs Committee  
2 West Miller Senate Office Building  
Annapolis, MD 21401

***Re: Letter of Information – Senate Bill 203 – Aquaculture Lease Applications – Notices, Protests, Meetings, and Conflict Resolution***

Dear Chair, Vice Chair, and Committee Members,

The Maryland Department of Natural Resources provides the following information on Senate Bill 203. This bill would require the agency to directly notify landowners who are not directly in front of proposed shellfish aquaculture projects, but are within 500 feet of the project and require the agency to consider conflict resolution between shoreline property owners and lease applicants before issuing a lease.

In the department's reading of SB 203, requiring notification of landowners who are not directly in front of the proposed shellfish aquaculture project, but are within 500 feet of the project may increase the number of notifications that are sent to members of the public who are not directly affected by the proposed leases. In fact, the requirement to notify property owners within 500 feet of a proposed submerged land or water column lease instead of property owners "directly in front" of a proposed project may result in sending notice to non-shoreline property owners who would in no way be impacted by the project as well as not sending notice to shoreline property owners who may be affected by a lease in front of their property located more than 500 feet from their shoreline.

SB 203's extremely broad requirement for the department to work with every petitioner who opposes a proposed aquaculture lease "to mitigate the concerns raised in the petition" may result in the department wasting time and resources on unreasonable or invalid concerns about a proposed aquaculture project. If, for example, a petitioner is concerned that a proposed lease located more than 1,000 feet from petitioner's property may somehow threaten their pet's safety, and the department is required to mitigate that concern, a lease applicant would be required to make unnecessary and unrealistic modifications to mitigate an arbitrary concern. The department currently implements practices and procedures to work through valid concerns raised by petitioners, including informal and formal mediation and settlement conferences organized through the Office of Administrative Hearings.

The new language added on page 3 of this bill effectively reduces the number of public information meetings held on proposed lease projects, which may lead to less public education,

outreach and awareness concerning proposed lease projects. This could, in turn, increase confusion and the perpetuation of misinformation regarding these projects. Under current law, the department is required to hold a public information meeting about a proposed lease project whenever one is requested. The new substitute language proposed in this bill requires public information meetings only if the department determines a person requesting a meeting is "raising a significant public health, safety, or welfare concern." So, the person requesting the meeting would have to put forward a basis for holding the meeting, and that basis would need to be a "significant public health, safety, or welfare concern." Aquaculture is a very positive program and permitted (and even encouraged) activity in this State, as it provides numerous environmental, economic, and cultural benefits to Marylanders. In the event the department did determine a proposed project presents such an issue, the lease would be denied, or at least substantially modified, in order to remove the threat, and consequently render any public meeting about it unnecessary.

With regards to requiring the agency to consider conflict resolution between shoreline property owners and lease applicants before issuing a lease, the department recognizes the importance of working to resolve conflicts identified by concerned citizens and protestants prior to issuing shellfish leases and has implemented these efforts in each case where a conflict has existed. The bill language as drafted would, for submerged land leases only, require the department to "consider conflict resolution" between shoreline property owners and lease applicants prior to issuing a lease. It is unclear when the department would be required to consider such resolutions, but the placement of the language in the submerged land lease location criteria suggests it would potentially need to be considered even before any property owners had an opportunity to submit comments on a proposed project.

The bill identifies a specific segment of people for which conflict resolution is required to be considered - "shoreline property owners." It is not clear whether this is intended to include only those owners that are near to the project and might be affected by the proposed lease, or riparian landowners in the State more generally. Overall, the placement of this wording in the location criteria statute for submerged leases, and the wording of the bill leave some ambiguity about what is required of the department. In addition, it is not clear who would pay for any conflict resolution if a formal mediation is required by the legislation and if this bill would cost the agency any additional funds in order to implement.

In sum, this bill will likely increase confusion and costs as well as significantly slow the aquaculture permitting process. Slowing the permitting process directly leads to fewer oysters grown in Maryland's waters.

Thank you for allowing the department to provide the above information on SB 203 for the committee's careful consideration.

Respectfully submitted,

James W. McKitrick  
Director, Legislative and Constituent Services