

**Department of Legislative Services**  
Maryland General Assembly  
2017 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 1284 (Delegate Stein, *et al.*)  
Environment and Transportation

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**Natural Resources - Aquaculture Leases - National Register of Historic Places**

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This bill prohibits an Aquaculture Enterprise Zone, a submerged land lease, a water column lease, or a demonstration lease from being located within 300 feet of the mean high watermark of the shoreline of property listed on the National Register of Historic Places. The bill also requires, rather than authorizes, the Department of Natural Resources (DNR) to deny a lease application for reasonable cause, or include any conditions in a lease, in order to protect the public health, safety, and welfare.

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**Fiscal Summary**

**State Effect:** The bill is not expected to materially affect State finances.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

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**Analysis**

**Current Law:** Specified statutory restrictions are placed on the location of Aquaculture Enterprise Zones (defined in statute as an area of the Chesapeake Bay approved for the leasing of submerged land or the water column by 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.

DNR, as it considers necessary to protect the public health, safety, and welfare, may deny a lease application for reasonable cause or include any conditions in a lease.

### **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.

DNR indicates, in its recent five-year oyster management review report (*Oyster Management Review: 2010-2015* (July 2016)), that Aquaculture Enterprise Zones, intended to eliminate regulatory hurdles and streamline the timeframe for lease approvals, are not being utilized, since changes to the law in 2011 provide the same benefits for leases in general.

*National Register of Historic Places*

The National Park Service, which administers the National Register of Historic Places, indicates that the National Register is the official federal list of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture. National Register properties have significance to the history of their community, state, or the nation.

**Small Business Effect:** DNR indicates that the bill may have a negative impact on aquaculture leaseholders, or prospective leaseholders, since leases may be altered or denied for locations near National Register properties. There are currently 393 shellfish aquaculture leases held by 169 distinct leaseholders.

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**Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Natural Resources; National Park Service; Department of Legislative Services

**Fiscal Note History:** First Reader - March 6, 2017  
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