

SENATE BILL 709

M2

5lr2737
CF HB 419

By: **Senator Conway**

Introduced and read first time: February 11, 2015

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Natural Resources – Aquaculture Leases – Consideration of User Conflicts**

3 FOR the purpose of requiring the Department of Natural Resources to consider certain
4 potential user conflicts in determining the location of submerged land aquaculture
5 leases in the Chesapeake Bay and water column aquaculture leases in the waters of
6 the State; requiring the Department to mitigate and minimize the effects of the
7 proposed location of certain aquaculture leasing areas on other users if the
8 Department determines that conflicts exist; making a certain stylistic change;
9 making a certain technical correction; and generally relating to the consideration of
10 user conflicts in determining the location of aquaculture leases.

11 BY repealing and reenacting, without amendments,
12 Article – Natural Resources
13 Section 4–11A–05(a) and 4–11A–07(a)
14 Annotated Code of Maryland
15 (2012 Replacement Volume and 2014 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Natural Resources
18 Section 4–11A–05(b)(3), 4–11A–06, 4–11A–07(e), and 4–11A–08
19 Annotated Code of Maryland
20 (2012 Replacement Volume and 2014 Supplement)

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

23 **Article – Natural Resources**

24 4–11A–05.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 (b) (3) (I) In determining the location of an Aquaculture Enterprise Zone,
4 the Department shall consider potential conflicts presented by other uses of the proposed
5 area, [to include] **INCLUDING** navigation, recreation, and commercial fishing.

6 (ii) If the Department determines that conflicts presented by other
7 uses exist, the Department shall mitigate and minimize the effects of the proposed location
8 of the Aquaculture Enterprise Zone on the other uses.

9 4-11A-06.

10 (a) This section applies to a submerged land lease in the Chesapeake Bay that is
11 not in an Aquaculture Enterprise Zone.

12 (b) (1) (i) Subject to subparagraph (ii) of this paragraph, the Department
13 may issue to a person a submerged land lease in waters of the Chesapeake Bay after the
14 Department of the Environment classifies the waters as:

15 1. Approved, conditionally approved, or restricted for
16 harvest; or

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

21 (ii) The Department may issue a submerged land lease in the waters
22 of the Chesapeake Bay to a corporation only if:

23 1. The corporation is organized under the laws of the State;
24 and

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

27 (2) A submerged land lease may not be located:

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

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

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

1 (iv) Except as provided in paragraph (4) of this subsection, within
2 150 feet of a federal navigational channel;

3 (v) Subject to paragraph (3) of this subsection, in any creek, cove,
4 bay, or inlet less than 300 feet wide at its mouth at mean low tide; or

5 (vi) In an SAV Protection Zone.

6 (3) Paragraph (2)(v) of this subsection does not apply to a riparian owner
7 or a lawful occupant of the riparian property.

8 **(4) (I) IN DETERMINING THE LOCATION OF A SUBMERGED LAND**
9 **LEASE IN THE CHESAPEAKE BAY, THE DEPARTMENT SHALL CONSIDER POTENTIAL**
10 **CONFLICTS PRESENTED BY OTHER USES OF THE PROPOSED AREA, INCLUDING**
11 **NAVIGATION, RECREATION, AND COMMERCIAL FISHING.**

12 **(II) IF THE DEPARTMENT DETERMINES THAT CONFLICTS**
13 **PRESENTED BY OTHER USES EXIST, THE DEPARTMENT SHALL MITIGATE AND**
14 **MINIMIZE THE EFFECTS OF THE PROPOSED LOCATION OF THE SUBMERGED LAND**
15 **LEASE ON THE OTHER USES.**

16 **[(4)] (5)** A submerged land lease of a riparian owner or a lawful occupant
17 of the riparian property may be located in Herring Creek in St. Mary's County.

18 (c) A person with a submerged land lease in the Chesapeake Bay may cultivate
19 shellfish on the submerged land, in temporary protective enclosures approved by the
20 Department on the surface of the submerged land, or in any other manner authorized by
21 the Department.

22 (d) Notwithstanding any other provision of this subtitle, a lease of submerged
23 land located within a sanctuary must be compatible with oyster restoration and must
24 satisfy the criteria for permissible leasing within a sanctuary as provided in regulations
25 adopted under this subtitle.

26 4-11A-07.

27 (a) This section applies to a submerged land lease in the waters of the Atlantic
28 Coastal Bays.

29 (e) (1) The Department may establish submerged land areas in the Atlantic
30 Coastal Bays that:

31 (i) Are preapproved for leasing;

32 (ii) May not be leased; **OR**

1 (iii) May be approved for leasing only on specific application and
2 review by the Department.

3 (2) (I) In establishing areas that are preapproved for leasing or that
4 may not be leased under paragraph (1) of this subsection, the Department shall consider
5 potential conflicts presented by other uses of the proposed area, including navigation,
6 recreation, and commercial fishing.

7 (II) IF THE DEPARTMENT DETERMINES THAT CONFLICTS
8 PRESENTED BY OTHER USES EXIST, THE DEPARTMENT SHALL MITIGATE AND
9 MINIMIZE THE EFFECTS OF THE PROPOSED LOCATION OF THE SUBMERGED LAND
10 LEASE ON THE OTHER USES.

11 4-11A-08.

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

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

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

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

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

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

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

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

26 (iv) Except as provided in paragraph (3) of this subsection, within
27 150 feet of a federal navigational channel;

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

30 (vi) In an SAV Protection Zone; or

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

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

5 **(3) (I) IN DETERMINING THE LOCATION OF A WATER COLUMN**
6 **LEASE, THE DEPARTMENT SHALL CONSIDER POTENTIAL CONFLICTS PRESENTED BY**
7 **OTHER USES OF THE PROPOSED AREA, INCLUDING NAVIGATION, RECREATION, AND**
8 **COMMERCIAL FISHING.**

9 **(II) IF THE DEPARTMENT DETERMINES THAT CONFLICTS**
10 **PRESENTED BY OTHER USES EXIST, THE DEPARTMENT SHALL MITIGATE AND**
11 **MINIMIZE THE EFFECTS OF THE PROPOSED LOCATION OF THE WATER COLUMN**
12 **LEASE ON THE OTHER USES.**

13 ~~[(3)]~~ (4) A water column lease of a riparian owner or a lawful occupant of
14 the riparian property may be located in Herring Creek in St. Mary's County.

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

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

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

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2015.