

SENATE BILL 442

M2, M3

1l1961
CF 1l1973

By: **Senator Klausmeier**

Introduced and read first time: January 20, 2021

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Aquaculture Leases and Shellfish Nursery Operations – Wetlands**

3 FOR the purpose of exempting under certain circumstances certain activities and the use
4 of certain equipment associated with an aquaculture lease or a shellfish nursery
5 operation from the requirement to obtain certain licenses from the Department of
6 the Environment or the Board of Public Works; establishing that the use of certain
7 equipment on or attached to a pier and associated with an aquaculture lease or a
8 shellfish nursery operation is not included as a nonwater-dependent project for the
9 purposes of the requirement to obtain a State or tidal wetlands license; establishing
10 that certain aquaculture activity and the installation of certain equipment on a pier
11 for the cultivation of shellfish seed under a certain permit are lawful uses on private
12 wetlands; making certain conforming changes; altering a certain definition; and
13 generally relating to wetlands license or permit requirements for aquaculture leases
14 and shellfish nursery operations.

15 BY repealing and reenacting, without amendments,
16 Article – Environment
17 Section 16–101(a), 16–104(b)(1), and 16–202(a)
18 Annotated Code of Maryland
19 (2014 Replacement Volume and 2020 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Environment
22 Section 16–101(i), 16–202(h), and 16–304
23 Annotated Code of Maryland
24 (2014 Replacement Volume and 2020 Supplement)

25 BY repealing and reenacting, without amendments,
26 Article – Natural Resources
27 Section 4–11A–09(a), 4–11A–10(a), and 4–11A–23(a) and (b)
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2018 Replacement Volume and 2020 Supplement)

2 BY adding to

3 Article – Natural Resources

4 Section 4–11A–10(d–1)

5 Annotated Code of Maryland

6 (2018 Replacement Volume and 2020 Supplement)

7 BY repealing and reenacting, with amendments,

8 Article – Natural Resources

9 Section 4–11A–23(d)

10 Annotated Code of Maryland

11 (2018 Replacement Volume and 2020 Supplement)

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

14 **Article – Environment**

15 16–101.

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

17 (i) (1) “Nonwater–dependent project” means a temporary or permanent
18 structure that, by reason of its intrinsic nature, use, or operation, does not require location
19 in, on, or over State or private wetlands.

20 (2) “Nonwater–dependent project” includes:

21 (i) A dwelling unit on a pier;

22 (ii) A restaurant, a shop, an office, or any other commercial building
23 or use on a pier;

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

25 (iv) A pier used to support a nonwater–dependent use; and

26 (v) A small–scale renewable energy system on a pier, including:

27 1. A solar energy system and its photovoltaic cells, solar
28 panels, or other necessary equipment;

29 2. A geothermal energy system and its geothermal heat
30 exchanger or other necessary equipment; and

31 3. A wind energy system and its wind turbine, tower, base,

1 or other necessary equipment.

2 (3) “Nonwater–dependent project” does not include:

3 (i) A fuel pump or other fuel–dispensing equipment on a pier;

4 (ii) A sanitary sewage pump or other wastewater removal equipment
5 on a pier;

6 (iii) A pump, a pipe, or any other equipment **ON OR** attached to a pier
7 and associated with **[a]**:

8 **1. AN AQUACULTURE LEASE ISSUED BY THE**
9 **DEPARTMENT OF NATURAL RESOURCES UNDER TITLE 4, SUBTITLE 11A OF THE**
10 **NATURAL RESOURCES ARTICLE; OR**

11 **2. A shellfish nursery operation under a permit issued by the**
12 **Department of Natural Resources under § 4–11A–23 of the Natural Resources Article; or**

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

16 16–104.

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

20 16–202.

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

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

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

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

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

30 (4) Routine maintenance or repair of existing bulkheads, provided that

1 there is no addition or channelward encroachment;

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

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

10 16–304.

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

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

14 (2) Trapping, hunting, fishing, and catching shellfish, if otherwise legally
 15 permitted;

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

18 (4) Reclamation of fast land owned by a natural person and lost during the
 19 person's ownership of the land by erosion or avulsion to the extent of provable preexisting
 20 boundaries. The right to reclaim lost fast land relates only to fast land lost after January
 21 1, 1972. The burden of proof that the loss occurred after this date is on the owner of the
 22 land;

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

25 (6) **ACTIVITY AND THE USE OF EQUIPMENT ASSOCIATED WITH AN**
 26 **AQUACULTURE LEASE ISSUED BY THE DEPARTMENT OF NATURAL RESOURCES**
 27 **UNDER TITLE 4, SUBTITLE 11A OF THE NATURAL RESOURCES ARTICLE; AND**

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

33

1 4-11A-09.

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

6 4-11A-10.

7 (a) A leaseholder shall:

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

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

13 (3) Comply with any other marking requirements established by the
14 Department for the protection of navigation;

15 (4) Comply with the regulations established by the Maryland Department
16 of Health in consultation with the Department of the Environment to carry out the mandate
17 of the National Shellfish Sanitation Program; and

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

20 **(D-1) A LEASEHOLDER IS NOT REQUIRED TO OBTAIN A TIDAL WETLANDS**
21 **LICENSE OR PERMIT FROM THE DEPARTMENT OF THE ENVIRONMENT OR A STATE**
22 **WETLANDS LICENSE FROM THE BOARD OF PUBLIC WORKS UNDER TITLE 16 OF THE**
23 **ENVIRONMENT ARTICLE FOR ACTIVITY AND THE USE OF EQUIPMENT ASSOCIATED**
24 **WITH A LEASE ISSUED UNDER THIS SUBTITLE.**

25 4-11A-23.

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

27 (2) "Permit" means a shellfish nursery permit.

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

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

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

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

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

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

8 (3) Shellfish nursery products are exempt from water quality
9 classifications and restrictions established by the Department of the Environment under
10 the National Shellfish Sanitation Program.

11 (4) A person cultivating shellfish seed using a pump, a pipe, or any other
12 equipment **ON OR** attached to a pier in accordance with a permit issued under this section
13 is not required to obtain a tidal wetlands license or permit from the Department of the
14 Environment or a State wetlands license from the Board of Public Works under Title 16 of
15 the Environment Article, provided that the pump, pipe, or other equipment does not require
16 increasing the length, width, or channelward encroachment of the pier.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2021.