

Chapter 177

(Senate Bill 350)

AN ACT concerning

Natural Resources – Aquaculture – Leases

FOR the purpose of repealing provisions of law authorizing the Department of Natural Resources to establish Aquaculture Enterprise Zones and issue leases within those zones for shellfish aquaculture; authorizing the Department to issue enterprise leases under certain circumstances for the cultivation of native or naturalized aquatic plants; prohibiting the Department from issuing an enterprise lease for the purpose of cultivating certain nonnative species; requiring a person who wishes to obtain an enterprise lease to complete and submit a certain application and pay a certain application fee; authorizing the Department to deny an enterprise lease application for reasonable cause or include any conditions in an enterprise lease; establishing a maximum lease term and maximum lease size for enterprise leases; requiring the Department, in consultation with the Aquaculture Coordinating Council, to establish certain rent for enterprise leases; prohibiting enterprise leases in certain areas; prohibiting the assignment, transfer, and renewal of an enterprise lease; authorizing an enterprise leaseholder to cultivate aquatic plants in any manner approved by the Department; authorizing the Department to adopt certain regulations to implement this Act; requiring a proposed enterprise lease to be marked under certain circumstances; establishing a process for providing notice of enterprise lease applications and considering protests of the applications; requiring the Department to hold a public informational meeting on an enterprise lease application under certain circumstances; defining a certain term; and generally relating to aquaculture in the State.

BY renumbering

Article – Natural Resources

Section 4–11A–01(i) through (q), respectively

to be Section 4–11A–01(j) through (r), respectively

Annotated Code of Maryland

(2018 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, without amendments,

Article – Natural Resources

Section 4–11A–01(a)

Annotated Code of Maryland

(2018 Replacement Volume and 2020 Supplement)

BY adding to

Article – Natural Resources

Section 4–11A–01(i) and 4–11A–05

Annotated Code of Maryland

(2018 Replacement Volume and 2020 Supplement)

BY repealing

Article – Natural Resources

Section 4–11A–05

Annotated Code of Maryland

(2018 Replacement Volume and 2020 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 4–11A–01(i) through (q), respectively, of Article – Natural Resources of the Annotated Code of Maryland be renumbered to be Section(s) 4–11A–01(j) through (r), respectively.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Natural Resources

4–11A–01.

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

(I) “ENTERPRISE LEASE” MEANS A LEASE OF THE WATER COLUMN FOR THE PURPOSE OF RESEARCHING OR TESTING THE FEASIBILITY OF CULTIVATING NATIVE OR NATURALIZED SPECIES, AS THOSE TERMS ARE DEFINED IN § 4–205.1 OF THIS TITLE, OF AQUATIC PLANTS FOR COMMERCIAL PURPOSES.

[4–11A–05.

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

(b) (1) In consultation with the Department of the Environment and the Wetlands Administrator of the Board of Public Works, the Department shall establish Aquaculture Enterprise Zones in the Chesapeake Bay.

(2) An Aquaculture Enterprise Zone may not be located:

(i) 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 Aquaculture Enterprise Zone;

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

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

(iv) Within 150 feet of a federal navigational channel;

(v) In any creek, cove, bay, or inlet less than 300 feet wide at its mouth at mean low tide; or

(vi) In an SAV Protection Zone.

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

(4) Before adopting regulations establishing an Aquaculture Enterprise Zone, the Department shall hold a public hearing in the county or counties immediately adjacent to the proposed location of the Aquaculture Enterprise Zone.

(c) (1) Subject to paragraph (2) of this subsection, the Department may issue to any person an aquaculture lease in an Aquaculture Enterprise Zone.

(2) (i) 1. The Department shall set aside 25% of each Aquaculture Enterprise Zone for leasing to persons who hold tidal fish licenses under Subtitle 7 of this title and who have actively used those licenses during the 3 years preceding June 1, 2009.

2. An applicant for a lease under this subparagraph shall comply with the provisions for leasing set forth in this subtitle.

3. The set-aside provided for in subsubparagraph 1 of this subparagraph shall expire June 1, 2011.

(ii) The Department may issue an aquaculture lease to a corporation only if:

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

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

(3) The Department may establish a buffer between leased areas within an Aquaculture Enterprise Zone.

(d) A person who leases an area in an Aquaculture Enterprise Zone may cultivate shellfish:

- (1) On the submerged land;
 - (2) In temporary protective enclosures approved by the Department on the surface of the submerged land;
 - (3) Subject to approval by the United States Army Corps of Engineers, on or under the surface of the water in a floating structure or in a structure on the submerged bottom, except that the height of the structure may not exceed 18 inches; or
 - (4) In any other manner authorized by the Department.
- (e) Notwithstanding any other provision of this subtitle, an Aquaculture Enterprise Zone located within a sanctuary must be compatible with oyster restoration and must satisfy the criteria for permissible leasing within a sanctuary as provided in regulations adopted under this subtitle.]

4-11A-05.

(A) THIS SECTION APPLIES TO ENTERPRISE LEASES.

(B) (1) THE DEPARTMENT MAY ISSUE AN ENTERPRISE LEASE TO A PERSON FOR USE IN THE WATERS OF THE STATE.

(2) THE DEPARTMENT MAY NOT ISSUE AN ENTERPRISE LEASE FOR THE PURPOSE OF CULTIVATING A NONNATIVE SPECIES, AS DEFINED IN § 4-205.1 OF THIS TITLE.

~~(2)~~ (3) A PERSON WHO WISHES TO OBTAIN AN ENTERPRISE LEASE SHALL:

(I) COMPLETE AND SUBMIT AN APPLICATION TO THE DEPARTMENT ON A FORM THE DEPARTMENT REQUIRES; AND

(II) PAY A NONREFUNDABLE APPLICATION FEE ESTABLISHED BY THE DEPARTMENT IN CONSULTATION WITH THE AQUACULTURE COORDINATING COUNCIL.

~~(3)~~ (4) AN APPLICATION FOR AN ENTERPRISE LEASE SHALL INCLUDE:

(I) A DECLARATION THAT THE APPLICANT INTENDS TO ACTIVELY USE THE LEASED AREA FOR ASSESSING THE FEASIBILITY OF CULTIVATING AQUATIC PLANTS FOR COMMERCIAL PURPOSES; AND

(II) A PROPOSED PLAN FOR ACTIVE USE OF THE LEASE THAT INCLUDES:

1. THE SPECIES OF AQUATIC PLANTS TO BE CULTIVATED;

2. THE SOURCE OF THE AQUATIC PLANTS TO BE CULTIVATED;

3. THE METHODS AND MEANS THAT THE APPLICANT WILL USE TO CULTIVATE THE AQUATIC PLANTS;

4. THE QUANTITY OF AQUATIC PLANTS THAT THE APPLICANT EXPECTS TO GROW AND HARVEST DURING THE INITIAL 3 YEARS OF THE LEASE; AND

5. A DESCRIPTION OF THE LABOR, MATERIALS, AND EQUIPMENT TO BE USED TO CULTIVATE THE AQUATIC PLANTS.

~~(4)~~ (5) THE DEPARTMENT MAY:

(I) DENY AN ENTERPRISE LEASE APPLICATION FOR REASONABLE CAUSE; OR

(II) INCLUDE ANY CONDITIONS IN AN ENTERPRISE LEASE.

(C) (1) THE TERM OF AN ENTERPRISE LEASE MAY NOT EXCEED 5 YEARS.

(2) THE SIZE OF AN ENTERPRISE LEASE MAY NOT EXCEED 2 ACRES.

(3) THE DEPARTMENT SHALL ESTABLISH, IN CONSULTATION WITH THE AQUACULTURE COORDINATING COUNCIL, AN ANNUAL AMOUNT OF RENT FOR AN ENTERPRISE LEASE.

(D) (1) AN ENTERPRISE LEASE MAY NOT BE LOCATED:

(I) WITHIN 50 FEET OF A SHORELINE OR ANY PIER WITHOUT THE WRITTEN PERMISSION OF THE RIPARIAN OWNER AT THE TIME OF INITIAL APPLICATION FOR THE LEASE;

(II) WITHIN 150 FEET OF THE PUBLIC SHELLFISH FISHERY OR A REGISTERED POUND NET SITE;

(III) WITHIN 150 FEET OF AN OYSTER HARVEST RESERVE AREA OR ANY YATES BAR LOCATED IN AN OYSTER SANCTUARY;

(IV) WITHIN 150 FEET OF A FEDERAL NAVIGATIONAL CHANNEL;

(V) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IN ANY CREEK, COVE, BAY, OR INLET LESS THAN 300 FEET WIDE AT ITS MOUTH AT MEAN LOW TIDE;

(VI) IN AN SAV PROTECTION ZONE; OR

(VII) IN A SETBACK OR BUFFER FROM THE ASSATEAGUE ISLAND NATIONAL SEASHORE ESTABLISHED BY THE DEPARTMENT.

(2) THE PROVISIONS OF PARAGRAPH (1)(V) OF THIS SUBSECTION DO NOT APPLY TO THE RIPARIAN OWNER OR A LAWFUL OCCUPANT OF THE RIPARIAN PROPERTY.

(E) (1) AN ENTERPRISE LEASE MAY NOT BE ASSIGNED, TRANSFERRED, OR RENEWED.

(2) ANY TRANSFER OR ASSIGNMENT OF OR ATTEMPT TO TRANSFER OR ASSIGN AN ENTERPRISE LEASE SHALL VOID THE LEASE AND THE INTEREST IN THE WATER COLUMN SHALL REVERT TO THE STATE WITHOUT THE NECESSITY OF ANY ACTION BY THE STATE.

(F) (1) A PERSON WITH AN ENTERPRISE LEASE IN THE WATERS OF THE STATE MAY CULTIVATE AQUATIC PLANTS IN ANY MANNER APPROVED BY THE DEPARTMENT.

(2) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS SECTION, INCLUDING REGULATIONS CONCERNING SPECIES THAT MAY NOT BE CULTIVATED OR GEAR THAT MAY NOT BE USED IN A LEASED AREA.

(G) (1) IF THE DEPARTMENT DETERMINES THAT AN APPLICATION FOR AN ENTERPRISE LEASE MEETS THE REQUIREMENTS OF THIS SECTION:

(I) THE APPLICANT FOR THE LEASE SHALL MARK THE PROPOSED AREA WITH A STAKE; AND

(II) THE DEPARTMENT SHALL:

1. ADVERTISE THE APPLICATION ON THE WEBSITE OF THE DEPARTMENT FOR AT LEAST 2 CONSECUTIVE WEEKS;

2. NOTIFY THE OWNERS OF PROPERTY DIRECTLY IN FRONT OF THE PROPOSED ACTIVITY; AND

3. NOTIFY OTHER INTERESTED PARTIES THAT THE DEPARTMENT DEEMS APPROPRIATE.

(2) (I) WITHIN 37 DAYS AFTER THE FIRST DAY THAT THE NOTICE OF THE ENTERPRISE LEASE APPLICATION IS POSTED ON THE DEPARTMENT'S WEBSITE, A PERSON MAY REQUEST A PUBLIC INFORMATIONAL MEETING ON THE ISSUANCE OF THE LEASE.

(II) THE DEPARTMENT SHALL HOLD A PUBLIC INFORMATIONAL MEETING ON THE ISSUANCE OF AN ENTERPRISE LEASE ON THE REQUEST OF ANY PERSON UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH.

(3) (I) WITHIN 37 DAYS AFTER THE FIRST DAY THAT NOTICE OF THE ENTERPRISE LEASE IS POSTED ON THE DEPARTMENT'S WEBSITE, ANY PERSON WHO HAS A SPECIFIC RIGHT, DUTY, PRIVILEGE, OR INTEREST THAT IS DIFFERENT FROM THAT OF THE GENERAL PUBLIC AND MAY BE ADVERSELY AFFECTED BY THE PROPOSED LEASE MAY FILE A PETITION WITH THE DEPARTMENT PROTESTING THE ISSUANCE OF THE LEASE.

(II) THE PROTEST SHALL BE HEARD IN ACCORDANCE WITH THE REQUIREMENTS OF THE ADMINISTRATIVE PROCEDURE ACT UNDER TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(III) IMMEDIATELY AFTER TERMINATION OF THE PERIOD PRESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH FOR FILING A PETITION OR AFTER A FINAL DECISION DISMISSING A PROTEST, THE DEPARTMENT SHALL ISSUE AN ENTERPRISE LEASE TO THE APPLICANT.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.

Approved by the Governor, May 18, 2021.