

# SENATE BILL 342

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CF HB 210

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By: **Senator Bailey**

Introduced and read first time: January 23, 2020

Assigned to: Education, Health, and Environmental Affairs

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## A BILL ENTITLED

1 AN ACT concerning

2 **Aquaculture – Leases in Water Column – Riparian Right of First Refusal**

3 FOR the purpose of establishing that a riparian property owner or lessee shall have the  
4 right of first refusal to apply for and, if approved, obtain a water column lease, or an  
5 aquaculture lease for use in the water column in an Aquaculture Enterprise Zone,  
6 applicable to a certain area that fronts the riparian property, subject to certain  
7 standards and requirements; requiring a person other than the riparian owner or  
8 lessee who applies for a water column lease or an aquaculture lease for use in the  
9 water column in an area that is subject to a certain right of first refusal to provide  
10 notice of the lease application to the riparian owner or lessee in certain manners  
11 under certain circumstances; authorizing a person other than the riparian owner or  
12 lessee to apply for and, if approved, obtain a water column lease or an aquaculture  
13 lease for use in the water column if the riparian owner or lessee does not exercise the  
14 right of first refusal within a certain time after receiving notice; and generally  
15 relating to a right of first refusal for riparian owners and lessees over aquaculture  
16 leases in the water column.

17 BY repealing and reenacting, with amendments,  
18 Article – Natural Resources  
19 Section 4–11A–05 and 4–11A–08  
20 Annotated Code of Maryland  
21 (2018 Replacement Volume and 2019 Supplement)

22 BY repealing and reenacting, without amendments,  
23 Article – Natural Resources  
24 Section 4–11A–10(a)  
25 Annotated Code of Maryland  
26 (2018 Replacement Volume and 2019 Supplement)

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



**Article – Natural Resources**

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)] **PARAGRAPHS (2) THROUGH (4)** 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.

**(4) (I) A RIPARIAN PROPERTY OWNER OR LESSEE SHALL HAVE THE RIGHT OF FIRST REFUSAL TO APPLY FOR AND, IF APPROVED, OBTAIN AN AQUACULTURE LEASE FOR USE IN THE WATER COLUMN IN AN AREA IN AN AQUACULTURE ENTERPRISE ZONE THAT FRONTS THE RIPARIAN PROPERTY, SUBJECT TO THE STANDARDS AND REQUIREMENTS OF THIS SUBTITLE.**

**(II) A PERSON OTHER THAN THE RIPARIAN OWNER OR LESSEE WHO APPLIES FOR AN AQUACULTURE LEASE FOR USE IN THE WATER COLUMN FOR AN AREA THAT IS SUBJECT TO A RIGHT OF FIRST REFUSAL UNDER THIS PARAGRAPH SHALL PROVIDE NOTICE OF THE LEASE APPLICATION TO THE RIPARIAN OWNER OR LESSEE BY:**

**1. CERTIFIED MAIL, RETURN RECEIPT REQUESTED; OR**

**2. IF THE NAME AND ADDRESS OF THE RIPARIAN OWNER OR LESSEE ARE UNKNOWN, POSTING NOTICE FOR 20 DAYS ON A BOARD FASTENED TO A STAKE DRIVEN IN THE WATER DIRECTLY IN FRONT OF THE PROPERTY AND WITHIN 300 FEET OF THE SHORE.**

**(III) IF THE RIPARIAN OWNER OR LESSEE DOES NOT EXERCISE THE RIGHT OF FIRST REFUSAL WITHIN 20 DAYS AFTER RECEIVING NOTICE UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE OTHER PERSON MAY APPLY FOR AND, IF APPROVED, OBTAIN THE AQUACULTURE LEASE.**

**(IV) A WATER COLUMN LEASE OBTAINED BY A RIPARIAN RIGHT OF FIRST REFUSAL UNDER THIS PARAGRAPH:**

1                                   **1.     SHALL DIRECTLY FRONT THE RIPARIAN SHORELINE;**

2   **AND**

3                                   **2.     MAY NOT EXTEND FURTHER THAN THE LESSER OF**  
4   **300 FEET OFF THE SHORELINE OR THE CENTER OF A RIVER, CREEK, COVE, BAY, OR**  
5   **INLET.**

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

8                   (1)     On the submerged land;

9                   (2)     In temporary protective enclosures approved by the Department on the  
10   surface of the submerged land;

11                  (3)     Subject to approval by the United States Army Corps of Engineers, on  
12   or under the surface of the water in a floating structure or in a structure on the submerged  
13   bottom, except that the height of the structure may not exceed 18 inches; or

14                  (4)     In any other manner authorized by the Department.

15           (e)     Notwithstanding any other provision of this subtitle, an Aquaculture  
16   Enterprise Zone located within a sanctuary must be compatible with oyster restoration and  
17   must satisfy the criteria for permissible leasing within a sanctuary as provided in  
18   regulations adopted under this subtitle.

19   4-11A-08.

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

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

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

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

27           (c)     (1)     A water column 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;

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

(iv) Except as provided in paragraph (3) of this subsection, 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.

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

**(4) (I) A RIPARIAN PROPERTY OWNER OR LESSEE SHALL HAVE THE RIGHT OF FIRST REFUSAL TO APPLY FOR AND, IF APPROVED, OBTAIN A WATER COLUMN LEASE THAT FRONTS THE RIPARIAN PROPERTY, SUBJECT TO THE STANDARDS AND REQUIREMENTS OF THIS SUBTITLE.**

**(II) A PERSON OTHER THAN THE RIPARIAN OWNER OR LESSEE WHO APPLIES FOR A WATER COLUMN LEASE FOR AN AREA THAT IS SUBJECT TO A RIGHT OF FIRST REFUSAL UNDER THIS PARAGRAPH SHALL PROVIDE NOTICE OF THE LEASE APPLICATION TO THE RIPARIAN OWNER OR LESSEE BY:**

**1. CERTIFIED MAIL, RETURN RECEIPT REQUESTED; OR**

**2. IF THE NAME AND ADDRESS OF THE RIPARIAN OWNER OR LESSEE ARE UNKNOWN, POSTING NOTICE FOR 20 DAYS ON A BOARD FASTENED TO A STAKE DRIVEN IN THE WATER DIRECTLY IN FRONT OF THE PROPERTY AND WITHIN 300 FEET OF THE SHORE.**

**(III) IF THE RIPARIAN OWNER OR LESSEE DOES NOT EXERCISE THE RIGHT OF FIRST REFUSAL WITHIN 20 DAYS AFTER RECEIVING NOTICE UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE OTHER PERSON MAY APPLY FOR AND, IF APPROVED, OBTAIN THE WATER COLUMN LEASE.**

**(IV) A WATER COLUMN LEASE OBTAINED BY A RIPARIAN RIGHT OF FIRST REFUSAL UNDER THIS PARAGRAPH:**

1                               **1.     SHALL DIRECTLY FRONT THE RIPARIAN SHORELINE;**

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3                               **2.     MAY NOT EXTEND FURTHER THAN THE LESSER OF**  
4   **300 FEET OFF THE SHORELINE OR THE CENTER OF A RIVER, CREEK, COVE, BAY, OR**  
5   **INLET.**

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

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

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

11   4–11A–10.

12               (a)     A leaseholder shall:

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

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

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

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

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

25               SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June  
26   1, 2020.