

COUNTY COUNCIL
OF
TALBOT COUNTY, MARYLAND

2011 Legislative Session, Legislative Day No. : February 22, 2011

Bill No.: 1201

Expiration Date: April 28, 2011

Introduced by: Mr. Duncan, Mr. Hollis, Mr. Pack, Ms. Price

A BILL TO AMEND CHAPTER 128, TALBOT COUNTY CODE, BY ENACTING ARTICLE II THEREOF, ENTITLED "TALBOT COUNTY SEAFOOD INDUSTRY RIGHT TO WORK", FOR THE PURPOSE OF PROTECTING THE RIGHT TO HARVEST SEAFOOD AND TO ENGAGE IN THE COMMERCIAL SEAFOOD AND FISHING INDUSTRY; TO PROVIDE FOR THE PERSONS WHO ENGAGE IN THE COMMERCIAL SEAFOOD AND FISHING INDUSTRY TO BE IMMUNE FROM PRIVATE NUISANCE ACTIONS INVOLVING THE COMMERCIAL SEAFOOD AND FISHING INDUSTRY; TO ESTABLISH A GRIEVANCE COMMITTEE TO ARBITRATE DISPUTES INVOLVING COMMERCIAL SEAFOOD AND FISHING INDUSTRY OPERATIONS; TO REQUIRE A PERSON CLAIMING A NUISANCE INVOLVING COMMERCIAL SEAFOOD AND FISHING INDUSTRY OPERATIONS TO SEEK AND OBTAIN RELIEF FROM THE GRIEVANCE COMMITTEE; TO REQUIRE A PERSON CLAIMING A NUISANCE TO PAY REASONABLE EXPENSES, INCLUDING ATTORNEY FEES, IN CERTAIN CIRCUMSTANCES; TO REQUIRE A TRANSFEROR OF REAL PROPERTY TO PROVIDE CERTAIN INFORMATION TO THE TRANSFEREE IN CERTAIN CIRCUMSTANCES; AND GENERALLY RELATING TO THE AUTHORITY OF THE COUNTY COUNCIL TO PROTECT THE COMMERCIAL SEAFOOD AND FISHING INDUSTRY IN TALBOT COUNTY

By the Council: February 22, 2011

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, March 22, 2011 at 7:00 p.m. at the Bradley Meeting Room, South Wing, Talbot County Court House, 11 North Washington Street, Easton, Maryland 21601.

By Order Susan W. Moran
Susan W. Moran, Secretary

A BILL TO ENACT CHAPTER 128, ARTICLE II, ENTITLED "TALBOT COUNTY SEAFOOD INDUSTRY RIGHT TO WORK", FOR THE PURPOSE OF PROTECTING THE RIGHT TO HARVEST SEAFOOD AND TO ENGAGE IN THE COMMERCIAL SEAFOOD AND FISHING INDUSTRY; TO PROVIDE FOR THE PERSONS WHO ENGAGE IN THE COMMERCIAL SEAFOOD AND FISHING INDUSTRY TO BE IMMUNE FROM PRIVATE NUISANCE ACTIONS INVOLVING THE COMMERCIAL SEAFOOD AND FISHING INDUSTRY; TO ESTABLISH A GRIEVANCE COMMITTEE TO ARBITRATE DISPUTES INVOLVING COMMERCIAL SEAFOOD AND FISHING INDUSTRY OPERATIONS; TO REQUIRE A PERSON CLAIMING A NUISANCE INVOLVING COMMERCIAL SEAFOOD AND FISHING INDUSTRY OPERATIONS TO SEEK AND OBTAIN RELIEF FROM THE GRIEVANCE COMMITTEE; TO REQUIRE A PERSON CLAIMING A NUISANCE TO PAY REASONABLE EXPENSES, INCLUDING ATTORNEY FEES, IN CERTAIN CIRCUMSTANCES; TO REQUIRE A TRANSFEROR OF REAL PROPERTY TO PROVIDE CERTAIN INFORMATION TO THE TRANSFEREE IN CERTAIN CIRCUMSTANCES; AND GENERALLY RELATING TO THE AUTHORITY OF THE COUNTY COUNCIL TO PROTECT THE COMMERCIAL SEAFOOD AND FISHING INDUSTRY IN TALBOT COUNTY

SECTION ONE: BE IT ENACTED by the County Council of Talbot County, Maryland that new Chapter 128 Article II, entitled "Talbot County Seafood Industry Right to Work" be added to the Talbot County Code to read as follows:

KEY

Boldface..... Heading or defined term.
Underlining..... Added to existing law by original bill.
~~Strikethrough~~..... Deleted from existing law by original bill.
Double underlining..... Added to bill by amendment.
~~Double strikethrough~~ Deleted from bill by amendment.
* * *.....Existing law unaffected.

* * *

CHAPTER 128, ARTICLE II - TALBOT COUNTY - SEAFOOD INDUSTRY RIGHT TO WORK

§ 128-7 Findings and Policy

It is declared policy of Talbot County to preserve, protect and encourage the development and improvement of its waterways for the harvesting of seafood. It is the purpose of this Article to

reduce the loss to the County of its commercial seafood and fishing industry by limiting the circumstances under which commercial seafood and fishing industry operations may be deemed to constitute a nuisance, trespass, or other interference with the reasonable use and enjoyment of private property. Protected practices associated with the commercial seafood and fishing industries include, without limitation, all activities to handle, harvest, buy, sell, load, un-load, transport, and process commercial seafood including, but not limited to boats leaving and returning at all hours, painting crab pots, use of chemicals, paints, power tools, creation of dust, maintenance, running, and operation of boats and any and all other equipment, noise, smell, and use and presence of machinery and equipment associated with commercial seafood operating at any and all hours.

Provided that nothing in this Chapter shall in any way restrict or impede the authority of the State or of the County to protect the public health, safety and welfare. It is in the public interest to promote a clear understanding between seafood industry operations and residential neighbors concerning normal inconveniences of seafood industry operations that follow generally accepted seafood industry practices and that do not endanger public health or safety.

This Chapter is not intended and shall not be construed to modify or abridge local, State, or federal laws relating to health, safety, zoning, licensing requirements, environmental standards (including standards regarding air and water quality), and the like. An additional purpose of this Chapter is to promote a good neighbor policy by advising purchasers and users of property adjacent to or near commercial seafood operations of the potential problems inherently associated with such purchase or use. It is intended that, through mandatory disclosures, purchasers and users will better understand the impact of living near commercial seafood operations and be prepared to accept attendant conditions as the natural result of living in or near such areas. However, this Chapter shall be effective regardless of whether disclosure was made in accordance with Section 128-5 herein ("Seafood Industry Right to Work Notice and Real Estate Transfer Disclosure").

§ 128-8 Definitions

"Land" -- means all real property within the boundaries of Talbot County and all territorial waters, rivers, bays and creeks located within Talbot County.

"Commercial Seafood Operation" -- means, but is not limited to, all matters relating to the harvest of seafood in Talbot County, including boats leaving and returning at all hours, painting of crab pots, presence and use of bait, salt, paints, power tools, maintenance, running, and operation of boats and any other equipment at all hours, creation of dust, noise, and smell, presence of machinery and equipment associated with commercial seafood operating at any and all hours, including but not limited to, presence of workers, boats, generators, ice making, refrigerated trucks, chum trucks, boilers, steam generators, cooking, forklifts, heating equipment, cooling equipment, soft crab shedding equipment, tanks, pallets, cooking baskets, lighting and drums.

"Generally Accepted Seafood Industry Practices" -- means those methods used in connection with the commercial seafood and fishing industry (the "Industry") that do not violate applicable

federal, State or local laws or public health, safety, and welfare and which are generally accepted in the Industry. They include practices that are recognized as best management practices, and those methods, that are authorized by various governmental agencies, bureaus and departments. A practice is presumed to be a general accepted seafood industry practice.

"Health Officer" means the Health Officer for Talbot County or his/her designee.

§ 128-9 Limitation of Actions

- A. A private action may not be maintained with respect to a Commercial Seafood Operation on the grounds that it interferes, or has interfered, with the use or enjoyment of property, whether public or private, if:
 - 1. The Commercial Seafood Operation has been underway for a period of 1 year or more and if the operation or any change in the operation did not constitute a nuisance from the date the operation or change began; and
 - 2. The Commercial Seafood Operation is conducted substantially in accordance with Generally Accepted Seafood Industry Practices.
- B. Notwithstanding any other provision of this Article, no action alleging that a Commercial Seafood Operation has interfered with the reasonable use of enjoyment of real property shall be maintained if the complainant has not sought arbitration through the Seafood Reconciliation Committee.

§ 128-10 Resolution of Disputes and Arbitration of Complaints

A. Nuisances which affect public health.

- 1. Complaints. The Talbot County Health Department shall investigate any complaint that a Commercial Seafood Operation is engaged in or is creating a public nuisance.
- 2. Investigations. The Health Officer shall investigate all complaints of public nuisance received against a Commercial Seafood Operation. When a previous complaint involving substantially the same condition has resulted in a determination by the Health Officer that a public nuisance did not exist, the Health Officer may investigate or may not investigate such a complaint. The Talbot County Health Department may initiate any investigation about a public nuisance concerning a Commercial Seafood Operation without citizen complaint.
- 3. After the Health Officer has completed the investigation if there has been a complaint filed with the Seafood Reconciliation Committee, the findings shall be provided to the Committee to aid in their determination as to the existence of a private nuisance.

B. Seafood Reconciliation Committee

1. The Talbot County Seafood Reconciliation Committee (the "Committee") is hereby established to arbitrate disputes involving Commercial Seafood Operations, to issue written findings formalizing any agreements reached through arbitration, or, if no such agreement is reached, to decide and issue written opinions determining whether such operations are conducted in a manner consistent with Generally Accepted Seafood Industry Practices. Any person may file a written complaint with the Committee regarding any claim of interference with the use or enjoyment of property from a Commercial Seafood Operation .
2. The Committee shall be composed of five (5) County residents who have a seafood industry background, appointed by the County Council. Members of the Committee shall serve a three year term; however the initial appointments shall be as follows:
 - a. One member shall be appointed to serve a one year term;
 - b. Two members shall be appointed to serve a two year term;
 - c. Two members shall be appointed to serve a three year term.
 - d. After these initial appointments, all appointments shall be for a full three year term.
- C. The Committee shall conduct non-binding arbitration on all complaints arising out of Commercial Seafood Operations. The Committee shall conduct its proceedings in an informal manner and the rules of evidence shall not apply. If the Committee finds that the conduct of a party in bringing or maintaining an action in connection with a Seafood Industry Operation was in bad faith or without substantial justification, the Committee shall require that party to pay to the owner of the Seafood Industry Operation (or any other party opponent) the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees, incurred by that party in defending against the action.

§ 128-11 Right to Operate Commercial Seafood Operation and Real Estate Transfer Disclosure

A contract or an addendum to the contract of sale for any real property in Talbot County shall contain in conspicuous type the following disclosure statement:

RIGHT TO OPERATE SEAFOOD INDUSTRY REAL ESTATE TRANSFER DISCLOSURE

NOTICE TO BUYER

TALBOT COUNTY ALLOWS COMMERCIAL SEAFOOD OPERATIONS as defined in the *Talbot County Seafood Industry Right to Work*, Chapter 128, Article II, Talbot County Code. You may be subject to inconveniences or discomforts arising from such operations, including but not limited to, all matters relating to the harvest of seafood in Talbot County, including boats leaving and returning at all hours, painting of crab pots, presence and use of bait, salt,

paints, dust, power tools, maintenance, running, and operation of any equipment at all hours, creation of dust, noise, and smell, and presence of machinery and equipment associated with commercial seafood, including but not limited to, presence of workers, boats, generators, ice making, refrigerated trucks, chum trucks, boilers, steam generators, cooking, forklifts, heating equipment, cooling equipment, soft crab shedding equipment, tanks, pallets, cooking baskets, lighting, and drums. Talbot County has determined that inconveniences or discomforts associated with such Commercial Seafood Operations shall not be considered to be an interference with reasonable use and enjoyment of land, if such operations are conducted in accordance with Generally Accepted Seafood Industry Practices. Talbot County has established a Seafood Reconciliation Committee to assist in the arbitration and resolution of disputes which might arise in this County concerning whether seafood industry operations are causing an interference with the reasonable use and enjoyment of land and whether those operations are being conducted in accordance with Generally Accepted Seafood Industry Practices.

Seller: _____ Date: _____

Seller: _____ Date: _____

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT:

Buyer: _____ Date: _____

Buyer: _____ Date: _____

IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

§ 128-12 Severability

Should any provision, section, paragraph or subparagraph of this Article, including any code or text adopted hereby, be declared null and void, illegal, unconstitutional, or otherwise determined to be unenforceable by a Court of competent jurisdiction, the same shall not affect the validity, legality, or enforceability of any other provision, section, paragraph, or subparagraph hereof, including any code or text adopted hereby. Each such provision, section, paragraph, or subparagraph is expressly declared and is deemed to be severable.

§ 128-13 Section Headings, Chapter Headings, Titles

Section headings, chapter headings, titles, etc. are for the purpose of description or ease of use and do not form a part of the text of this Article or any code or text adopted hereby.

§ 128-14 Short Title.

This Article shall be cited as the "Talbot County - Seafood Industry Right to Work."

SECTION TWO: BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND that General Code Publishers is directed to codify new Chapter 128, Article II in the Talbot County Code accordingly.

SECTION THREE: BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND that this Bill shall take effect sixty days after its final passage.

PUBLIC HEARING

Having been posted and Notice of time, date, and place of hearing, and Title of Bill No. _____ having been published, a public hearing was held on _____.

BY THE COUNCIL

Read the third time.

ENACTED: _____

By Order _____
Susan W. Moran, Secretary

Bartlett	-
Hollis	-
Pack	-
Price	-
Duncan	-