

COUNTY COUNCIL
OF
DORCHESTER COUNTY, MARYLAND

2005 Legislative Session,
Legislative Day No. August 30, 2005

Reintroduced By: County Council

BILL NO. 2005-10

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND ACTING PURSUANT TO ARTICLE 25A, SECTION 5 (S) AND ARTICLE 25, SECTION 232 OF THE ANNOTATED CODE OF MARYLAND ENACTING NEW CHAPTER 126 ENTITLED "DORCHESTER 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 DORCHESTER COUNTY.

Reintroduced, read second time, ordered posted on official bulletin board of County, County Office Building, 501 Court Lane, Cambridge, Maryland 21613.

Ordered publication for once a week for two successive weeks, and public hearing scheduled on Tuesday, September 27, 2005, Room 110, County Office Building, 501 Court Lane, Cambridge, Maryland at 6:40 p.m.

By order: Jane Baynard
Jane Baynard, County Manager

FILED

05 OCT -5 AM 11:18

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND ACTING PURSUANT TO ARTICLE 25A, SECTION 5 (S) AND ARTICLE 25, SECTION 232 OF THE ANNOTATED CODE OF MARYLAND ENACTING NEW CHAPTER 126 ENTITLED "DORCHESTER 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 DORCHESTER COUNTY.

SECTION ONE: Acting under Article 25A, Section 5 (S) and Article 25, Section 232 of the Annotated Code of Maryland, and The Secretary of the Maryland Department of Natural Resources having consented to the adoption of this Bill on August 23, 2005 as required by Article 25, Section 232 (the "Acts"), be it ENACTED and ORDAINED by the County Council of Dorchester County, Maryland that new Chapter 126 entitled "Dorchester County Seafood Industry Right to Work" be added to the Dorchester County Code to read as follows:

DORCHESTER COUNTY – SEAFOOD INDUSTRY RIGHT TO WORK

ARTICLE I.

§126-1 Findings and Policy

It is declared policy of Dorchester County to preserve, protect and encourage the development and improvement of its waterways for the harvesting of seafood. It is the purpose of this Chapter 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 practices associated with the preparation and activity of and to handle, harvest, buy, sell, load, un-load, transport, process commercial seafood including, but not limited to boats leaving and returning at all hours, painting crab pots, chemicals, paints, dust, power tools, maintenance of boats and any and all other equipment, running and operation, noise, smell 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 and of the County to protect the public health, safety and welfare.

It is in the public interest to promote a clearer understanding between seafood industry operations and residential neighbors concerning the normal inconveniences of seafood industry operations which follow generally accepted seafood industry practices and do not endanger public health or safety.

This Chapter is not intended to and shall not be construed as in any way modifying or abridging local, state or federal laws relating to health, safety, zoning, licensing requirements, environmental standards (including those standards which relate to 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 inherent potential problems associated with such purchase or use. These potential problems include, but are not limited to boats leaving and returning at all hours, painting crab pots, chemicals, paints, dust, power tools, maintenance of boats and any and all other equipment, running and operation, noise, smell and presence of machinery and equipment associated with commercial seafood operating at any and all hours. 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 rural and urban areas. However, this Chapter shall be effective regardless of whether disclosure was made in accordance with Section 126-5 herein ("Seafood Industry Right to Work Notice and Real Estate Transfer Disclosure").

§126-2 Definitions.

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

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

"Generally Accepted Seafood Industry Practices" means those methods used in connection with the commercial seafood and fishing industries which do not violate applicable federal, state or local laws or public health safety and welfare and which are generally accepted commercial seafood and fishing practices in the commercial seafood and fishing industry. Generally Accepted Seafood Industry Practices include practices, which are recognized as best management practices, and those methods, which are authorized by various governmental agencies, bureaus and departments. If no generally accepted seafood industry practices exists or there is no method authorized by those agencies mentioned herein which govern a practice, the practice is presumed to be a general accepted seafood industry practice.

"Health Officer" means the Director of the Health Department for Dorchester County or his designee.

§126-3 Limitation of Actions.

- A. A private action may not be maintained with respect to a seafood industry operation on the grounds that the seafood industry operation interferes or has interfered with the use or enjoyment of property, whether public or private, if:
1. The seafood operation has been under way for a period of 1 year or more and if the operation or any future change in the operation did not constitute a nuisance from the date the operation or change in the future operation began; and
 2. The seafood operation is conducted substantially in accordance with generally accepted seafood industry practices.
- B. Notwithstanding any provision of this section, no action alleging that a seafood industry operation has interfered with the reasonable use of enjoyment of real property or personal well-being shall be maintained if the plaintiff has not sought arbitration through Seafood Reconciliation Committee.

§126-4 Resolution of Disputes and Procedure for Complaints, Investigation and Declaration.

A. Nuisances which affect public health.

1. Complaints. A person may complain to the Dorchester County Health Department to declare that a nuisance which affects public health exists.
2. Investigations. The health officer may investigate all complaints of nuisance received against a seafood industry operation. When a previous complaint involving the same condition resulted in a determination by the health officer that a nuisance condition did not exist, the health officer may investigate the complaint but the health officer may also determine not to investigate such a complaint. The Dorchester County Health Department may initiate any investigation without citizen complaint.
3. After the health officer has completed his investigation, he will report his findings to the Seafood Reconciliation Committee, to aid in their determination as to the existence of a nuisance.

B. Seafood Reconciliation Committee

1. If any conflict cannot be resolved regarding an interference with the use or enjoyment of property from seafood industry operations, the parties to that controversy may file a written complaint with the Seafood Reconciliation Committee.
2. There is hereby established the Dorchester County Seafood Reconciliation Committee, which shall arbitrate and mediate disputes involving seafood operations and issue opinions on whether such seafood operations are conducted in a manner consistent with generally accepted seafood industry management practices.
3. The Seafood Reconciliation Committee shall be composed of five persons, all county residents, all of whom shall have a seafood industry background, and shall be 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.
4. The Seafood Reconciliation Committee will conduct its proceedings in an informal manner and the rules of evidence shall not apply. In each case before it the Seafood Reconciliation Committee shall engage in non-binding arbitration in controversies arising out of seafood industry operations, including but not limited to the invasion of property and personal rights by seafood industry operations.
 - a. If the Seafood Reconciliation Committee or a Court 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 Seafood Reconciliation Committee or Court 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.

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

RIGHT TO OPERATE SEAFOOD INDUSTRY
REAL ESTATE TRANSFER DISCLOSURE

Notice To Buyer

DORCHESTER COUNTY ALLOWS SEAFOOD INDUSTRY OPERATIONS (as defined in the Dorchester County Seafood Industry Right to Work Chapter 126 of The Dorchester County Code.) You may be subject to inconveniences or discomforts arising from such operations, including but not limited to boats leaving and returning at different hours of the day, odors, fumes and noises associated with the maintenance of boats and any and all other equipment, noise, smell and presence of machinery and equipment associated with commercial seafood operating at various hours, including but not limited to workers, boats, generators, refrigeration, ice making, refrigerated trucks, chum trucks, all other trucks, boilers, steam generators, boats, cooking, fork lifts, heating equipment, cooling equipment, soft crab shedding equipment and lighting. Dorchester County has determined that inconveniences or discomforts associated with such seafood industry 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. Dorchester County has established a reconciliation committee to assist in the resolution of disputes which might arise between persons in this County regarding whether seafood industry operations are causing an interference with the reasonable use and enjoyment of land or personal well being 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.

§126-6 Severability

Should any provision, section, paragraph or subparagraph of this Chapter including any code or text adopted hereby, be declared null and void, illegal, unconstitutional, or otherwise determined to be unenforceable by a Court having 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 to be and is deemed severable.

§126-7 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 Chapter or any code or text adopted hereby.

§126-8 Existing Liabilities

Except to the extent specifically provided herein, this Chapter shall not discharge, impair or release any contract, obligation, duty, liability or penalty whatever existing on the date of its enactment. It is not intended hereby that the law of non-conforming use be changed, or that the court's rule of construction concerning the application of changes in

the law during the pendency of actions be modified hereby, but simply that this Chapter should not effect a change between private parties.

§126-9 Short Title.

“This Chapter shall be cited as the “Dorchester County – Seafood Industry Right to Work”.

SECTION TWO: BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND that General Code Publishers is directed to codify new Chapter 126 in the Dorchester County Code accordingly.

SECTION THREE: BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND that this Bill No. 2005-10 of Dorchester County, Maryland shall take effect sixty days after its final passage.

PASSED this 27th day of September, 2005.

ATTEST:

COUNTY COUNCIL OF DORCHESTER COUNTY:

BY: Jane Baynard
Jane Baynard, County Manager

Glenn L. Bramble
Glenn L. Bramble, President

APPROVED this 27th day of September, 2005.

ATTEST:

COUNTY COUNCIL OF DORCHESTER COUNTY:

BY: Jane Baynard
Jane Baynard, County Manager

Glenn L. Bramble
Glenn L. Bramble, President

Bramble - *aye*
Yockey - *aye*
Elzey - *aye*
Nichols - *aye*
Innes - *aye*

FILED

05 OCT -5 AM 11:18