

HOUSE BILL 28

M2, M3

(PRE-FILED)

9lr0026
CF SB 939

By: **Delegate Clark**

Requested: October 24, 2018

Introduced and read first time: January 9, 2019

Assigned to: Environment and Transportation

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 20, 2019

CHAPTER _____

1 AN ACT concerning

2 **Natural Resources – Shellfish Nursery Operations – Wetlands License**
3 **Requirements**

4 FOR the purpose of exempting under certain circumstances certain activities and the use
5 of certain equipment associated with a shellfish nursery operation from the
6 requirement to obtain certain licenses or permits from the Department of the
7 Environment or the Board of Public Works; establishing that the use of certain
8 equipment that is attached to a pier and associated with a shellfish nursery
9 operation is not included as a nonwater-dependent project for the purposes of the
10 requirement to obtain a State or tidal wetlands license; providing that the
11 installation of certain equipment that is attached to a pier for the cultivation of
12 shellfish seed under a certain permit is a lawful use on private wetlands; altering
13 the criteria for determining persons eligible for a shellfish nursery permit and
14 locations where a shellfish nursery may be established; altering a certain definition;
15 defining a certain term; and generally relating to wetlands license requirements for
16 shellfish nursery operations.

17 BY repealing and reenacting, without amendments,
18 Article – Environment
19 Section 16–101(a), 16–104(b)(1) and (2), and 16–202(a)
20 Annotated Code of Maryland
21 (2014 Replacement Volume and 2018 Supplement)

22 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article – Environment
 2 Section ~~16–101(i) and 16–202(h)~~, 16–202(h), and 16–304
 3 Annotated Code of Maryland
 4 (2014 Replacement Volume and 2018 Supplement)

5 BY repealing and reenacting, with amendments,
 6 Article – Natural Resources
 7 Section 4–11A–23
 8 Annotated Code of Maryland
 9 (2018 Replacement Volume)

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

12 **Article – Environment**

13 16–101.

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

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

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

19 (i) A dwelling unit on a pier;

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

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

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

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

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

27 2. A geothermal energy system and its geothermal heat
 28 exchanger or other necessary equipment; and

29 3. A wind energy system and its wind turbine, tower, base,
 30 or other necessary equipment.

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

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

2 (ii) A sanitary sewage pump or other wastewater removal equipment
3 on a pier; [or]

4 (iii) **A PUMP, A PIPE, OR ANY OTHER EQUIPMENT ATTACHED TO**
5 **A PIER AND ASSOCIATED WITH A SHELLFISH NURSERY OPERATION UNDER A PERMIT**
6 **ISSUED BY THE DEPARTMENT OF NATURAL RESOURCES UNDER § 4–11A–23 OF THE**
7 **NATURAL RESOURCES ARTICLE; OR**

8 [(iii)] (iv) An office on a pier for managing marina operations,
9 including monitoring vessel traffic, registering vessels, providing docking services, and
10 housing electrical or emergency equipment related to marina operations.

11 16–104.

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

15 (2) The Board of Public Works may issue a license to authorize a
16 nonwater–dependent project located on State wetlands if the project:

17 (i) 1. Involves a commercial activity that is permitted as a
18 secondary or accessory use to a permitted primary commercial use;

19 2. Is not located on a pier that is attached to residentially,
20 institutionally, or industrially used property;

21 3. Avoids and minimizes impacts to State or private
22 wetlands and other aquatic resources;

23 4. Is located in:

24 A. An intensely developed area and the project is authorized
25 under a program amendment to a local jurisdiction’s critical area program approved on or
26 after July 1, 2013, if the approved program amendment includes necessary changes to the
27 local jurisdiction’s zoning, subdivision, and other ordinances so as to be consistent with or
28 more restrictive than the requirements provided under this paragraph; or

29 B. An area that has been excluded from a local critical area
30 program if the exclusion has been adopted or approved by the Critical Area Commission for
31 the Chesapeake and Atlantic Coastal Bays;

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1 5. Is approved by the local planning and zoning authorities
2 after the local jurisdiction's program amendment under item 4A of this item, if applicable,
3 has been approved;

4 6. Allows or enhances public access to State wetlands;

5 7. Does not expand beyond the length, width, or channelward
6 encroachment of the pier on which the project is constructed;

7 8. Has a height of up to 18 feet unless the project is located
8 at a marina and the Secretary recommends additional height;

9 9. Is up to 1,000 square feet in total area;

10 10. Is not located in, on, or over vegetated tidal wetlands,
11 submerged aquatic vegetation, a natural oyster bar, a public shellfish fishery area, a Yates
12 Bar, or an area with rare, threatened, or endangered species or species in need of
13 conservation; and

14 11. Does not adversely impact a fish spawning or nursery area
15 or an historic waterfowl staging area; or

16 (ii) 1. Is located on a pier that was in existence on or before
17 December 31, 2012;

18 2. Satisfies all of the requirements under item (i)1 through 8
19 of this paragraph; and

20 3. If applicable, has a temporary or permanent roof or
21 covering that is up to 1,000 square feet in total area.

22 16–202.

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

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

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

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

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

1 (4) Routine maintenance or repair of existing bulkheads, provided that
2 there is no addition or channelward encroachment; [or]

3 (5) Aquaculture activities occurring under a lease issued by the
4 Department of Natural Resources under Title 4, Subtitle 11A of the Natural Resources
5 Article; OR

6 (6) **INSTALLING A PUMP, A PIPE, OR ANY OTHER EQUIPMENT**
7 **ATTACHED TO A PIER FOR THE CULTIVATION OF SHELLFISH SEED IN A SHELLFISH**
8 **NURSERY UNDER A PERMIT ISSUED BY THE DEPARTMENT OF NATURAL RESOURCES**
9 **UNDER § 4-11A-23 OF THE NATURAL RESOURCES ARTICLE, PROVIDED THAT THE**
10 **PUMP, PIPE, OR OTHER EQUIPMENT DOES NOT REQUIRE INCREASING THE LENGTH,**
11 **WIDTH, OR CHANNELWARD ENCROACHMENT OF THE PIER.**

12 16-304.

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

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

16 (2) Trapping, hunting, fishing, and catching shellfish, if otherwise legally
17 permitted;

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

20 (4) Reclamation of fast land owned by a natural person and lost during the
21 person's ownership of the land by erosion or avulsion to the extent of provable preexisting
22 boundaries. The right to reclaim lost fast land relates only to fast land lost after January
23 1, 1972. The burden of proof that the loss occurred after this date is on the owner of the
24 land; [and]

25 (5) Routine maintenance and repair of existing bulkheads, provided that
26 there is no addition or channelward encroachment; AND

27 (6) **INSTALLING A PUMP, A PIPE, OR ANY OTHER EQUIPMENT**
28 **ATTACHED TO A PIER FOR THE CULTIVATION OF SHELLFISH SEED IN A SHELLFISH**
29 **NURSERY UNDER A PERMIT ISSUED BY THE DEPARTMENT OF NATURAL RESOURCES**
30 **UNDER § 4-11A-23 OF THE NATURAL RESOURCES ARTICLE, PROVIDED THAT THE**
31 **PUMP, PIPE, OR OTHER EQUIPMENT DOES NOT REQUIRE INCREASING THE LENGTH,**
32 **WIDTH, OR CHANNELWARD ENCROACHMENT OF THE PIER.**

33 Article – Natural Resources

34 4-11A-23.

1 (a) (1) In this section[, “permit”] **THE FOLLOWING WORDS HAVE THE**
2 **MEANINGS INDICATED.**

3 (2) **“PERMIT”** means a shellfish nursery permit.

4 (3) **“PIER” HAS THE MEANING STATED IN § 16–101 OF THE**
5 **ENVIRONMENT ARTICLE.**

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

8 (c) For a shellfish nursery to be located on land, the Department may issue a
9 permit only to the owner or legal tenant of the property or to a person with the permission
10 of the property owner.

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

13 (i) To the owner of a [wharf] **PIER** or other structure constructed on
14 or about the water and approved by the U.S. Army Corps of Engineers, or to a person with
15 the permission of the owner of the [wharf] **PIER** or other structure; and

16 (ii) For the cultivation of shellfish seed within 20 feet of the [wharf]
17 **PIER** or other structure, in an area of water not exceeding 200 square feet.

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

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

23 (4) **A PERSON CULTIVATING SHELLFISH SEED USING A PUMP, A PIPE,**
24 **OR ANY OTHER EQUIPMENT ATTACHED TO A PIER IN ACCORDANCE WITH A PERMIT**
25 **ISSUED UNDER THIS SECTION IS NOT REQUIRED TO OBTAIN A TIDAL WETLANDS**
26 **LICENSE OR PERMIT FROM THE DEPARTMENT OF THE ENVIRONMENT OR A STATE**
27 **WETLANDS LICENSE FROM THE BOARD OF PUBLIC WORKS UNDER TITLE 16 OF THE**
28 **ENVIRONMENT ARTICLE, PROVIDED THAT THE PUMP, PIPE, OR OTHER EQUIPMENT**
29 **DOES NOT REQUIRE INCREASING THE LENGTH, WIDTH, OR CHANNELWARD**
30 **ENCROACHMENT OF THE PIER.**

31 (e) (1) To obtain a permit, a person shall:

32 (i) Complete and submit an application to the Department on a form
33 prescribed by the Department; and

1 (ii) Pay a nonrefundable application fee established by the
2 Department in consultation with the Aquaculture Coordinating Council.

3 (2) The application fee may not exceed the cost of processing the permit.

4 (f) The Department may, as it considers necessary to protect the public health,
5 safety, and welfare:

6 (1) Deny a permit application for reasonable cause; or

7 (2) Include conditions in a permit.

8 (g) (1) The term of a shellfish nursery permit is 5 years.

9 (2) The Department may revoke or suspend a permit issued under this
10 section at any time for noncompliance with the requirements of this section, regulations
11 adopted under this section, or the conditions of the permit.

12 (h) A permit holder shall allow the Department to inspect at reasonable hours
13 any facilities, equipment, or shellfish that are part of the permit holder's shellfish nursery
14 operations.

15 (i) The Department may adopt regulations to implement this section.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2019.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.