

Chapter 236

(House Bill 28)

AN ACT concerning

Natural Resources – Shellfish Nursery Operations – Wetlands License Requirements

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

BY repealing and reenacting, without amendments,

Article – Environment

Section 16–101(a), 16–104(b)(1) and (2), and 16–202(a)

Annotated Code of Maryland

(2014 Replacement Volume and 2018 Supplement)

BY repealing and reenacting, with amendments,

Article – Environment

Section 16–101(i) ~~and 16–202(h)~~, 16–202(h), and 16–304

Annotated Code of Maryland

(2014 Replacement Volume and 2018 Supplement)

BY repealing and reenacting, with amendments,

Article – Natural Resources

Section 4–11A–23

Annotated Code of Maryland

(2018 Replacement Volume)

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

Article – Environment

16–101.

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

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

(2) “Nonwater–dependent project” includes:

- (i) A dwelling unit on a pier;
- (ii) A restaurant, a shop, an office, or any other commercial building or use on a pier;
- (iii) A temporary or permanent roof or covering on a pier;
- (iv) A pier used to support a nonwater–dependent use; and
- (v) A small–scale renewable energy system on a pier, including:
 1. A solar energy system and its photovoltaic cells, solar panels, or other necessary equipment;
 2. A geothermal energy system and its geothermal heat exchanger or other necessary equipment; and
 3. A wind energy system and its wind turbine, tower, base, or other necessary equipment.

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

- (i) A fuel pump or other fuel–dispensing equipment on a pier;
- (ii) A sanitary sewage pump or other wastewater removal equipment on a pier; [or]

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

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

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

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

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

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

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

4. Is located in:

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

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

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

6. Allows or enhances public access to State wetlands;

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

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

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

10. Is not located in, on, or over vegetated tidal wetlands, submerged aquatic vegetation, a natural oyster bar, a public shellfish fishery area, a Yates

Bar, or an area with rare, threatened, or endangered species or species in need of conservation; and

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

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

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

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

16–202.

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

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

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

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

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

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

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

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

16-304.

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

- (1) Conservation of soil, vegetation, water, fish, shellfish, and wildlife;
- (2) Trapping, hunting, fishing, and catching shellfish, if otherwise legally permitted;
- (3) Exercise of riparian rights to improve land bounding on navigable water, to preserve access to the navigable water, or to protect the shore against erosion;
- (4) Reclamation of fast land owned by a natural person and lost during the person's ownership of the land by erosion or avulsion to the extent of provable preexisting boundaries. The right to reclaim lost fast land relates only to fast land lost after January 1, 1972. The burden of proof that the loss occurred after this date is on the owner of the land; [and]
- (5) Routine maintenance and repair of existing bulkheads, provided that there is no addition or channelward encroachment; AND
- (6) INSTALLING A PUMP, A PIPE, OR ANY OTHER EQUIPMENT ATTACHED TO A PIER FOR THE CULTIVATION OF SHELLFISH SEED IN A SHELLFISH NURSERY UNDER A PERMIT ISSUED BY THE DEPARTMENT OF NATURAL RESOURCES UNDER § 4-11A-23 OF THE NATURAL RESOURCES ARTICLE, PROVIDED THAT THE PUMP, PIPE, OR OTHER EQUIPMENT DOES NOT REQUIRE INCREASING THE LENGTH, WIDTH, OR CHANNELWARD ENCROACHMENT OF THE PIER.

Article – Natural Resources

4-11A-23.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Include conditions in a permit.

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

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

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

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

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

Approved by the Governor, April 30, 2019.