

# SENATE BILL 939

M2, M3

9lr3022  
CF HB 28

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By: **Senator Klausmeier**

Introduced and read first time: February 15, 2019

Assigned to: Rules

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## A BILL ENTITLED

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; altering the criteria for  
11 determining persons eligible for a shellfish nursery permit and locations where a  
12 shellfish nursery may be established; altering a certain definition; defining a certain  
13 term; and generally relating to wetlands license requirements for shellfish nursery  
14 operations.

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

20 BY repealing and reenacting, with amendments,  
21 Article – Environment  
22 Section 16–101(i) and 16–202(h)  
23 Annotated Code of Maryland  
24 (2014 Replacement Volume and 2018 Supplement)

25 BY repealing and reenacting, with amendments,  
26 Article – Natural Resources  
27 Section 4–11A–23  
28 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(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**

1 **NATURAL RESOURCES ARTICLE; OR**

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

5 16–104.

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

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

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

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

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

17 4. Is located in:

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

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

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

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

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

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

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

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

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

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

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

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

14 16–202.

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

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

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

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

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

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

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

29                  **(6)    INSTALLING A PUMP, A PIPE, OR ANY OTHER EQUIPMENT**  
30 **ATTACHED TO A PIER FOR THE CULTIVATION OF SHELLFISH SEED IN A SHELLFISH**  
31 **NURSERY UNDER A PERMIT ISSUED BY THE DEPARTMENT OF NATURAL RESOURCES**

1 UNDER § 4-11A-23 OF THE NATURAL RESOURCES ARTICLE, PROVIDED THAT THE  
2 PUMP, PIPE, OR OTHER EQUIPMENT DOES NOT REQUIRE INCREASING THE LENGTH,  
3 WIDTH, OR CHANNELWARD ENCROACHMENT OF THE PIER.

4 **Article – Natural Resources**

5 4-11A-23.

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

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

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

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

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

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

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

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

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

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

28 (4) **A PERSON CULTIVATING SHELLFISH SEED USING A PUMP, A PIPE,**  
29 **OR ANY OTHER EQUIPMENT ATTACHED TO A PIER IN ACCORDANCE WITH A PERMIT**  
30 **ISSUED UNDER THIS SECTION IS NOT REQUIRED TO OBTAIN A TIDAL WETLANDS**  
31 **LICENSE OR PERMIT FROM THE DEPARTMENT OF THE ENVIRONMENT OR A STATE**  
32 **WETLANDS LICENSE FROM THE BOARD OF PUBLIC WORKS UNDER TITLE 16 OF THE**

1 **ENVIRONMENT ARTICLE, PROVIDED THAT THE PUMP, PIPE, OR OTHER EQUIPMENT**  
2 **DOES NOT REQUIRE INCREASING THE LENGTH, WIDTH, OR CHANNELWARD**  
3 **ENCROACHMENT OF THE PIER.**

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

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

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

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

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

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

13 (2) Include conditions in a permit.

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

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

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

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

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