

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 28.2-1206, 28.2-1208 and 28.2-1213 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 28.2-1204.2, relating to the Marine Habitat and Waterways Improvement Fund.

[H 1305]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 28.2-1206, 28.2-1208 and 28.2-1213 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 28.2-1204.2 as follows:

§ 28.2-1204.2. Marine Habitat and Waterways Improvement Fund established.

There is hereby created in the state treasury a special nonreverting fund to be known as the Marine Habitat and Waterways Improvement Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. In addition to the receipt of moneys as may be specifically provided by law, the Commissioner is authorized to accept gifts and grants for the Fund, as well as proceeds that may be received from time to time on the sale of state-owned marine lands. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of improving marine habitat and waterways, including the removal of obstructions or hazardous property from state waters as authorized in §§ 15.2-909 and 28.2-1210. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner.

§ 28.2-1206. Permit fees; royalties; exemptions.

A. The fee paid to the Commission for issuing each permit to recover underwater historic property shall be twenty-five dollars.

B. The fee paid to the Commission for issuing each permit to use state-owned bottomlands shall be twenty-five dollars, but if the cost of the project is to exceed \$10,000, the fee paid shall be \$100. Commercial facilities engaged in the primary business of ship construction and repair may elect to pay a one-time permit fee of up to \$5,000 in lieu of any other royalties, except that royalties for removal of bottom material shall be charged as provided in subsection C.

C. When the activity or project for which a permit is requested will involve the removal of bottom material, the application shall indicate this fact. If granted, the permit shall specify a royalty of not less than twenty cents, nor more than sixty cents, per cubic yard of bottom material removed. In fixing the amount of the royalty, the Commission shall consider, among other factors, the following:

1. The primary and secondary purposes for removing the bottom material;

2. Whether the material has any commercial value and whether it will be used for any commercial purpose;

3. The use to be made of the removed material and any public benefit or adverse effect upon the public which will result from the removal or disposal of the material;

4. The physical characteristics of the material to be removed; and

5. The expense of removing and disposing of the material.

D. Where it appears that the project or facility for which a permit application is made has been completed or work thereon commenced at the time application is made, the Commission may impose additional assessments not to exceed an amount of three times the normal permit fee and royalties.

E. Bottom material removed attendant to maintenance dredging shall be exempt from any royalty. The Virginia Department of Transportation shall be exempt from all fees and royalties otherwise assessable under this section. All counties, cities, and towns of the Commonwealth shall pay the required permit fee but shall be exempt from all other fees and royalties assessable under this section if the permit is issued prior to the commencement of any work to be accomplished under the permit.

F. All fees and royalties collected pursuant to this chapter on and after July 1, 2000, shall be paid into the state treasury to the credit of the ~~Public Oyster Rocks Replenishment~~ Marine Habitat and Waterways Improvement Fund.

§ 28.2-1208. Granting easements in or leasing the beds of certain waters.

A. The Marine Resources Commission may, with the approval of the Attorney General and the Governor, grant easements in or lease the beds of the waters of the Commonwealth outside of the Baylor Survey. Every easement or lease executed pursuant to this section shall be for a period not to

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exceed five years and shall specify the rent royalties and such other terms deemed expedient and proper. Such easements and leases may include the right to renew the same for an additional period not to exceed five years, and, in addition to any other rights, may authorize the grantees and lessees to prospect for and take from the bottoms covered thereby, oil, gas, and other specified minerals and mineral substances. However, no easement or lease shall in any way affect or interfere with the rights vouchsafed to the people of the Commonwealth concerning fishing, fowling, and the catching and taking of oysters and other shellfish in and from the leased bottoms or the waters above.

B. All easements granted and leases made pursuant to this section shall be executed for, and in the name and on behalf of, the Commonwealth by the Attorney General and shall be countersigned by the Governor.

C. All rents or royalties collected from such easements or leases *on and after July 1, 2000*, shall be paid into the state treasury to the credit of the ~~Public Oyster Rocks Replenishment~~ *Marine Habitat and Waterways Improvement Fund*.

D. Prior to December 1 of each year, the Commissioner and the Attorney General shall make reports to the General Assembly on all easements and leases executed pursuant to this section during the preceding twelve months.

E. The Commission shall, in cooperation with the Division of Mineral Resources of the Department of Mines, Minerals and Energy and with the assistance of affected state agencies, departments and institutions, maintain a State Subaqueous Minerals Management Plan which shall supplement the State Minerals Management Plan set forth in § 2.1-512.1. The State Subaqueous Minerals Management Plan shall include provisions for (i) the holding of public hearings, (ii) public advertising for competitive bids or proposals for mineral leasing and extraction activities, (iii) preparation of environmental impact reports to be reviewed by the appropriate agency of the Commonwealth, and (iv) review and approval of leases by the Attorney General and the Governor as required by subsection A. The environmental impact reports shall address, but not be limited to:

1. The environmental impact of the proposed activity;
2. Any adverse environmental effects which cannot be avoided if the proposed activity is undertaken;
3. Measures proposed to minimize the impact of the proposed activity;
4. Any alternative to the proposed activity; and
5. Any irreversible environmental changes which would be involved in the proposed activity.

For the purposes of subdivision 4 of this subsection, the report shall contain all alternatives considered and the reasons why the alternatives were rejected. If a report does not set forth alternatives, it shall state why alternatives were not considered.

§ 28.2-1213. Penalties.

A. Without limiting the remedies which may be obtained under this chapter, any person who violates any provision of this chapter or who violates or fails, neglects, or refuses to obey any Commission notice, order, rule, regulation, or permit condition authorized by this chapter shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$25,000 for each day of violation. Such civil penalties may, ~~at the discretion of the court assessing them, be directed to~~ *shall be paid into the treasury of the county, city, or town in which the violation occurred for the purpose of abating environmental damage to or restoring state-owned bottomlands therein, in such a manner as the court may, by order, direct, except that where the violator is the county, city, or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury to the credit of the Marine Habitat and Waterways Improvement Fund.*

B. Without limiting the remedies which may be obtained under this chapter, and with the consent of any person who has violated any provision of this chapter or who has violated or failed, neglected, or refused to obey any Commission order, rule, regulation, or permit condition authorized by this chapter, the Commission may provide, in an order issued by the Commission against such person, for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Civil charges shall be in lieu of any appropriate civil penalty which could be imposed under subsection A of this section. Civil charges may be in addition to the cost of any restoration ordered by the Commission *and shall be paid into the state treasury to the credit of the Marine Habitat and Waterways Improvement Fund.*

2. That all fees, rents and royalties collected as provided in subsection F of § 28.2-1206 and subsection C of § 28.2-1208 prior to July 1, 2000, shall remain in the Public Oyster Rocks Replenishment Fund.