

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 405

An Act to amend and reenact § 28.2-1205 of the Code of Virginia, relating to applications for state-owned bottomlands permits.

[S 432]

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That § 28.2-1205 of the Code of Virginia is amended and reenacted as follows:

§ 28.2-1205. Permits for the use of state-owned bottomlands.

A. When determining whether to grant or deny any permit for the use of state-owned bottomlands, the Commission shall be guided in its deliberations by the provisions of Article XI, Section I of the Constitution of Virginia. In addition to other factors, the Commission shall also consider the public and private benefits of the proposed project and shall exercise its authority under this section consistent with the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to § 1-10 in order to protect and safeguard the public right to the use and enjoyment of the subaqueous lands of the Commonwealth held in trust by it for the benefit of the people as conferred by the public trust doctrine and the Constitution of Virginia. The Commission shall also consider the project's effect on the following:

1. Other reasonable and permissible uses of state waters and state-owned bottomlands;
2. Marine and fisheries resources of the Commonwealth;
3. Tidal wetlands, except when this has or will be determined under the provisions of Chapter 13 of this title;
4. Adjacent or nearby properties;
5. Water quality; and
6. Submerged aquatic vegetation (SAV).

B. The Commission shall consult with other state agencies, including the Virginia Institute of Marine Science, the State Water Control Board, the Virginia Department of Transportation, and the State Corporation Commission, whenever the Commission's decision on a permit application relates to or affects the particular concerns or activities of those agencies.

C. No permit for a marina or boatyard for commercial use shall be granted until the owner or other applicant presents to the Commission a plan for sewage treatment or disposal facilities which has been approved by the State Department of Health.

D. A permit is required and shall be issued by the Commission for placement of any private pier measuring 100 or more feet in length from the mean low-water mark, which is used for noncommercial purposes by an owner of the riparian land in the waters opposite the land, and that traverses commercially productive leased oyster or clam grounds, as defined in § 28.2-630, provided that the pier does not extend beyond the navigation line established by the Commission or the United States Army Corps of Engineers. The permit may reasonably prescribe the design and location of the pier for the sole purpose of minimizing the adverse impact on such oyster or clam grounds or the harvesting or propagation of oysters or clams therefrom. The permit shall contain no other conditions or requirements. Unless information or circumstances materially alter the conditions under which the permit would be issued, the Commission shall act within ~~ninety~~ 90 days of receipt of a complete joint permit application to approve or deny the application. If the Commission fails to act within that time, the application shall be deemed approved and the applicant shall be notified of the deemed approval.

E. All permits issued by the Commission for the use of state-owned bottomlands or to recover underwater historic property shall be in writing and specify the conditions, terms and royalties which the Commission determines are appropriate.

F. Any person aggrieved by a decision of the Commission under this section is entitled to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). However, any decision made by the Commission hereunder consistent with the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to § 1-10 shall not be deemed to have been made pursuant to the police power. *No person shall reapply for the same or substantially similar use of the bottomlands within 12 months of the denial of a permit by the Commission.* Nothing in this subsection shall be construed to deprive a riparian landowner of such rights as he may have under common law.