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HOUSE BILL NO. 182

Offered January 14, 2004

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A BILL to amend and reenact § 28.2-1205, 28.2-1206, 28.2-1208, and 28.2-1306 of the Code of Virginia, relating to royalties for use of state-owned bottomland.

 Patron—Oder

 Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 28.2-1205, 28.2-1206, 28.1-1208, and 28.2-1306 of the Code of Virginia are 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 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, *and terms and royalties which that* 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. Nothing in this subsection shall be construed to deprive a riparian landowner of such rights as he may have under common law.

§ 28.2-1206. Permit fees; exemptions.

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

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

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

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

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

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

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

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

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

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

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

89 § 28.2-1208. Granting easements in or leasing the beds of certain waters.

90 A. The Marine Resources Commission may, with the approval of the Attorney General and the
91 Governor, grant easements in or lease the beds of the waters of the Commonwealth outside of the
92 Baylor Survey. Every easement or lease executed pursuant to this section shall be for a period not to
93 exceed five years and shall specify the rent ~~royalties~~ and such other terms deemed expedient and proper.
94 Such easements and leases may include the right to renew the same for an additional period not to
95 exceed five years, and, in addition to any other rights, may authorize the grantees and lessees to
96 prospect for and take from the bottoms covered thereby, oil, gas, and other specified minerals and
97 mineral substances. However, no easement or lease shall in any way affect or interfere with the rights
98 vouchsafed to the people of the Commonwealth concerning fishing, fowling, and the catching and taking
99 of oysters and other shellfish in and from the leased bottoms or the waters above.

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

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

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

108 E. The Commission shall, in cooperation with the Division of Mineral Resources of the Department
109 of Mines, Minerals and Energy and with the assistance of affected state agencies, departments and
110 institutions, maintain a State Subaqueous Minerals Management Plan which shall supplement the State
111 Minerals Management Plan set forth in § 2.2-1157. The State Subaqueous Minerals Management Plan
112 shall include provisions for (i) the holding of public hearings, (ii) public advertising for competitive bids
113 or proposals for mineral leasing and extraction activities, (iii) preparation of environmental impact
114 reports to be reviewed by the appropriate agency of the Commonwealth, and (iv) review and approval of
115 leases by the Attorney General and the Governor as required by subsection A. The environmental impact
116 reports shall address, but not be limited to:

117 1. The environmental impact of the proposed activity;

118 2. Any adverse environmental effects which cannot be avoided if the proposed activity is undertaken;

119 3. Measures proposed to minimize the impact of the proposed activity;

120 4. Any alternative to the proposed activity; and

121 5. Any irreversible environmental changes which would be involved in the proposed activity.
122 For the purposes of subdivision 4 of this subsection, the report shall contain all alternatives
123 considered and the reasons why the alternatives were rejected. If a report does not set forth alternatives,
124 it shall state why alternatives were not considered.

125 § 28.2-1306. Permits required for certain activities; issuance of permits by Commission.

126 A. It shall be unlawful for any person to conduct any activity which would require a permit under a
127 wetlands zoning ordinance without such a permit. Until the county, city, or town in which a person
128 proposes to conduct an activity which would require a permit under a wetlands zoning ordinance adopts
129 the wetlands zoning ordinance, the person shall apply for a permit directly to the Commission, except as
130 provided in subsection C of § 28.2-1303. If an applicant desires to use or develop wetlands owned by
131 the Commonwealth, he shall apply for a permit directly to the Commission, and in addition to the
132 application fee required by the wetlands zoning ordinance, he shall pay those fees and royalties assessed
133 under § 28.2-1206.

134 B. Upon notification by any county, city, or town that it has adopted the wetlands zoning ordinance,
135 the Commission shall immediately forward to that jurisdiction's wetlands board any pending permit
136 application over which that board would have had jurisdiction if the ordinance had been in effect at the
137 time the application was filed. However, if requested by the applicant, the application shall remain
138 within the Commission's jurisdiction.

139 C. The Commission shall process permit applications in accordance with the provisions of the
140 wetlands zoning ordinance and the Commissioner, or his authorized representative, shall sign such
141 permit; however, the Commission may designate one or more hearing officers who may, in lieu of the
142 Commission, conduct public hearings as required under § 28.2-1302, and thereafter report their findings
143 and recommendations to the Commission.