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SENATE BILL NO. 605

Offered January 21, 2004

A BILL to amend the Code of Virginia by adding in Title 28.2 a chapter numbered 16, consisting of articles numbered 1, 2 and 3, containing sections numbered 28.2-1600 through 28.2-1622, relating to water column leases for aquaculture.

Patrons—Bolling and Hanger; Delegate: Pollard

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 28.2 a chapter numbered 16, consisting of articles numbered 1, 2 and 3, containing sections numbered 28.2-1600 through 28.2-1622, as follows:

CHAPTER 16.**WATER COLUMN LEASES FOR AQUACULTURE PURPOSES.****Article 1.****General Provisions.****§ 28.2-1600. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Aquaculture" means the propagation, rearing, enhancement, and harvest of aquatic organisms in controlled or selected environments.

"Aquatic organism" means any species or hybrid of animal or plant, including but not limited to fish, fishes, shellfish, marine fish and organisms that has been approved for import into the Commonwealth in accordance with § 28.2-825.

*"Submerged aquatic vegetation" or "SAV" means any rooted, vascular submerged plants such as eelgrass (*Zostera marina*), widgeon grass (*Ruppia maritima*), or other species commonly found in Chesapeake Bay and its tributaries.*

"Aquaculture structure" means floats, racks, trays, nets and other similar devices located within the water column for holding and protecting aquatic organisms during aquaculture activities.

"Water column lease" means the vertical extent of water, including the surface and the bottom.

§ 28.2-1601. Powers and duties of the Commission.

A. The Commission may lease areas of the water column overlying state-owned bottomland for the purpose of conducting aquaculture activities, which are not otherwise authorized elsewhere by law or by Commission regulation or permit.

B. When determining whether to grant or deny an application for an aquaculture water column lease, the Commission shall be guided in its deliberations by Article XI, Sections 1 and 3 of the Constitution of Virginia.

Article 2.**Water Column Leasing Procedures.****§ 28.2-1602. General water column leases.**

The waters lying above state-owned bottomland that are outside the limits of public oyster beds, rocks, shoals, as defined by law and included in the Baylor survey, outside the boundaries of existing oyster planting ground leases held by others, and outside the limits of navigation projects adopted and authorized by Congress, may be leased for aquaculture purposes, upon receipt of a proper application and a finding by the Commission that such activity will not significantly interfere with other permissible uses of state waters and bottomlands.

§ 28.2-1603. Eligible applicants.

Application for assignment of a water column lease for the purposes of conducting aquaculture may be made by (i) any resident of the Commonwealth, (ii) any county, municipality, or political subdivision of the Commonwealth, or (iii) any firm or corporation chartered under the laws of the Commonwealth provided that at least 60 percent of the stock of any such corporation is wholly owned by residents of the Commonwealth.

§ 28.2-1604. Application for assignment; requirements for Commission review.

All applications for assignment of water column leases for aquaculture purposes shall be made in writing to the Commission. The application shall contain the following information: the name, address and telephone number of the applicant, the location of the proposed lease depicted on an accurately scaled vicinity map, the size of the area to be leased, a detailed description of the aquaculture structures proposed to be deployed, a five-year development plan detailing the activities proposed to be

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59 undertaken within the lease, the species to be cultured, a general description of the area including
60 existing marine resources (SAV, shellfish beds, traditional finfishing areas), any existing structures'
61 water depths, tidal range, and substrate type, and any additional information the Commission deems
62 necessary to evaluate the proposal. The application shall also include a list of the names and addresses
63 of all riparian property owners within 500 feet of the lease and shall depict the location of their land
64 on a tax map or other suitable map. Accurately scaled drawings shall be included with the application,
65 which depict the types of structures proposed to be deployed within the boundaries of the lease.

66 § 28.2-1605. Notice of application.

67 Notice of the application shall be (i) posted by the Commission for not less than 60 days at the
68 courthouse of the county or city in which the proposed lease area is located, (ii) published at least once
69 a week for four consecutive weeks in a newspaper of general circulation in that county or city, and (iii)
70 provided to any riparian property owners within 500 feet of the proposed lease area.

71 § 28.2-1606. Survey and marking of lease boundaries.

72 A. If a protest is not filed in the Commission office within 60 days after providing notice of
73 application, the Commissioner shall select a surveyor to survey the lease boundaries and make a plat.
74 The surveyor shall forward the plat of survey to the Commission and the applicant shall mark the
75 boundaries of the lease in accordance with Commission regulations for marking oyster ground. If no
76 protest to the application, survey or marking of the lease is made within 30 days after the plat of survey
77 is recorded in the Commissioner's office, the lease may be assigned provided that:

78 1. The application and assignment complies with all applicable provisions of the law and, in the
79 judgment of the Commission, the lease is in the public interest.

80 2. All fees, costs, and the annual rent have been paid for the lease of the water column. The lease
81 shall be marked in accordance with Commission regulations for marking water column leases at the
82 expense of the applicant.

83 Should the application or marking of the lease be protested, a public hearing will be scheduled to
84 receive testimony and evidence concerning the lease application. The Commission shall consider the
85 additional testimony and evidence while deciding whether to grant the lease.

86 B. Any person aggrieved by a decision of the Commission under the section is entitled to judicial
87 review in accordance with the Administrative Process Act.

88 § 28.2-1607. Application, survey and recording fees.

89 The following nonrefundable application fees shall be paid by the applicant at the time the lease
90 request is submitted for review: \$100 for a lease of less than one acre and \$250 for a lease between
91 one and 10 acres. The applicant pays the Commission's surveying costs, the preparation of the original
92 and one copy of the plat, a \$12 recording fee and a \$1.50 assignment fee for each lease assignment. No
93 water column lease shall be assigned until all of the prescribed fees have been paid.

94 § 28.2-1608. Payment of annual rent; penalty for default.

95 The applicant shall pay to the Commission annual rent of \$50 per acre or any fraction thereof for
96 the first four years of the lease term and \$250 per acre for the fifth year and subsequent years
97 thereafter, upon proper renewal of the lease. Such payment shall be due and payable on September 1 of
98 each year after the date of assignment, plus a 10 percent penalty if not paid on or before December 5.
99 If not paid by June 30 of the following year, the lease shall be terminated.

100 § 28.2-1609. Reporting and production requirements.

101 The applicant shall report annually on the activity within the leased area. The report shall include
102 the quantity of animals cultured in and harvested from the leased area during the previous year, and the
103 report shall show proof of significant production, as determined by the Commission. The lease shall
104 meet at least 50 percent of the production goals, as specified in the lease development plan approved by
105 the Commission, except where the Commission finds there was good cause for production failure after
106 review of the annual report. Any unusual events or other factors that may have contributed to reduced
107 production shall be documented in the annual report.

108 § 28.2-1610. Duration of lease; renewals.

109 Each assignment of water column lease shall continue in force for a period of five years from the
110 date of assignment, unless the assignment is terminated. Upon proper application and a finding by the
111 Commission that the lease has been used productively for aquaculture, the lease may be renewed for an
112 additional five-year period. After 10 years, the Commission shall reevaluate the lease prior to further
113 renewal to ensure that the lease continues to be in the public interest.

114 § 28.2-1611. Transfer of lease.

115 Leases may be transferable upon proper application and a finding by the Commission that the use of
116 the lease continues to be in the public interest. The fee for an individual lease transfer shall be \$5 for
117 parcels of one acre or less and \$10 for parcels between one and 10 acres, plus all applicable recording
118 and assignment fees pursuant to § 28.2-1607.

119 § 28.2-1612. Termination of lease.

120 Failure to pay all rents as required in § 28.2-1607, failure to report as required in § 28.2-1609, or

any other failure to comply with the terms of the lease may result in termination of the lease. Upon a finding by the Commission that the lease assignment has resulted in an unacceptable level of impact on the marine resources of the Commonwealth or other reasonable and permissible uses of state waters, the lease will be terminated. The Commission shall provide 45 days notice of intent to terminate in order to provide the lessee an opportunity to address the situation to the Commission's satisfaction.

Article 3.

Restrictions and Requirements.

§ 28.2-1613. Rights of riparian owners.

All assignments of water column leases under this chapter shall be subject to the rights vested in riparian property owners. Any waterfront landowner who desires to build a private pier or open a channel for access shall provide the lessee 12 months' notice of such intention in order to give the lessee an opportunity to relocate any structures within their lease. Upon expiration of that time, the rights of the lessee in the area of the lease shall cease. If construction of the pier or channel is not commenced within three months after the leased area was vacated, the former lessee shall have the right to reoccupy the lease, provided all other terms of the lease have been met.

§ 28.2-1614. Rights of renter; rights of public to areas not within the boundaries of the lease.

The Commonwealth shall guarantee to any lessee who has complied with the lease assignment requirements the exclusive right to continue to use and occupy the lease area for the term of the lease subject to §§ 28.2-1610, 28.2-1611, and 28.2-1612. The water column lease and associated activities shall not significantly affect or interfere with the right vouchsafed to the people of Virginia to use the state-owned waters and bottomlands not included within the boundaries of the lease.

§ 28.2-1615. Restrictions on assigned acreage and applications.

No individual lease shall be granted for areas greater than 10 acres in size. Applications for additional acreage will be considered on a case-by-case basis.

§ 28.2-1616. Leases in areas of SAV.

No water column leases will be assigned in areas of existing beds of SAV. If SAV colonizes areas within the boundaries of an existing lease, the lease will remain in effect for the remainder of the lease term. The Commission shall evaluate the potential effects of continued use of the lease on the SAV resource outside the boundaries of the lease prior to renewing such leases. Leases shall only be renewed upon a finding by the Commission that the activity within the lease will not significantly interfere with the continued vitality of the SAV resource outside the boundaries of the lease.

§ 28.2-1617. Leases in navigation channels.

No water column lease shall be granted within a navigation channel authorized by the U.S. Congress or within a navigation channel recognized or approved by any agency of the federal government. Water column leases shall not be granted in areas where the placement of the aquaculture structures may significantly impact navigation within any public waterway.

§ 28.2-1618. Compliance with water quality standards; other authorizations.

The lessee shall comply with the water quality standards as established by the Department of Environmental Quality and all other applicable laws, ordinances, rules, and regulations affecting activities within the leased area. The granting of a lease shall not relieve the lessee of his responsibility to obtain other permits or authorization required for any aquaculture activity conducted within the leased area.

§ 28.2-1619. Health and sanitation provisions.

The lessee shall comply with all applicable health and sanitation provisions described in Chapter 8 (§ 28.2-800 et seq.) of this title and applicable Commission regulations related to polluted waters of the Commonwealth.

§ 28.2-1620. Introduction of imported species.

The lessee shall comply with all conditions contained within § 28.2-825 and applicable Commission regulations related to importation of fish, shellfish or crustacea for introduction into waters of the Commonwealth.

§ 28.2-1621. Harvest restrictions.

The lessee shall comply with all applicable laws, regulations and requirements pertaining to the harvest of the cultured species from waters of the Commonwealth, unless the aquaculture activity is specifically exempted by law or regulation.

§ 28.2-1622. Maintenance or removal of structures within leases.

The lessee shall maintain in good repair all structures deployed within the leased area, including markers, and shall remove any structures from state waters upon their falling into a state of disrepair.