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HOUSE BILL NO. 1855

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources)
on January 24, 2007)

(Patron Prior to Substitute—Delegate Wittman)

A BILL to amend and reenact § 28.2-603 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 28.2-603.1 and 28.2-603.2, relating to aquaculture.

Be it enacted by the General Assembly of Virginia:

1. That § 28.2-603 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 28.2-603.1 and 28.2-603.2 as follows:

§ 28.2-603. General oyster-planting grounds.

Waterfront that is not already assigned or reserved for the riparian owners, and the beds of the bays, rivers, and creeks and shores of the sea lying outside the limits of navigation projects adopted and authorized by the Congress and not required for the disposal of materials dredged incident to the maintenance of such projects, and grounds other than public oyster beds, rocks, or shoals, as defined by law and included in the Baylor survey, may be occupied for the purpose of planting or propagating oysters, including the use of temporary protective enclosures in compliance with this chapter and Commission regulations, and may be leased by the Commissioner upon the receipt of a proper application.

§ 28.2-603.1. Temporary enclosures on leased ground.

The Commission shall, pursuant to its authority to regulate marine fisheries and commercial fishing, establish a general permit regulation authorizing the use of temporary protective enclosures to grow shellfish on grounds leased pursuant to § 28.2-603. In developing the general permit, the Commission shall consider those factors set forth in subsection A of § 28.2-1205. In addition to such other requirements as the Commission may prescribe for the protection of public safety, navigation, natural resources, and the environment, the general permit shall include the following provisions:

1. Leaseholders shall comply with any Commission requirements pertaining to aquaculture licensing;

2. Enclosures shall be constructed of nontoxic materials;

3. Leaseholders shall not place enclosures (i) in or upon submerged aquatic vegetation, (ii) in any marked navigation channel or in any other area that would create a hazard, or (iii) in any area that would impede customary access to navigable waters from any riparian property, public or commercial landing, or marina facility;

4. The location of enclosures shall be clearly marked to alert boaters and to allow the leaseholder or other authorized persons to retrieve the enclosures if necessary. The general permit regulation shall specify acceptable means and devices for complying with this requirement;

5. Leaseholders shall maintain a list identifying those leases on which enclosures are placed during the term of the lease and provide, upon request, a current copy of the list to authorized representatives of the Commission. Leaseholders shall also submit such list to be filed with any application for lease renewal made pursuant to § 28.2-613;

6. Leaseholders shall promptly remove any enclosure that is not actively in use for the planting and propagating of shellfish, and, upon expiration or termination of a lease or of the leaseholder's aquaculture license, the leaseholder shall promptly remove all enclosures placed on the leasehold; and

7. At his discretion, the Commissioner may order the removal or relocation of any enclosure that interferes with navigation, creates a hazard, or otherwise fails to comply with the conditions of the general permit.

§ 28.2-603.2. Commissioner to provide notice.

A. At least 30 days before placing temporary protective enclosures on a leasehold pursuant to § 28.2-603.1, the leaseholder shall provide written notification to the Commissioner that identifies the leasehold, the approximate maximum number of enclosures to be placed on the leasehold at any given time, and the estimated date such placement will begin. No later than 30 days after receiving such notification, the Commissioner may publish notice of the proposed placement in a newspaper of general circulation serving the area in which the leasehold is located. In determining whether to publish such notice, the Commissioner shall consider the potential effect on existing uses of waters proximate to the leasehold and the potential for conflict between the proposed placement and such uses. The public notice shall invite written comment on the proposed placement and include information concerning the submission of written comments. The Commission may receive written comments for no more than 30 days following publication of notice.

B. If, on the basis of written comments, the Commissioner finds significant and substantive opposition from persons residing on or using the waters proximate to the leasehold, the Commissioner shall

60 *convene a public meeting on the proposal no more than 30 days after the close of the comment period.*
61 *No later than 15 days after the public meeting, the Commissioner shall (i) approve the proposal, (ii)*
62 *approve the proposal with conditions, or (iii) deny the proposal. If the Commissioner denies the*
63 *proposal, the leaseholder may request approval of the proposal before a hearing of the Commission.*
64 *C. If the Commissioner determines not to publish public notice, the Commissioner shall, no later*
65 *than 30 days after receiving written notification of the proposal, advise the leaseholder to proceed in*
66 *accordance with the requirements of the general permit. If the Commissioner publishes public notice but*
67 *does not find significant and substantive opposition by persons residing on or using the waters to the*
68 *leasehold, the Commissioner shall, no later than 15 days after the close of the comment period, advise*
69 *the leaseholder to proceed in accordance with the requirements of the general permit.*
70 **2. That the Commission shall promulgate regulations to implement the provisions of this act to be**
71 **effective within 280 days of its enactment.**