080593244

1   **SENATE BILL NO. 528**

2   Offered January 9, 2008

3   Prefiled January 9, 2008

4   *A BILL to amend and reenact §§ 28.2-1203 and 28.2-1306 of the Code of Virginia, relating to permits*

5   *issued by the Marine Resources Commission.*

6

                            Patron—Houck

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8   Referred to Committee on Agriculture, Conservation and Natural Resources

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10   **Be it enacted by the General Assembly of Virginia:**

11   **1. That §§ 28.2-1203 and 28.2-1306 of the Code of Virginia are amended and reenacted as follows:**

12   § 28.2-1203. Unlawful use of subaqueous beds; penalty.

13   A. It shall be unlawful for any person to build, dump, trespass or encroach upon or over, or take or

14 use any materials from the beds of the bays, ocean, rivers, streams, or creeks which are the property of

15 the Commonwealth, unless such act is performed pursuant to a permit issued by the Commission or is

16 necessary for the following:

17   1. Erection of dams, the construction of which has been authorized by proper authority;

18   2. Uses of subaqueous beds authorized elsewhere in this title;

19   3. Construction and maintenance of congressionally approved navigation and flood-control projects

20 undertaken by the United States Army Corps of Engineers, the United States Coast Guard, or other

21 federal agency authorized by Congress to regulate navigation, navigable waters, or flood control;

22   4. Construction of piers, docks, marine terminals, and port facilities owned or leased by or to the

23 Commonwealth or any of its political subdivisions;

24   5. Except as provided in subsection D of § 28.2-1205, placement of private piers for noncommercial

25 purposes by owners of the riparian lands in the waters opposite those lands, provided that (i) the piers

26 do not extend beyond the navigation line or private pier lines established by the Commission or the

27 United States Army Corps of Engineers, (ii) the piers do not exceed six feet in width and finger piers

28 do not exceed five feet in width, (iii) any L or T head platforms and appurtenant floating docking

29 platforms do not exceed, in the aggregate, 400 square feet, (iv) if prohibited by local ordinance

30 open-sided shelter roofs or gazebo-type structures shall not be placed on platforms as described in clause

31 (iii), but may be placed on such platforms if not prohibited by local ordinance, and (v) the piers are

32 determined not to be a navigational hazard by the Commission. Subject to any applicable local

33 ordinances, such piers may include an attached boat lift and an open-sided roof designed to shelter a

34 single boat slip or boat lift. In cases in which open-sided roofs designed to shelter a single boat, boat

35 slip or boat lift will exceed 700 square feet in coverage or the open-sided shelter roofs or gazebo

36 structures exceed 400 square feet, and in cases in which an adjoining property owner objects to a

37 proposed roof structure, permits shall be required as provided in § 28.2-1204;

38   6. Agricultural, horticultural or silvicultural irrigation on riparian lands or the watering of animals on

39 riparian lands, provided that (i) no permanent structure is placed on or over the subaqueous bed, (ii) the

40 person withdrawing water complies with requirements administered by the Department of Environmental

41 Quality under Title 62.1, and (iii) the activity is conducted without adverse impacts to instream

42 beneficial uses as defined in § 62.1-10; or

43   7. Recreational gold mining, provided that (i) a man-portable suction dredge no larger than four

44 inches in diameter is used, (ii) rights of riparian property owners are not affected, (iii) the activity is

45 conducted without adverse impacts to instream beneficial uses as defined in § 62.1-10, (iv) the activity is

46 conducted without adverse impacts to underwater historic properties and related objects as defined in

47 § 10.1-2214, and (v) the activity is not defined as mining in § 45.1-180.

48   B. *The Commissioner may waive the requirement for a permit during emergency situations if he finds*

49 *that normal permit and processing and issuance procedures and timelines are inadequate to protect,*

50 *maintain, or repair existing public water, wastewater, and other utility systems.*

51   *C.* A violation of this section is a Class 1 misdemeanor.

52   § 28.2-1306. Permits required for certain activities; issuance of permits by Commission.

53   A. It shall be unlawful for any person to conduct any activity which would require a permit under a

54 wetlands zoning ordinance without such a permit. Until the county, city, or town in which a person

55 proposes to conduct an activity which would require a permit under a wetlands zoning ordinance adopts

56 the wetlands zoning ordinance, the person shall apply for a permit directly to the Commission, except as

57 provided in subsection C of § 28.2-1303. If an applicant desires to use or develop wetlands owned by

58 the Commonwealth, he shall apply for a permit directly to the Commission, and in addition to the

59 application fee required by the wetlands zoning ordinance, he shall pay those fees and royalties assessed
60 under § 28.2-1206.
61   B. Upon notification by any county, city, or town that it has adopted the wetlands zoning ordinance,
62 the Commission shall immediately forward to that jurisdiction's wetlands board any pending permit
63 application over which that board would have had jurisdiction if the ordinance had been in effect at the
64 time the application was filed. However, if requested by the applicant, the application shall remain
65 within the Commission's jurisdiction.
66   C. The Commission shall process permit applications in accordance with the provisions of the
67 wetlands zoning ordinance and the Commissioner, or his authorized representative, shall sign such
68 permit; however, the Commission may designate one or more hearing officers who may, in lieu of the
69 Commission, conduct public hearings as required under § 28.2-1302, and thereafter report their findings
70 and recommendations to the Commission.
71   *D. The Commissioner may waive the requirement for a permit during emergency situations if he*
72 *finds that normal permit and processing and issuance procedures and timelines are inadequate to*
73 *protect, maintain, or repair existing public water, wastewater, and other utility systems.*