

VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 766

An Act to amend and reenact § 28.2-1208 of the Code of Virginia, relating to offshore renewable energy resources.

[S 1350]

Approved March 30, 2009

Be it enacted by the General Assembly of Virginia:

1. That § 28.2-1208 of the Code of Virginia is amended and reenacted as follows:

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

A. The Marine Resources Commission may, with the approval of the Attorney General and the Governor, grant easements over or under or lease the beds of the waters of the Commonwealth outside of the Baylor Survey. Every easement or lease executed pursuant to this section shall be for a period not to exceed five years, *except in the case of offshore renewable energy leases described in clause (ii), in which case the period shall not exceed 30 years*, and shall specify the rent and such other terms deemed expedient and proper. Such easements and leases may include the right to renew the same for an additional period not to exceed five years; ~~and, in addition to any other rights, may authorize the. Any lease that authorizes~~ grantees or lessees to (i) prospect for and take from the bottoms covered thereby, oil, gas, and other specified minerals and mineral substances; ~~provided, however, that any easement or lease granting the right to prospect for oil, gas, and other minerals or (ii) generate electrical energy from wave or tidal action, currents, offshore winds, or thermal or salinity gradients, and transmit energy from such sources to shore shall require a royalty. The~~ Except for offshore renewable energy leases, purchase payment for any easement granted to a public service corporation, certificated telephone company, interstate natural gas company or provider of cable television or other multichannel video programming service shall be \$100 and shall be for a period of 40 years. However, no easement or lease shall in any way affect or interfere with the rights vouchsafed to the people of the Commonwealth concerning fishing, fowling, and the catching and taking of oysters and other shellfish in and from the leased bottoms or the waters above.

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

C. All oil, gas and other minerals royalties collected from such easements or leases on and after July 1, 2000, shall be paid into the state treasury to the credit of the Marine Habitat and Waterways Improvement Fund. *All royalties collected as a result of the generation or transmission of electrical or compressed air energy from offshore renewable sources including wave or tidal action, currents, offshore winds, and thermal or salinity gradients shall be paid into the state treasury and appropriated to the Virginia Coastal Energy Research Consortium established pursuant to § 67-600.*

D. Prior to December 1 of each year, the Commissioner and the Attorney General shall make reports to the General Assembly on all easements and leases executed pursuant to this section during the preceding 12 months.

E. The Commission shall, in cooperation with the Division of Geology and Mineral Resources of the Department of Mines, Minerals and Energy and with the assistance of affected state agencies, departments and institutions, *including the Virginia Coastal Energy Research Consortium*, maintain a State Subaqueous Minerals and Coastal Energy Management Plan that shall supplement the State Minerals Management Plan set forth in § 2.2-1157 and the Virginia Energy Plan (§ 67-200 et seq.). The State Subaqueous Minerals and Coastal Energy Management Plan shall include provisions for (i) the holding of public hearings, (ii) public advertising for competitive bids or proposals for mineral and renewable energy leasing and extraction activities, (iii) preparation of environmental impact reports to be reviewed by the appropriate agency of the Commonwealth, and (iv) review and approval of leases by the Attorney General and the Governor as required by subsection A. The environmental impact reports shall address, but not be limited to:

1. The environmental impact of the proposed activity;
2. Any adverse environmental effects that cannot be avoided if the proposed activity is undertaken;
3. Measures proposed to minimize the impact of the proposed activity;
4. Any alternative to the proposed activity; and
5. Any irreversible environmental changes which would be involved in the proposed activity.

For the purposes of subdivision 4 of this subsection, the report shall contain all alternatives considered and the reasons why the alternatives were rejected. If a report does not set forth alternatives, it shall state why alternatives were not considered.

2. That the Marine Resources Commission, in consultation with the Virginia Coastal Energy

Research Consortium, other state agencies, conservation and industry representatives, and other interested parties as appropriate, shall (i) identify 100 acres suitable for use by the Virginia Coastal Energy Research Consortium as a research site; and (ii) determine whether sufficient and appropriate subaqueous land exists in state territorial waters to support the generation and transmission of electrical or compressed air energy from offshore wind. The Marine Resources Commission shall by March 1, 2010, submit its findings in a written report to the General Assembly.

3. If sufficient and appropriate subaqueous land exists, and pursuant to requirements and provisions of subsections A and B of § 28.2-1208 of this act, the Marine Resources Commission shall offer such land in a lease auction to parties willing, and able within a reasonable time, to convert such wind resources to electrical or compressed air energy and transmit such energy to shore.

4. Nothing in this act requires or prohibits auctions of leases for transmission of renewable energy generated in federal waters.