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HOUSE BILL NO. 1163

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact §§ 28.2-1205 and 28.2-1206 of the Code of Virginia, relating to payment of rents and royalties for use of state-owned bottomlands.

Patron—Cosgrove

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:**1. That §§ 28.2-1205 and 28.2-1206 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 § 1-200 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 that 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 90 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 pursuant to § 28.2-1204, or to recover underwater historic property shall be in writing and specify the conditions and terms that the Commission determines are appropriate, and ~~royalties unless prohibited under other provisions of this chapter.~~ *The only royalties that shall be assessed are those set forth in subsection C of § 28.2-1206.*

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 § 1-200 shall not be deemed to have been made pursuant to the police power. No person shall reapply for the same or substantially similar use of the bottomlands within 12 months of the denial of a permit by the Commission. Nothing

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59 in this subsection shall be construed to deprive a riparian landowner of such rights as he may have
60 under common law.

61 § 28.2-1206. Permit fees; exemptions.

62 A. The fee paid to the Commission for issuing each permit to recover underwater historic property
63 shall be \$25.

64 B. The fee paid to the Commission for issuing each permit to use state-owned bottomlands shall be
65 \$25, but if the cost of the project is to exceed \$10,000, the fee paid shall be \$100. ~~Riparian owners of~~
66 ~~(i) commercial facilities engaged in the business of ship construction or repair, (ii) commercial facilities~~
67 ~~providing services relating to the shipping of domestic or foreign cargo, and (iii) commercial facilities~~
68 ~~engaged in the business of selling or servicing watercraft shall be exempt from the payment of rents and~~
69 ~~royalties, except as provided in subsection C.~~

70 C. When the activity or project for which a permit is requested will involve the removal of bottom
71 material, the application shall indicate this fact. If granted, the permit shall specify a royalty of not less
72 than \$.20, nor more than \$.60, per cubic yard of bottom material removed. In fixing the amount of the
73 royalty, the Commission shall consider, among other factors, the following:

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

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

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

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

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

81 D. Where it appears that the project or facility for which a permit application is made has been
82 completed or work thereon commenced at the time application is made, the Commission may impose
83 additional assessments not to exceed an amount of three times the normal permit fee and royalties,
84 unless such royalties are prohibited by this chapter.

85 E. Bottom material removed attendant to maintenance dredging or directional drilling shall be exempt
86 from any royalty. The Virginia Department of Transportation shall be exempt from all fees, rents and
87 royalties otherwise assessable under this section. All counties, cities, and towns of the Commonwealth
88 shall pay the required permit fee but shall be exempt from all other fees, rents and royalties assessable
89 under this section if the permit is issued prior to the commencement of any work to be accomplished
90 under the permit.

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