

# VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

## CHAPTER 733

*An Act to amend and reenact § 28.2-1200.1 of the Code of Virginia, relating to the conveyance of state-owned bottomlands.*

[H 2310]

Approved March 28, 2011

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

**1. That § 28.2-1200.1 of the Code of Virginia is amended and reenacted as follows:**

§ 28.2-1200.1. Conveyance of state-owned bottomlands.

A. In order to fulfill the Commonwealth's responsibility under Article XI of the Constitution of Virginia to conserve and protect public lands for the benefit of the people, the Commonwealth shall not convey fee simple title to state-owned bottomlands covered by waters. However, the Commonwealth may grant a lease, easement, or other limited interest in state-owned bottomlands covered by waters pursuant to § 28.2-1208 or as long as the property is used by a governmental entity for the performance of a governmental activity, as defined in §§ 28.2-1300 and 28.2-1400.

B. The Commonwealth may convey fee simple title to specified parcels of state-owned bottomlands that have been lawfully filled. For the purpose of this section, "lawfully filled" means the deposit of fill was (i) authorized by statute, (ii) pursuant to valid court order, (iii) authorized or permitted by state officials pursuant to statutory authority subsequent to July 1, 1960, or (iv) under apparent color of authority prior to July 1, 1960. In the absence of information to the contrary, it may be presumed that state-owned bottomlands filled prior to July 1, 1960, were filled under apparent color of authority and, it may also be presumed, that all of the fill on the specified parcel was lawfully authorized if a substantial portion of the fill on such parcel was authorized. Properties not qualified under clauses (i) through (iv) of this subsection shall not be eligible for conveyance under this section.

C. Except as provided in subsection D, the grantee shall compensate the Commonwealth in an amount commensurate with the property interest being conveyed, which shall be considered equivalent to 25 percent of the assessed value of the specified parcel, exclusive of any buildings or other improvements. The assessed value shall be established as the average of the local real estate tax assessments for the most recent 10 years available for the specified parcel. If no such assessments are available for the specified parcel, then the assessed value shall be calculated as the percentage, by square footage or acreage, that the specified parcel represents of the larger parcel for which such assessments are available. *The Commission may convey fee simple title to specified parcels of state-owned bottomlands to an applicant who can provide evidence of his ownership and demonstrate that the parcel was lawfully filled, including (i) title to the adjacent upland parcel and any title to the filled bottomland; (ii) evidence the fill deposit was placed legally or under color of law; (iii) aerial photographs, maps, charts, or other information depicting the site and establishing the timing of the deposit; (iv) any certified documents establishing authorization to fill the bottomlands; or (v) any known general authority or applicable law that would have allowed filling. The applicant shall submit to the Commission a certified survey and legal description, which shall reference calls of the adjacent riparian upland, of the parcel for which the conveyance is requested. The applicant shall provide, subject to the approval of the Attorney General, the legal documentation necessary to effect the conveyance. This subsection shall not apply to any state-owned bottomlands filled by publicly funded initiative and put to a continuing public use, which includes beach nourishment projects and public landings.*

D. *If the Commission determines that unique circumstances exist, the Commission may allow the grantee to compensate the Commonwealth in an amount less than 25 percent of the assessed value of the specified parcel. Any such determination by the Commission shall be justified in writing and shall not be subject to judicial review. For any conveyance under subsection B or C, the applicant shall pay a fee to the Commission in an amount reasonably related to the administrative costs to effect the conveyance. The proceeds of the fee shall be payable to the Marine Habitat and Waterways Improvement Fund established pursuant to § 28.2-1204.2.*

**2. Any payments made to the Commonwealth for conveyances of state-owned bottomlands under prior to July 1, 2011, shall not be refundable.**

**3. That the provisions of this act shall become effective on October 1, 2011.**