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SENATE BILL NO. 1190

Offered January 12, 2011

Prefiled January 12, 2011

A *BILL to amend and reenact §§ 3.2-300, 28.2-603, and 28.2-1203 of the Code of Virginia, relating to aquaculture; Marine Resources Commission; authority of local governments.*

Patron—Norment

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-300, 28.2-603, and 28.2-1203 of the Code of Virginia are amended and reenacted as follows:

§ 3.2-300. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agricultural operation" means any operation devoted to the bona fide production of crops, or animals, or fowl including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; *the production and harvest of products from the practice of aquaculture, as defined in § 3.2-2600*; and the production and harvest of products from silviculture activity.

"Production agriculture and silviculture" means the bona fide production or harvesting of agricultural, *aquacultural*, or silvicultural products but shall not include the processing of agricultural, *aquacultural*, or silvicultural products or the aboveground application or storage of sewage sludge.

§ 28.2-603. General oyster planting grounds; aquaculture opportunity zones.

A. 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.

B. The Commission shall establish commercial shellfish aquaculture opportunity zones for the placement of temporary protective enclosures as set forth in § 28.2-603.1, in the waters off the shores of the Northern Neck, the Middle Peninsula, and Tangier Island. Such zones shall be established by regulations. The regulations shall prescribe (i) the location of such zones; (ii) the proper procedures for the maintenance of such zones, including the (a) proper placement and handling of gear and other apparatus so as not to create a safety hazard and (b) seasonal and time-of-day use of such zones; and (iii) penalties for violations of the regulations. Once established, such zones shall be exempt from the provisions of §§ 28.2-606, 28.2-607, ~~and~~ 28.2-608, §§ 28.2-612 through 28.2-615, and 28.2-617. The Commission may establish a single fee for the application and use of the aquaculture opportunity zones.

C. *Except for those ordinances directed to the abatement of noise and notwithstanding any other law or ordinance to the contrary, no locality may restrict shellfish aquaculture operations on privately-owned riparian land, piers, and docks in a manner that would:*

1. *Prevent a single individual, whether a riparian landowner, his agent, or his employee, per acre from working on a shellfish aquaculture operation, including the washing, sorting, and grading of shellfish, located on the property of the riparian landowner and in waters opposite his property;*

2. *Restrict access to the land, pier, and dock of a riparian landowner by the landowner or his agents or employees for shellfish aquaculture operations on his property and in waters opposite his property;*

3. *Restrict a riparian landowner, and his agents or employees, from parking on the riparian landowner's property when accessing the shellfish aquaculture operation located on the riparian landowner's property and in waters opposite his property;*

4. *Prohibit a riparian landowner, and his agents or employees, from crossing land to remove aquaculture products for sale, provided there is no trespass;*

5. *Prohibit the storage of equipment and tools for shellfish aquaculture operations by a riparian landowner on his own property when such equipment and tools are not generally visible from neighboring properties; or*

6. *Prohibit the harvesting of aquaculture products from temporary enclosures on a dock or pier after 4:00 a.m. and before 10:00 p.m.*

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59 § 28.2-1203. Unlawful use of subaqueous beds; penalty.

60 A. It shall be unlawful for any person to build, dump, trespass or encroach upon or over, or take or
61 use any materials from the beds of the bays, ocean, rivers, streams, or creeks which are the property of
62 the Commonwealth, unless such act is performed pursuant to a permit issued by the Commission or is
63 necessary for the following:

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

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

66 3. Construction and maintenance of congressionally approved navigation and flood-control projects
67 undertaken by the United States Army Corps of Engineers, the United States Coast Guard, or other
68 federal agency authorized by Congress to regulate navigation, navigable waters, or flood control;

69 4. Construction of piers, docks, marine terminals, and port facilities owned or leased by or to the
70 Commonwealth or any of its political subdivisions;

71 5. Except as provided in subsection D of § 28.2-1205, placement of private piers for noncommercial
72 purposes by owners of the riparian lands in the waters opposite those lands, provided that (i) the piers
73 do not extend beyond the navigation line or private pier lines established by the Commission or the
74 United States Army Corps of Engineers, (ii) the piers do not exceed six feet in width and finger piers
75 do not exceed five feet in width, (iii) any L or T head platforms and appurtenant floating docking
76 platforms do not exceed, in the aggregate, 400 square feet, (iv) if prohibited by local ordinance
77 open-sided shelter roofs or gazebo-type structures shall not be placed on platforms as described in clause
78 (iii), but may be placed on such platforms if not prohibited by local ordinance, and (v) the piers are
79 determined not to be a navigational hazard by the Commission. Subject to any applicable local
80 ordinances, such piers may include an attached boat lift and an open-sided roof designed to shelter a
81 single boat slip or boat lift. In cases in which open-sided roofs designed to shelter a single boat, boat
82 slip or boat lift will exceed 700 square feet in coverage or the open-sided shelter roofs or gazebo
83 structures exceed 400 square feet, and in cases in which an adjoining property owner objects to a
84 proposed roof structure, permits shall be required as provided in § 28.2-1204.

85 *A private pier may be used by its owner for aquaculture operations and the pier shall be deemed*
86 *noncommercial provided that the pier has not been substantially modified from its form prior to the*
87 *aquaculture operation and no unauthorized structure has been built on the pier. No regulation of the*
88 *Commission shall prohibit up to 1,200 square feet of floating oyster containment devices tied to such*
89 *pier so long as such devices do not block navigation or extend more than 20 feet beyond such pier. Nor*
90 *shall any regulation of the Commission prohibit the harvesting of aquaculture products from temporary*
91 *enclosures after 4:00 a.m. and before 10:00 p.m.;*

92 6. Agricultural, horticultural or silvicultural irrigation on riparian lands or the watering of animals on
93 riparian lands, provided that (i) no permanent structure is placed on or over the subaqueous bed, (ii) the
94 person withdrawing water complies with requirements administered by the Department of Environmental
95 Quality under Title 62.1, and (iii) the activity is conducted without adverse impacts to instream
96 beneficial uses as defined in § 62.1-10; or

97 7. Recreational gold mining, provided that (i) a man-portable suction dredge no larger than four
98 inches in diameter is used, (ii) rights of riparian property owners are not affected, (iii) the activity is
99 conducted without adverse impacts to instream beneficial uses as defined in § 62.1-10, (iv) the activity is
100 conducted without adverse impacts to underwater historic properties and related objects as defined in
101 § 10.1-2214, and (v) the activity is not defined as mining in § 45.1-180.

102 B. A violation of this section is a Class 1 misdemeanor.