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HOUSE BILL NO. 2032

Offered January 14, 2015

Prefiled January 14, 2015

A BILL to amend and reenact §§ 28.2-603, 28.2-603.2, and 28.2-606 of the Code of Virginia, relating to notice to localities and property owners of oyster ground leases and temporary protective enclosures.

Patron—Helsel

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 28.2-603, 28.2-603.2, and 28.2-606 of the Code of Virginia are amended and reenacted as follows:

§ 28.2-603. General oyster planting grounds.

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. Prior to execution of a lease as described in subsection A, the Commissioner shall comply with all notice requirements as set forth in § 28.2-606.

§ 28.2-603.2. Commissioner to provide notice.

A. At least 30 days before placing temporary protective enclosures on a leasehold pursuant to § 28.2-603.1, the leaseholder shall provide written notification to the Commissioner that identifies the leasehold, the approximate maximum number of enclosures to be placed on the leasehold at any given time, and the estimated date such placement will begin. No later than 30 days after receiving such notification, the Commissioner ~~may~~ shall provide written notification of receipt of the application to the city manager or county administrator of the city or county where the temporary protective enclosures are proposed to be located and to all riparian property owners whose property is within 500 feet of the area where the temporary protective enclosures are proposed to be located. Notices sent by registered or certified mail to the last known address of such owners as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement. The Commissioner shall also publish notice of the proposed placement in a newspaper of general circulation serving the area in which the leasehold is located at least once a week for four consecutive weeks. In determining whether to publish such notice, the Commissioner shall consider the potential effect on existing uses of waters proximate to the leasehold and the potential for conflict between the proposed placement and such uses. The written notifications and public notice shall invite written comment on the proposed placement and include information concerning the submission of written comments. The Commission may receive written comments for no more than 30 days following publication of notice.

B. If, on the basis of written comments, the Commissioner finds significant and substantive opposition from persons residing on or using the waters proximate to the leasehold, the Commissioner shall convene a public meeting on the proposal no more than 30 days after the close of the comment period. No later than 15 days after the public meeting, the Commissioner shall (i) approve the proposal, (ii) approve the proposal with conditions, or (iii) deny the proposal. If the Commissioner denies the proposal, the leaseholder may request approval of the proposal before a hearing of the Commission.

C. If the Commissioner determines not to publish public notice, the Commissioner shall, no later than 30 days after receiving written notification of the proposal, advise the leaseholder to proceed in accordance with the requirements of the general permit. If the Commissioner publishes public notice but does not find significant and substantive opposition by persons residing on or using the waters to the leasehold, the Commissioner shall, no later than 15 days after the close of the comment period, advise the leaseholder to proceed in accordance with the requirements of the general permit. The cost of the notice required by this section shall be borne by the applicant.

§ 28.2-606. Posting of notice of applications.

Notice of the application shall be A. Upon receipt of an application, the Commissioner shall direct

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59 *that the notice be* (i) ~~posted by the Commission~~ for not less than ~~sixty~~ 60 days at the courthouse of the
60 county or city in which the ground applied for lies, and in at least two or more prominent places in the
61 vicinity of the ground ~~and~~; (ii) published at least once a week for four consecutive weeks in a
62 newspaper of general circulation in that county or city; (iii) *provided in writing to all riparian property*
63 *owners whose property is within 500 feet of the proposed area to be leased at least 60 days prior to*
64 *execution of a lease; and (iv) provided in writing to the city manager or county administrator of the city*
65 *or county where the proposed lease will be located at least 60 days prior to execution of a lease.*
66 *Notices, pursuant to clause (iii), sent by registered or certified mail to the last known address of such*
67 *owners as shown on the current real estate tax assessment books or current real estate tax assessment*
68 *records shall be deemed adequate compliance with this requirement.*

69 *B. The cost of the notice required by this section shall be borne by the applicant.*