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SENATE BILL NO. 1143

Offered January 11, 2017

Prefiled January 9, 2017

A *BILL to amend and reenact §§ 28.2-618 and 28.2-630 of the Code of Virginia, relating to oyster or clam grounds; Lynnhaven River; navigation channels.*

Patrons—DeSteph; Delegate: Knight

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 28.2-618 and 28.2-630 of the Code of Virginia are amended and reenacted as follows:

§ 28.2-618. Commonwealth guarantees rights of renter subject to right of fishing.

The Commonwealth shall guarantee to any person who has complied with ground assignment requirements the absolute right to continue to use and occupy the ground for the term of the lease, subject to:

1. Section 28.2-613;

2. Riparian rights *and, in the Lynnhaven River and its tributaries, channels necessary for navigable access;*

3. The right of fishing in waters above the bottoms, provided (i) that no person exercising the right of fishing shall use any device which is fixed to the bottom, or which, in any way, interferes with the renter's rights or damages the bottoms, or the oysters planted thereon, and (ii) that crab pots and gill nets which are not staked to the bottom shall not be considered devices which are fixed to the bottom unless the crab pots and gill nets are used over planted oyster beds in waters of less than four feet at mean low water on the seaside of Northampton and Accomack Counties; and

4. Established fishing stands, but only if the fishing stand license fee is timely received from the existing licensee of the fishing stand and no new applicant shall have priority over the oyster lease. However, a fishing stand location assigned prior to the lease of the oyster ground is a vested interest, a chattel real, and an inheritable right which may be transferred or assigned whenever the current licensee complies with all existing laws.

§ 28.2-630. Rights of riparian owners to build bulkhead or wharf or open channel.

All assignments or leases of oyster or clam grounds under this chapter shall be subject to the rights vested in riparian claimants under Article 1 (§ 28.2-600 et seq.) of this chapter and also to the following condition: That any landowner who desires to erect a bulkhead or wharf in front of his property ~~or~~, to open a channel, *or to open and mark a channel or channels necessary for navigable access in the Lynnhaven River and its tributaries*, and who is not a lessee or riparian holder of suitable bottoms for that purpose, shall give the lessee or other holder of oyster or clam grounds in front of his property ~~twelve~~ 12 months' notice of such intention; and upon the expiration of that time, the rights of the lessee or holder of so much of the oyster or clam grounds as are reasonably needed for building the bulkhead, wharf, ~~or~~ channel, *or channels* shall cease. This ~~twelve-month~~ 12-month notice and waiting period shall not apply if, at the time the landowner provides notice to the lessee or other holder of the oyster or clam grounds in front of his property, the landowner provides the Commissioner sufficient information describing the dimensions and location of the bulkhead, wharf ~~or~~, channel, *or channels* and the Commissioner subsequently finds, in writing, that the proposed bulkhead, wharf ~~or~~, channel, *or channels* will not adversely impact commercially productive oyster or clam grounds. For purposes of this section "commercially productive oyster or clam grounds" are those areas ~~which~~ *that* can be demonstrated to have (i) suitable substrate for oyster or clam production and (ii) evidence of commercial oyster or clam production within the past three years. If the bulkhead, wharf, ~~or~~ channel ~~has~~, *or channels have* not commenced as specified in the notice within three months after the oyster or clam grounds were vacated, the former lessee or holder shall have the right to resume possession of the oyster or clam grounds he has vacated in favor of such landowners, subject to the provisions of this chapter. Any person constructing a channel *or channels* under this section shall compensate the lessee of any oyster or clam grounds for all losses or damages, including the value of the ground taken for the construction of the channel *or channels*. The lessee shall have recourse under action of the law in the court of the proper jurisdiction of the Commonwealth of Virginia to recover damages.