

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 806

An Act to amend and reenact §§ 28.2-1203 and 28.2-1206 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 28.2-627.1, relating to oyster leasing, conservation, and repletion programs; fees; fund.

[S 702]

Approved April 7, 2020

Be it enacted by the General Assembly of Virginia:

1. That §§ 28.2-1203 and 28.2-1206 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 28.2-627.1 as follows:

§ 28.2-627.1. Oyster Leasing, Conservation, and Repletion Programs Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Oyster Leasing, Conservation, and Repletion Programs Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All oyster planting ground application fees, oyster planting ground transfer fees, oyster planting ground lease renewal fees, and oyster ground rents collected pursuant to this chapter shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of administering the oyster ground leasing program and the conservation and repletion program. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner.

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

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

1. Erection of dams, the construction of which has been authorized by proper authority;
2. Uses of subaqueous beds authorized elsewhere in this title;
3. Construction and maintenance of congressionally approved navigation and flood-control projects undertaken by the United States Army Corps of Engineers, the United States Coast Guard, or other federal agency authorized by Congress to regulate navigation, navigable waters, or flood control;
4. Construction of piers, docks, marine terminals, and port facilities owned or leased by or to the Commonwealth or any of its political subdivisions;
5. Except as provided in subsection D of § 28.2-1205, placement, *after submission of an application to the Commission for review and processing*, of private piers for noncommercial purposes by owners of the riparian lands in the waters opposite those lands, provided that (i) the piers do not extend beyond the navigation line or private pier lines established by the Commission or the United States Army Corps of Engineers, (ii) the piers do not exceed six feet in width and finger piers do not exceed five feet in width, (iii) any L or T head platforms and appurtenant floating docking platforms do not exceed, in the aggregate, 400 square feet, (iv) if prohibited by local ordinance open-sided shelter roofs or gazebo-type structures shall not be placed on platforms as described in clause (iii), but may be placed on such platforms if not prohibited by local ordinance, and (v) the piers are determined not to be a navigational hazard by the Commission. Subject to any applicable local ordinances, such piers may include an attached boat lift and an open-sided roof designed to shelter a single boat slip or boat lift. In cases in which open-sided roofs designed to shelter a single boat, boat slip or boat lift will exceed 700 square feet in coverage or the open-sided shelter roofs or gazebo structures exceed 400 square feet, and in cases in which an adjoining property owner objects to a proposed roof structure, permits shall be required as provided in § 28.2-1204;
6. Agricultural, horticultural or silvicultural irrigation on riparian lands or the watering of animals on riparian lands, provided that (i) no permanent structure is placed on or over the subaqueous bed, (ii) the person withdrawing water complies with requirements administered by the Department of Environmental Quality under Title 62.1, and (iii) the activity is conducted without adverse impacts to instream beneficial uses as defined in § 62.1-10; or
7. Recreational gold mining, provided that (i) a man-portable suction dredge no larger than four inches in diameter is used, (ii) rights of riparian property owners are not affected, (iii) the activity is conducted without adverse impacts to instream beneficial uses as defined in § 62.1-10, (iv) the activity is conducted without adverse impacts to underwater historic properties and related objects as defined in § 10.1-2214, and (v) the activity is not defined as mining in § 45.1-180.

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

§ 28.2-1206. Fees; exemptions.

A. *A non-refundable processing fee of \$100 shall accompany each application (i) submitted for a Commission permit for the use of state-owned submerged lands or (ii) submitted pursuant to § 28.2-1203. No such processing fee shall be required for an application to explore or recover underwater historic property or to conduct any activity authorized by a Virginia Marine Resources Commission General Permit.*

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

B. The fee paid to the Commission for issuing each permit to use state-owned bottomlands shall be ~~\$25, but~~ \$100; if the cost of the project is to exceed \$10,000 *but not exceed \$500,000*, the fee paid shall be \$100 ~~\$300~~; and *if the cost of the project is to exceed \$500,000, the fee paid shall be \$600*. Riparian owners of (i) commercial facilities engaged in the business of ship construction or repair, (ii) commercial facilities providing services relating to the shipping of domestic or foreign cargo, and (iii) commercial facilities engaged in the business of selling or servicing watercraft shall be exempt from the payment of rents and royalties, except as provided in subsection C.

C. When the activity or project for which a permit is requested will involve the removal of bottom material, the application shall indicate this fact. If granted, the permit shall specify a royalty of not less than ~~\$.20~~ \$0.40, nor more than ~~\$.60~~ \$0.80, per cubic yard of bottom material removed. In fixing the amount of the royalty, the Commission shall consider, among other factors, the following:

1. The primary and secondary purposes for removing the bottom material;
2. Whether the material has any commercial value and whether it will be used for any commercial purpose;
3. The use to be made of the removed material and any public benefit or adverse effect upon the public that will result from the removal or disposal of the material;
4. The physical characteristics of the material to be removed; and
5. The expense of removing and disposing of the material.

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

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

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

G. *Beginning July 1, 2020, and not more frequently than every three years thereafter, the Commission may increase or decrease fees for marine habitat applications, permits, leases, rents, and royalties that are authorized by this chapter, but such increase or decrease shall be no greater than the respective increase or decrease, expressed as a percentage, in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor, since the date on which the fee was last set or adjusted.*