

VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

CHAPTER 36

An Act to amend and reenact § 28.2-618, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to right to aquaculture.

[S 509]

Approved April 1, 2022

Be it enacted by the General Assembly of Virginia:

1. That § 28.2-618, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 28.2-618. (Effective until July 1, 2035) Commonwealth guarantees rights of renter subject to right of fishing.

A. 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, *including the right to propagate shellfish by whatever legal means necessary.*

B. The right described in subsection A is subject to:

1. The provisions of § 28.2-613;
2. Riparian rights;

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;

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; and

5. Municipal dredging projects located in the Lynnhaven River or its creeks and tributaries, including dredging projects to restore existing navigation channels in areas approved by the Commission.

C. When a municipal dredging project of the type described in subdivision B 5 proposes to impact grounds that are condemned or not subject to beneficial use as oyster-planting ground, the Commissioner shall notify, by certified letter, the holder of any such lease within the footprint of the proposed navigation channel, requesting a response within 60 days. The locality shall compensate the lessee for the use of the ground, and if the parties cannot agree on a compensation amount, a court of competent jurisdiction shall determine the value of the ground as of the date it is first disturbed.

D. When a municipal dredging project of the type described in subdivision B 5 proposes to impact grounds that are subject to beneficial use as oyster-planting ground, the following process shall apply:

1. The Commissioner shall review any such proposed project to ensure that the project, in addition to meeting the considerations established in § 28.2-1205, avoids impacting grounds that are subject to beneficial use as oyster-planting ground to the maximum extent practicable. Upon determining that the project meets such standard, the Commissioner shall notify, by certified letter, the holder of any such lease within the footprint of the proposed navigation channel requesting a response within 60 days.

2. After the Commissioner sends such notice, the locality shall compensate the lessee for the use of the ground. If the lessee and the locality are able to agree on a compensation amount within 90 days from the date the Commissioner's notice is sent, no additional action is necessary on the part of the locality. Otherwise, the locality shall offer in writing to enter with the lessee into mediation, as defined in § 8.01-581.21, at the expense of the locality. If the lessee refuses such offer, or if the locality and the lessee reach no agreement within nine months of such offer, a court of competent jurisdiction shall determine and order fair compensation to the lessee.

3. The Commission shall hold a hearing on any such project prior to approval. Any objector, the locality, and the lessee shall each have an opportunity to be heard at such hearing. If the Commission approves the project and compensation for the lease has been determined pursuant to the provisions of this subsection, the Commissioner shall issue the permit for the project.

4. The provisions of any compensation agreement or order made pursuant to this section may include terms establishing a timeline by which the lessee shall vacate the impacted portion of the leased ground. The process of transferring a lease as a result of the completion of the process established in this subsection shall not extend or otherwise affect any timeline established in this subsection.

§ 28.2-618. (Effective July 1, 2035) 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, *including the right to propagate shellfish by whatever legal means necessary*, subject to:

1. Section 28.2-613;
2. Riparian rights;

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 seashore of Northampton and Accomack Counties;

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; and

5. Municipal dredging projects located in the Lynnhaven River or its creeks and tributaries, including dredging projects to restore existing navigation channels in areas approved by the Commission. Such projects shall be limited to grounds that are condemned, restricted, or otherwise nonproductive. The locality shall compensate the lessee for the use of the ground, and if the parties cannot agree on a compensation amount, a court of competent jurisdiction shall determine the value of the ground as of the date it is first disturbed.