

LD5717132

HOUSE BILL NO. 390

Offered January 21, 1994

A BILL to amend and reenact §§ 10.1-1108, 28.2-1200, 28.2-1301, 41.1-3, 41.1-5, and 41.1-16 of the Code of Virginia, to amend the Code of Virginia by adding in Title 28.2 a chapter numbered 15, consisting of sections numbered 28.2-1500 through 28.2-1511, and to repeal § 41.1-4 of the Code of Virginia, relating to inventories of certain ungranted shores of the sea, marsh, and meadowlands.

Patrons—Bloxom and Murphy; Senators: Cross, Gartlan and Norment

Referred to Committee on Chesapeake and Its Tributaries

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1108, 28.2-1200, 28.2-1301, 41.1-3, 41.1-5, and 41.1-16 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 28.2 a chapter numbered 15, consisting of sections numbered 28.2-1500 through 28.2-1511, as follows:

§ 10.1-1108. Waste and unappropriated lands.

Any waste and unappropriated land, other than ~~unappropriated~~ *ungranted* marsh or meadowlands ~~lying on the eastern shore of Virginia~~ exempted from entry and grant by the provisions of § ~~41.1-4~~ *41.1-3*, may be set apart permanently for use as state forest land, by a grant and proclamation signed by the Governor upon the receipt from the State Forester of an application requesting that a certain piece, tract or parcel of waste and unappropriated land be so set apart. The State Forester shall submit with the application a copy of a report describing fully the location of the land, its character and suitability for forestry purposes together with a complete metes and bounds description of the boundary of the tract. The Department of General Services shall review the application and recommend either approval or disapproval of the transaction to the Governor. If the Governor determines that the land is more valuable for forestry purposes than for agricultural or any other purposes, he may authorize the preparation of a grant which shall be reviewed for legal sufficiency by the Attorney General for the Governor's signature and the lesser seal of the Commonwealth.

All lands so granted shall be subject to statutes and regulations relating to the regulation, management, protection and administration of state forests.

§ 28.2-1200. Ungranted beds of bays, rivers, and creeks to remain in common.

All the beds of the bays, rivers, *and* creeks ~~and the shores of the sea~~ within the jurisdiction of the Commonwealth, not conveyed by special grant ~~or compact according to law of the General Assembly~~, shall remain the property of the Commonwealth and may be used as a common by all the people of the Commonwealth for the purpose of fishing, fowling, *hunting*, and taking and catching oysters and other shellfish. No grant shall be issued by the State Librarian to pass any estate or interest of the Commonwealth in any natural oyster bed, rock, or shoal, whether or not it ebbs bare.

§ 28.2-1301. Powers and duties of the Commission.

A. The Commission may receive gifts, grants, bequests, and devises of wetlands and money which shall be held for the uses prescribed by the donor, grantor, or testator and in accordance with the provisions of this chapter. The Commission shall manage any wetlands it receives so as to maximize their ecological value.

B. The Commission shall preserve and prevent the despoliation and destruction of wetlands while accommodating necessary economic development in a manner consistent with wetlands preservation.

C. The Commission shall manage all unappropriated marsh or meadowlands lying on the Eastern Shore of Virginia which remain ungranted pursuant to the provisions of § ~~41.1-4~~ *28.2-1502*.

D. In order to perform its duties under this section and to assist counties, cities, and towns in regulating wetlands, the Commission shall promulgate and periodically update guidelines which scientifically evaluate vegetated and nonvegetated wetlands by type and describe the consequences of use of these wetlands types. The Virginia Institute of Marine Science shall provide advice and assistance to the Commission in developing these guidelines by evaluating wetlands by type and continuously maintaining and updating an inventory of vegetated wetlands.

E. In developing guidelines or regulations under this chapter the Commission shall consult with all affected state agencies. Consistent with other legal rights, consideration shall be given to the unique character of the Commonwealth's tidal wetlands which are essential for the production of marine and inland wildlife, waterfowl, finfish, shellfish and flora; serve as a valuable protective barrier against floods, tidal storms and the erosion of the Commonwealth's shores and soil; are important for the absorption of silt and pollutants; and are important for recreational and aesthetic enjoyment of the people and for the promotion of tourism, navigation and commerce.

INTRODUCED

HB390

CHAPTER 15.

UNGRANTED SHORES OF THE SEA, MARSHES AND MEADOWLANDS.

Article 1.

General Provisions.

§ 28.2-1500. Definitions.

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

"Beach" shall have the same meaning ascribed thereto in subsection A of § 28.2-1400. "Beach" shall also include any property referred to, defined, or labeled as such in any deed, grant, map, plat, or other historical document establishing or supporting a claim of state ownership.

"Inventory" means a set of maps prepared by, at the direction, or with the approval of the Commission, mapping certain ungranted shores of the sea, marshes and meadowlands in any county having a population greater than 31,700 but less than 31,705, or any county having a population greater than 13,060 but less than 13,065.

"Marsh" or "meadowland" shall have the same meaning ascribed to vegetated wetlands in § 28.2-1300. "Marsh" or "meadowland" shall also include any property referred to, defined, or labeled as such in any deed, grant, map, plat, or other historical document establishing or supporting a claim of state ownership.

"Shores of the sea" means a beach or any unvegetated lands lying contiguous to mean low water and between mean low water and mean high water. "Shores of the sea" shall also include any property referred to, defined, or labeled as such in any deed, grant, map, plat, or other historical document establishing or supporting a claim of state ownership.

"Ungranted shores of the sea, marsh or meadowlands" means (i) shores of the sea which were not conveyed by special grant or compact according to law prior to April 1, 1873, and which have not been conveyed by special grant of the General Assembly on or after that date and (ii) marsh or meadowlands which were not appropriated and remained ungranted prior to February 24, 1888, and which have not been conveyed by special grant of the General Assembly on or after that date.

§ 28.2-1501. Powers and duties of Commission.

A. The Commission may receive gifts, grants, bequests, and devises of shores of the sea, marsh, meadowlands, and money which shall be held for the uses prescribed by the donor, grantor, or testator and in accordance with the provisions of this chapter.

B. The Commission may promulgate regulations and guidelines necessary to carry out the provisions of this chapter.

§ 28.2-1502. Ownership of ungranted shores of the sea, marsh and meadowlands.

All ungranted shores of the sea, marsh and meadowlands shall remain the property of the Commonwealth. Such ungranted marsh and meadowlands which have been used as a commons by the people of the Commonwealth shall continue as a commons for the purpose of fishing, fowling, hunting, and the taking and catching of oysters and other shellfish. All ungranted shores of the sea may be used as a commons for the purpose of fishing, fowling, hunting, and the taking and catching of oysters and other shellfish. The Commission shall manage all ungranted shores of the sea, marsh and meadowlands.

§ 28.2-1503. Filing of inventories.

Inventories have been filed with the clerk of circuit court and the commissioner of revenue for the counties in which the ungranted shores of the sea, marsh and meadowlands mapped therein are located.

§ 28.2-1504. Amendments or supplements to inventories.

The Commission shall review each inventory periodically, and may amend or supplement an inventory as may be appropriate. Any amendment or supplement to an inventory shall be filed in the same offices as the original inventory.

Article 2.

Inventories of Certain Ungranted Shores of the Sea, Marsh and Meadowlands.

§ 28.2-1505. Notice of filing of inventories.

A. The Commission shall cause to be published, within 90 days following the effective date of this section, in a newspaper of general circulation published at the state capital, in a newspaper having general circulation in the counties where inventories have been filed, and in such other newspapers in the Commonwealth as the commission generally publishes notices pursuant to subsection F of § 9-6.14:7.1, a notice of the initial filing of the inventories. The notice shall state that any person claiming ownership of an interest in lands designated in an inventory as ungranted shores of the sea, marsh, or meadowlands is required to assert the claim as provided in § 28.2-1507 within two years following the filing of the effective date of this section, or any action to assert such claim shall be barred.

B. The Commission shall cause to be published a notice of the filing of an amendment or supplement to an inventory in a newspaper having general circulation in the county for which the inventory applies. The notice shall refer to the original inventory and any previous amendment or supplement thereto, and shall state that any person claiming ownership of an interest in lands designated therein as ungranted

shores of the sea, marsh, or meadowlands is required to assert the claim as provided in § 28.2-1507 within two years following the filing of the amendment or supplement, or any action to assert such claim shall be barred.

C. The failure of the Commission to comply with the requirements of this section shall not impair the Commonwealth's rights of ownership in any ungranted shores of the sea, marsh, or meadowlands.

§ 28.2-1506. Effect of inventories.

A. The failure to include any ungranted shores of the sea, marsh or meadowlands in an inventory shall not affect the Commonwealth's rights of ownership in such property, or impair the Commonwealth's right to file an amended or supplemental inventory.

B. The description of any parcel of ungranted shores of the sea, marsh, or meadowlands contained in a map in an inventory shall be accepted in any court as prima facie evidence of the location, dimensions and boundaries of the parcel at the time of the preparation of the map.

Article 3.

Resolution of Conflicting Claims of Inventoried Property.

§ 28.2-1507. Claims to lands designated in an inventory.

A. Any person claiming ownership of an interest in lands designated as ungranted shores of the sea, marsh, or meadowland in an inventory, or an amendment or supplement thereto, shall bring an action for declaratory judgment to determine title to the land pursuant to § 8.01-184, an action to establish the boundaries to land pursuant to § 8.01-179, or an action of ejectment pursuant to § 8.01-131.

B. Any action pursuant to subsection A with respect to lands designated as ungranted shores of the sea, marsh, or meadowland in an inventory shall be brought within two years following effective date of this section. Any action to assert a claim in such land shall be barred unless brought within the two-year period.

C. Any action pursuant to subsection A with respect to lands designated as ungranted shores of the sea, marsh or meadowland in an amendment or supplement to an inventory shall be brought within two years following the filing of such amendment or supplement. Any action to assert a claim in such lands shall be barred unless brought within the two-year period.

D. Upon entry of a final judgment ruling that any lands designated in an inventory as ungranted shores of the sea, marsh, or meadowlands are not property of the Commonwealth, the Commission shall file an amended inventory correcting its designation of such property.

§ 28.2-1508. Approval of amended or supplemental inventory.

The Commission shall not approve an amendment or supplement to an inventory, if the amendment or supplement initially designates a parcel of land as ungranted shores of the sea, marsh, or meadowlands, until notice of the Commission's intention so to do has been published once a week for two successive weeks in a newspaper having general circulation in the county where such land is located. Such notice shall specify the time and place of a public hearing at which persons affected may appear and present their views. In addition, the Commission shall give written notice of the amendment or supplement to an inventory, and of the public hearing, to the owner or owners of each parcel so designated, if known, by postpaid mail to the address of the owner as shown on the county's land book. Nothing in this section shall be construed to invalidate any subsequently filed amendment or supplement to an inventory because of the inadvertent failure of the Commission to give written notice to the owner or owners of any parcel involved. After the public hearing, the Commission may approve, amend, or disapprove the amendment or supplement.

§ 28.2-1509. Claims to shores of the sea, marsh, and meadowlands proposed for designation in amended or supplemental inventory.

A. The Commission shall not file any amendment or supplement to an inventory, if the amendment or supplement initially designates a parcel of land as ungranted shores of the sea, marsh, or meadowland unless the Commission has approved the amendment or supplement as provided in § 28.2-1508. The Commission shall give notice of its intention to file the amendment or supplement to any person listed as having an ownership interest in such land in the current land book for the county. The notice shall be sent by postpaid mail to the address of the person as shown on the land book. The Commission shall also cause notice of its intent to file an amended or supplemental inventory to be published in a newspaper of general circulation in the county where such land is located.

B. Any person claiming ownership of an interest in lands described in a notice given pursuant to subsection A shall bring an action for declaratory judgment to determine title to the land pursuant to § 8.01-184, to establish the boundaries to land pursuant to § 8.01-179, or an action of ejectment pursuant to § 8.01-131. Any such action shall be brought within two years following publication of the notice pursuant to subsection A; however, the failure of a person claiming ownership of such lands to commence an action within the two-year period as provided in subsection B shall not bar such person from asserting a claim of ownership as provided in § 28.2-1507.

C. If an action is not commenced within the two-year period as provided in subsection B, the

183 Commission may file an amended or supplemental inventory designating as ungranted shores of the sea,
 184 marsh, or meadowlands the parcels for which no action has been commenced. Upon filing the amended
 185 or supplemental inventory, the Commission shall cause to be published a notice as provided in
 186 subsection B of § 28.2-1505.

187 D. If an action is commenced within the two-year period as provided in subsection B, the
 188 Commission shall not during the pendency of the action file an amended or supplemental inventory
 189 designating the land which is the subject of the action as ungranted shores of the sea, marsh or
 190 meadowlands. Upon the entry of a final judgment ruling that any of the land is not the property of the
 191 Commonwealth, the Commission shall correct the amended or supplemental inventory to remove any
 192 designation of such land as ungranted shores of the sea, marsh, or meadowland. The Commission may
 193 then file the corrected amended or supplemental inventory. Upon the entry of a final judgment ruling
 194 that the land is the property of the Commonwealth, the Commission may file an amended or
 195 supplemental inventory designating such land as ungranted shores of the sea, marsh, or meadowlands,
 196 and further such final judgment shall bar the assertion of a like claim in any action brought to assert
 197 ownership of such land pursuant to § 28.2-1507. Upon filing an amended or supplemental inventory, the
 198 Commission shall cause to be published the notice as provided in subsection B of § 28.2-1505.

199 § 28.2-1510. Effect of disability.

200 The provisions of § 8.01-237 shall apply with respect to the effect of disabilities on the preservation
 201 of a right to bring an action to establish ownership of land pursuant to §§ 28.2-1507 and 28.2-1509.

202 § 28.2-1511. Filing of notice of lis pendens.

203 The Commissioner is authorized to record a notice of lis pendens in order to provide notice of the
 204 Commonwealth's claim of ownership of any property designated in an inventory, or amendment or
 205 supplement thereto, as ungranted shores of the sea, marsh or meadowland. The notice shall set forth the
 206 name of any person who has asserted an interest in the property, a description of the property, and a
 207 statement that the Commission has determined that the property is ungranted shores of the sea, marsh
 208 or meadowland and is designated as such on a filed inventory. The notice shall be admitted to record in
 209 the clerk's office of the county wherein the property is located.

210 § 41.1-3. Grants of certain lands, etc., to be void; such lands, etc., under control of Governor.

211 No grant shall be valid or effectual in law to pass any estate or interest in (i) any lands
 212 unappropriated or belonging to the Commonwealth, which embrace the old magazine at Westham, or
 213 any stone quarry now worked by the Commonwealth, or any lands which are within a mile of such
 214 magazine, or any such quarry; (ii) any ~~lands which are a common~~ ungranted beds of bays, rivers and
 215 creeks under § ~~62.1-4~~ 28.2-1200; (iii) any natural oyster bed, rock, or shoal, whether such bed, rock, or
 216 shoal shall ebb bare or not; (iv) any islands created in the navigable waters of the Commonwealth
 217 through the instrumentality of dredging or filling operations; ~~or~~ (v) any islands which rise from any ~~beds~~
 218 ~~lands which are a common property of the Commonwealth under § 62.1-4~~ 28.2-1201; or (vi) any
 219 ungranted shores of the sea, marsh or meadowlands as defined in § 28.2-1500. Every such grant for any
 220 such lands, islands, bed, rock, or shoal shall be absolutely void; however, this section shall not be
 221 construed to affect the title to grants issued prior to March 15, 1932. Such magazine and every such
 222 stone quarry and the lands of the Commonwealth adjacent to or in their neighborhood, shall be under
 223 the control of the Governor, who may make such regulations concerning the same as he may deem best
 224 for the interests of the Commonwealth.

225 § 41.1-5. Circuit courts authorized to dispose of waste and unappropriated lands.

226 The circuit courts of the counties and cities in which waste and unappropriated lands are alleged to
 227 lie are vested with authority to sell and dispose thereof in proceedings brought under §§ 41.1-16 through
 228 41.1-20; however, no sale or disposition shall be made of lands mentioned in § ~~62.1-4~~ 28.2-1200 or of
 229 lands as to which a grant could not have been issued by the State Librarian under §§ 41.1-3, ~~41.1-4, or~~
 230 ~~§ 41.1-4.1.~~

231 § 41.1-16. Sale of wastelands; proceeding by citizen resident; motion and deposit for costs; parties;
 232 copy of plat.

233 Any citizen, resident of this Commonwealth, who has reason to believe that there are waste and
 234 unappropriated lands in this Commonwealth (not being a ~~common~~ under § ~~62.1-4~~ or excluded under §§
 235 41.1-3 and ~~41.1-4~~ from grant), shall have the right to file a proceeding in the name of the county or city
 236 seeking the sale and disposition of such land. The venue for such a proceeding shall be as specified in
 237 subdivision 3 of § 8.01-261. The proceeding shall be instituted by motion signed by the party who
 238 institutes the proceeding, or on his behalf, and shall be accompanied with a deposit to cover the costs of
 239 the proceeding but in no event to exceed \$100. Each landowner adjoining the tract in question shall be
 240 made a party to the proceedings.

241 He shall file with the motion a copy of a plat prepared by a licensed land surveyor giving the metes
 242 and bounds of the land alleged to be waste and unappropriated. A copy of the motion and plat shall be
 243 served upon each of the landowners adjoining the tract in question.

244 2. That § 41.1-4 of the Code of Virginia is repealed.