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## HOUSE BILL NO. 2272

House Amendments in [ ] — February 9, 1999

A BILL to amend and reenact § 28.2-1203 of the Code of Virginia, relating to impact of private piers on oyster grounds.

Patrons—Murphy, Bloxom, Dillard, Jones, J.C. and Morgan; Senator: Chichester

Referred to Committee on Chesapeake and Its Tributaries

**Be it enacted by the General Assembly of Virginia:**

**1. That § 28.2-1203 of the Code of Virginia is amended and reenacted as follows:**

§ 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 any 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; or

5. Placement of private piers for noncommercial purposes by owners of the riparian lands in the waters opposite those lands, provided that 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. 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 such roofs will exceed 700 square feet in coverage, 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. *To qualify for the permit exemption provided for in this [ paragraph subdivision ], one must first provide the Commissioner sufficient information describing the dimensions and location of the pier and the Commissioner must find, in writing, that the proposed pier will not adversely impact [ public rocks, leased oyster grounds or commercially ] productive oyster grounds [ and these grounds can be demonstrated to have (i) suitable substrate for oyster production and (ii) evidence of oyster production within the past three years ] . A decision of the Commissioner that there is an adverse impact shall [ not ] be a final decision subject to judicial review [ ; however, the consistent with the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to § 1-10. Upon a final determination that there is an adverse impact, any ] person seeking placement of the pier may file an application for a permit [ and may appeal any adverse decision of the Commission, whether or not based on the Commissioner's determination, . If the Commissioner denies the application for the permit, the applicant shall be entitled to judicial review ] as provided in subsection E of § 28.2-1205.*

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

ENGROSSED

HB2272E