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HOUSE BILL NO. 2272

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on February 22, 1999)

(Patron Prior to Substitute—Delegate Murphy)

A BILL to amend and reenact §§ 28.2-630 and 28.2-1203 of the Code of Virginia, relating to impacts on oyster grounds.

Be it enacted by the General Assembly of Virginia:

1. That §§ 28.2-630 and 28.2-1203 of the Code of Virginia are amended and reenacted as follows:

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

All assignments or leases of oyster 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, and who is not a lessee or riparian holder of suitable bottoms for that purpose, shall give the lessee or other holder of oyster grounds in front of his property twelve 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 grounds as are reasonably needed for building the bulkhead, wharf, or channel shall cease. *This twelve-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 grounds in front of his property, the landowner provides the Commissioner sufficient information describing the dimensions and location of the bulkhead, wharf or channel and the Commissioner subsequently finds, in writing, that the proposed bulkhead, wharf or channel will not adversely impact commercially productive oyster grounds. For purposes of this section "commercially productive oyster grounds" are those areas which can be demonstrated to have (i) suitable substrate for oyster production and (ii) evidence of oyster production within the past three years.* If the bulkhead, wharf, or channel has not commenced as specified in the notice within three months after the oyster grounds were vacated, the former lessee or holder shall have the right to resume possession of the oyster grounds he has vacated in favor of such landowners, subject to the provisions of this chapter. Any person constructing a channel under this section shall compensate the lessee of any oyster grounds for all losses or damages including the value of the ground taken for the construction of the channel. 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.

§ 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, *measuring less than one hundred feet in length from the mean low-water mark*, 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 subdivision, one must first provide the Commission with plans describing the dimensions and location of the pier.*

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