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## HOUSE BILL NO. 1855

Offered January 10, 2007

Prefiled January 3, 2007

A *BILL to amend and reenact §§ 28.2-603 and 28.2-1203 of the Code of Virginia, relating to aquaculture.*

Patron—Wittman

Referred to Committee on Agriculture, Chesapeake and Natural Resources

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

**1. That §§ 28.2-603 and 28.2-1203 of the Code of Virginia are amended and reenacted as follows:**

§ 28.2-603. General oyster-planting grounds.

Waterfront that is not already assigned or reserved for the riparian owners, and the beds of the bays, rivers, and creeks and shores of the sea lying outside the limits of navigation projects adopted and authorized by the Congress and not required for the disposal of materials dredged incident to the maintenance of such projects, and grounds other than public oyster beds, rocks, or shoals, as defined by law and included in the Baylor survey, may be occupied for the purpose of planting or propagating oysters, *including the use of temporary protective enclosures authorized by Chapter 12 of this title*, and may be leased by the Commissioner upon the receipt of a proper application.

§ 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 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; or

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.

7. *Use of temporary protective enclosures by leaseholders in compliance with Commission requirements pertaining to aquaculture licensing, for the purpose of growing shellfish planted on ground leased pursuant to § 28.2-603. Such enclosures shall be constructed of nontoxic materials and not be placed in or upon submerged aquatic vegetation.*

a. *Such enclosures shall not be placed in any marked navigation channel or in any other area that would create a hazard or impede customary access to navigable water from any riparian property, public or commercial landing, or marina facility. Enclosures shall be marked so that their location is visible to boaters and shall be readily retrievable by the leaseholder or other authorized persons.*

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59       *b. Leaseholders who place such enclosures on their leased ground pursuant to this authorization*  
60 *shall maintain a list of those leases on which enclosures are placed during the term of the lease and*  
61 *shall make a current copy of the list available to authorized representatives of the Commission upon*  
62 *request. Such list shall be filed with the leaseholder's application for lease renewal made pursuant to*  
63 *§ 28.2-613.*

64       *c. Any such enclosure that is not actively in use for the planting and propagating of shellfish shall*  
65 *promptly be removed from the water. The Commissioner shall order or cause the removal or relocation*  
66 *of any enclosures found to interfere with navigation, create a hazard, or otherwise be in noncompliance*  
67 *with the conditions of this authorization. Upon expiration or termination of a lease or of the*  
68 *leaseholder's aquaculture license, the leaseholder shall promptly remove all such enclosures placed on*  
69 *the bottom pursuant to this authorization.*

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