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SENATE BILL NO. 202

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend and reenact §§ 28.2-1203, 28.2-1206, and 28.2-1207 of the Code of Virginia, relating to Marine Resources Commission; state-owned bottomlands; fees.

Patron—Blevins

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 28.2-1203, 28.2-1206, and 28.2-1207 of the Code of Virginia are 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 without submitting an application to the Commission for its review.~~ Any person engaging in federal activities not subject to state permit requirements and activities authorized under subdivisions 2, 6, and 7 shall be exempt from the requirement to submit an application to the Commission. All other activities shall be performed pursuant to a permit issued by the Commission or is deemed necessary by the Commission, based upon its review of the application, 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;

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; or

7. Recreational gold mining, provided that (i) a man-portable suction dredge no larger than four inches in diameter is used, (ii) rights of riparian property owners are not affected, (iii) the activity is conducted without adverse impacts to instream beneficial uses as defined in § 62.1-10, (iv) the activity is conducted without adverse impacts to underwater historic properties and related objects as defined in § 10.1-2214, and (v) the activity is not defined as mining in § 45.1-180.

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

§ 28.2-1206. Permit fees; exemptions.

A. The Commission shall establish application, permit, and royalty fees and schedules for the use of state-owned bottomlands. A nonrefundable application fee shall accompany any application required under § 28.2-1203 other than applications to explore or recover underwater historic property and activities authorized by general permit adopted by the Commission. In establishing the nonrefundable

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59 application fee, the Commission shall consider the services provided by the Commission in its review
60 including the time, skill, and expense of personnel. The initial permit fees shall be as follows:

61 1. The fee paid to the Commission for issuing each permit to recover or explore for underwater
62 historic property shall be \$25.

63 B- 2. The fee paid to the Commission for issuing each permit to use state-owned bottomlands shall
64 be \$25, but if the cost of the project is to exceed \$10,000, the fee paid shall be \$100 \$100 for projects
65 less than \$10,000; \$200 if the cost of the project exceeds \$10,000; and \$500 if the cost of the project
66 exceeds \$50,000. Riparian owners of (i) commercial facilities engaged in the business of ship
67 construction or repair, (ii) commercial facilities providing services relating to the shipping of domestic
68 or foreign cargo, and (iii) commercial facilities engaged in the business of selling or servicing watercraft
69 shall be exempt from the payment of rents and royalties, except as provided in subsection C.

70 C-3. When the activity or project for which a permit is requested will involve the removal of bottom
71 material, the application shall indicate this fact. If granted, the permit shall specify a royalty of not less
72 than \$-20 \$.40, nor more than \$-60 \$.80, per cubic yard of bottom material removed. In fixing the
73 amount of the royalty, the Commission shall consider, among other factors, the following:

74 1.a. The primary and secondary purposes for removing the bottom material;

75 2.b. Whether the material has any commercial value and whether it will be used for any commercial
76 purpose;

77 3.c. The use to be made of the removed material and any public benefit or adverse effect upon the
78 public that will result from the removal or disposal of the material;

79 4.d. The physical characteristics of the material to be removed; and

80 5.e. The expense of removing and disposing of the material.

81 D-4. Where it appears that the project or facility for which a permit application is made has been
82 completed or work thereon commenced at the time application is made, the Commission may impose
83 additional assessments not to exceed an amount of three times the normal permit fee and royalties,
84 unless such royalties are prohibited by this chapter.

85 E-5. Bottom material removed attendant to maintenance dredging or directional drilling shall be
86 exempt from any royalty. The Virginia Department of Transportation shall be exempt from all fees, rents
87 and royalties otherwise assessable under this section. All counties, cities, and towns of the
88 Commonwealth shall pay the required permit fee but shall be exempt from all other fees, rents and
89 royalties assessable under this section if the permit is issued prior to the commencement of any work to
90 be accomplished under the permit.

91 F-B. All fees, rents and royalties collected pursuant to this chapter on and after July 1, 2000, shall be
92 paid into the state treasury to the credit of the Marine Habitat and Waterways Improvement Fund.

93 C. Beginning July 1, 2013, and not more frequently than every three years thereafter, the
94 Commission shall increase fees for marine habitat applications, permits, leases, rents, and royalties that
95 are authorized under this chapter, but such increases shall be no greater than the increase in the
96 average Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics of
97 the U.S. Department of Labor calculated from the time the fee was last set or adjusted.

98 § 28.2-1207. Authority to approve permits for encroachment on subaqueous beds; notice.

99 A. Any application for a permit to trespass upon or over or encroach upon subaqueous beds which
100 are the Commonwealth's property may be approved by the Commissioner or his authorized
101 representative if the application meets the requirements of §§ 28.2-1205 and 28.2-1206 and the following
102 criteria are satisfied:

103 1. The total value of the project does not exceed ~~\$50,000~~ \$500,000;

104 2. The application is not protested by any citizen or objected to by any state agency; and

105 3. The project for which the permit is sought will not require any other permit from the Commission.

106 B. If the permit application is for a shore erosion control project recommended by the soil and water
107 conservation district in which the project is to be located and the criteria listed in subsection A of this
108 section are satisfied, the Commission may, after giving notice of the application to the Virginia Institute
109 of Marine Science, approve the application without giving notice to or awaiting the approval of any
110 other state agency.

111 C. The Commission shall, in conjunction with affected state and federal agencies, develop an
112 expedited process for issuing general permits for activities that are intended to improve water quality
113 such as bioengineered streambank projects and livestock stream crossings, and for activities required
114 during emergencies in which a determination has been made that there is a threat to public or private
115 property, or to the health and safety of the public. The development of the general permit shall be
116 exempt from Article 2 (§ 2.2-4007 et seq.) of the Administrative Process Act.