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HOUSE BILL NO. 1400

Offered January 9, 2013

Prefiled December 17, 2012

A *BILL to amend and reenact §§ 28.2-226, 28.2-228, 28.2-511, 28.2-538, 28.2-541, 28.2-542, 28.2-546, 28.2-548, 28.2-549, and 28.2-550 of the Code of Virginia and to repeal §§ 28.2-539, 28.2-540, 28.2-543, and 28.2-544 of the Code of Virginia, relating to oyster replenishment taxes; penalties.*

Patrons—Ransone, Helsel, Hodges, Jones, Lewis, Lingamfelter, Peace and Scott, E.T.; Senators: Hanger, McDougale and Stuart

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 28.2-226, 28.2-228, 28.2-511, 28.2-538, 28.2-541, 28.2-542, 28.2-546, 28.2-548, 28.2-549, and 28.2-550 of the Code of Virginia are amended and reenacted as follows:

§ 28.2-226. Exemptions from licensing requirements.

~~A.~~ The following activities are exempt from the licensing requirements of this subtitle:

1. Except as otherwise provided by regulation, taking by dip net, hand line, or two crab pots, as much as one bushel of hard crabs and two dozen peeler crabs in any one day for personal use only.

2. Taking a maximum of one bushel of oysters in any one day for personal use, when taken by hand or with ordinary tongs.

3. Taking a maximum of 250 clams in any one day for personal use, when taken by hand or with ordinary tongs.

4. Using one tank or float no greater than four feet in width and eight feet in length for shedding crabs for personal use.

~~B. No license shall be required of an oyster grounds leaseholder, or other person authorized or employed by a leaseholder, to harvest oysters or clams from the leasehold. However, this exemption shall not apply to other requirements to obtain permits, including those permits for dredging or scraping on leaseholds provided in § 28.2-516, or for removal and transportation of shellfish from condemned areas as required by §§ 28.2-810 and 28.2-811.~~

§ 28.2-228. Licenses for purchase of fish, shellfish, or marine organisms from the catcher; fee.

A. Any person, purchasing from the catcher, ~~oysters or clams, caught from the public grounds of the Commonwealth or the Potomac River, or crabs, fish, or other seafood, except oysters,~~ caught from the waters of the Commonwealth or the Potomac River, shall pay a license fee of (i) ~~fifty dollars~~ \$50 for each place of business and (ii) ~~twenty-five dollars~~ \$25 for each boat or motor vehicle used for buying. The Commission may subsequently revise the cost of licenses pursuant to § 28.2-201.

B. ~~Any person purchasing from the catcher oysters caught from the public grounds of the Commonwealth or the Potomac River shall pay a license fee of (i) \$50 for a single place of business with one boat or motor vehicle used for buying oysters and (ii) \$100 for a single place of business with multiple boats or motor vehicles used for buying oysters. The Commission may subsequently revise the cost of licenses pursuant to § 28.2-201.~~

C. No license shall be required of any person purchasing seafood for personal consumption, any place of business which is solely a restaurant, or any person who operates a business which is subject to local license taxes under § 58.1-3703 and who has in his possession no more than one bushel of peeler crabs to be sold as bait.

§ 28.2-511. Culling oysters; penalty.

A. In addition to any other penalty prescribed by law, any person charged with violating any regulation governing the culling of oysters shall be required, by the officer making the charge, to scatter the entire cargo of oysters on the public rocks under the supervision of the officer and at the expense of the person charged with the violation. In lieu of throwing the cargo overboard, the person charged with the violation may post cash bond with the officer in an amount approximately equal to the value of the entire load as determined by the officer. The refusal to either dump the oysters overboard or post a cash bond is a distinct and separate offense from any other violation. A person who has posted a cash bond and is acquitted shall be refunded the cash bond. If the person is found guilty, the cash bond shall be forfeited and deposited to the credit of the ~~Special~~ Oyster Replenishment Fund.

Any person charged with such a violation who posts cash bond shall properly cull the entire cargo of oysters immediately after the officer has found them to be in violation of such regulation and before they can be sold, planted, or disposed of by him or by any other person.

B. The requirement to scatter the entire cargo of oysters on the public rocks shall only apply to a

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58 cargo of oysters taken by any catcher from the public oyster grounds and shall not apply to oysters
59 which have been purchased by and are in the possession of a buyer.

60 A violation of any provision of this section is a Class 3 misdemeanor.

61 Article 3.

62 Oyster Records and Taxes *Resource User Fees*.

63 **§ 28.2-538. Record of oysters handled; penalty.**

64 All licensed oyster buyers, planters, packers, importers of shucking stock or shippers shall keep
65 accurate and itemized records, on forms issued by the Commission, which contain (i) the number of
66 bushels of oysters, before shucking, that come from public grounds, private grounds, or are imported;
67 (ii) the name of the person from whom the oysters were purchased or obtained; (iii) the number of
68 bushels and price paid per bushel for each seller; and (iv) if from public grounds, the grounds' general
69 area. Any seller accepting cash payment for his oysters shall sign an acknowledgment of the transaction
70 and receive a copy of the acknowledgment from the buyer harvesters, buyers, shucking houses, and
71 aquaculture operations shall record all fisheries data and information required by the Commission as
72 provided in § 28.2-204. Such records shall be open for inspection by the Commissioner and a copy
73 available to him or any employee designated by him to inspect or receive the same. A failure to keep
74 such a record is a Class 1 misdemeanor.

75 **§ 28.2-541. Oyster resource user fees.**

76 A. There is ~~are~~ imposed upon all oysters taken from the public rocks, beds, or shoals the following
77 replenishment tax: (i) on all oysters taken from the seed area of the James River, or from any other area
78 designated as a seed area by the Commission, selling for \$1.50 or less per bushel, five cents per bushel;
79 selling for \$1.51 through \$2.50 per bushel, ten cents per bushel; selling for \$2.51 through \$3.50 per
80 bushel, fifteen cents per bushel; selling for \$3.51 through \$4.50 per bushel, twenty cents per bushel;
81 selling for \$4.51 through \$5.50 per bushel, twenty-five cents per bushel; selling for \$5.51 through \$6.50
82 per bushel, thirty cents per bushel; selling for \$6.51 or above per bushel, fifty cents per bushel; and (ii)
83 on all oysters taken from any public rocks, beds, or shoals other than the James River seed area or any
84 other area designated as a seed area by the Commission, fifty cents per bushel oyster resource user fees,
85 per year: (i) on any licensed commercial fisherman harvesting oysters by hand, a fee of \$50; (ii) on the
86 use of any type of gear to harvest oysters, a fee of \$300; (iii) on any business shucking or packing (a)
87 less than 1,000 gallons of oysters, a fee of \$500; (b) between 1,001 and 10,000 gallons of oysters, a fee
88 of \$1,000; (c) between 10,001 and 25,000 gallons of oysters, a fee of \$2,000; and (d) more than 25,000
89 gallons of oysters, a fee of \$4,000; and (iv) on any oyster buyer using (1) a single truck or location, a
90 fee of \$100 and (2) multiple trucks or locations, a fee of \$300.

91 B. Any commercial aquaculture operation taking oysters pursuant to § 28.2-603 from a riparian
92 assignment or general oyster planting ground shall pay an oyster resource user fee of \$50.

93 C. No harvester shall pay more than one oyster resource user fee per year pursuant to this section.

94 D. The Commission may revoke the permit or license of any person who fails to comply with this
95 section.

96 **§ 28.2-542. Oyster Replenishment Fund.**

97 All oyster ~~replenishment taxes~~ resource user fees collected by the Commission shall be deposited in
98 the state treasury and credited to a ~~special Public~~ the Oyster Rocks Replenishment Fund, to be used only
99 for administration of the program and for replenishment, planting, and replanting the public oyster rocks,
100 beds, and shoals of ~~this the~~ Commonwealth, with seed oysters, oyster shells, or other material ~~which~~
101 ~~that~~ will catch, support, and grow oysters. These funds shall be withdrawn and expended for such
102 ~~purpose purposes~~ on the order of the Commission. Expenditures and disbursements from the Fund shall
103 be made by the State Treasurer on warrant of the Comptroller issued on vouchers signed by persons
104 designated by the Commission.

105 **§ 28.2-546. Permit to carry oysters out of state.**

106 A. It shall be unlawful for any person to carry, or attempt to carry, or to buy for the purpose of
107 carrying out of ~~this the~~ Commonwealth any size or kind of seed oysters taken from the public rocks,
108 beds, or shoals until he has first obtained for each cargo a permit to do so from an officer and has paid
109 to the Commission the required inspection and replenishment taxes with buyer's report. In place of a
110 cargo permit, the Commissioner may grant a monthly permit at the beginning of each calendar month to
111 a packing or shucking house located in the Commonwealth, provided that the packing or shucking house
112 is in compliance with the provisions of this section.

113 B. The permit shall state the name of the boat or license number of the motor vehicle and the name
114 and address of the owner or captain of the boat or owner or operator of the motor vehicle. The permit
115 shall state the name and address of the person to whom the cargo of oysters is to be delivered. The
116 permit shall specify the number of bushels and whether they are seed or shucking stock to be carried
117 out of the Commonwealth.

118 Before the permit shall be granted, the applicant shall certify, before an officer, that the cargo will
119 not be delivered or discharged to any other person.

§ 28.2-548. Duty to inspect.

It shall be the duty of the officer in whose district a cargo of oysters is to be loaded to inspect the oysters as they are loaded and to ensure that all measurements are a full measure of oysters as defined in § 28.2-526 and that the oysters are properly culled. ~~The oyster inspection tax shall be paid to the Commission and deposited in the Public Oyster Rocks Replenishment Fund established by § 28.2-542. The officer shall furnish the owner, captain, or operator of such boat, vessel, or motor vehicle a receipt showing the date, the destination, the number of bushels, and the amount of tax paid. This receipt shall be carried by the captain or operator of the boat, vessel, or motor vehicle and shall be exhibited when requested by any officer. A copy of the receipt shall be sent to the Commissioner.~~

§ 28.2-549. Violations; recovery of oyster resource user fees; penalties.

Any person who violates any provision of this article is guilty of a Class 1 misdemeanor. Any person willfully failing to pay ~~such taxes~~ *oyster resource user fees* to the Commission in the manner required by this article is guilty of a Class 1 misdemeanor. The Commission may maintain an action at law against any person required to pay ~~taxes~~ *oyster resource user fees* to the Commission for the amount of ~~taxes~~ *oyster resource user fees* due, plus interest, and a penalty to be added to the ~~tax~~ *oyster resource user fees* in the amount of six percent if the failure is for not more than one month, with an additional six percent for each additional month, or fraction thereof, during which the failure continues, not to exceed ~~thirty~~ 30 percent in the aggregate.

§ 28.2-550. Authority of Commissioner to make certain contracts; funds received to be paid into Oyster Replenishment Fund.

A. The Commissioner, with the approval of the Commission, may contract with any person to take or dredge submerged oyster shells or any other subaqueous materials from the tidal waters of the Commonwealth, and shall have the authority to plant, use, or sell such shells or other materials in whatever manner the Commission deems to be in the best interest of the Commonwealth.

B. The Commissioner, with the approval of the Commission, may contract with any commercial fisherman to engage in replenishment, research, and stock assessment activities in the Commonwealth. The Commission may promulgate regulations establishing criteria for awarding such contracts, including a preference for commercial fishermen actively engaged in the taking or catching of fish or shellfish who have suffered an adverse economic impact resulting from the implementation of regulations of the Commission regulating the seafood and marine resources of the Commonwealth. In determining whether a person is a commercial fisherman actively engaged in the taking or catching of fish or shellfish, the Commission shall consider, among other relevant evidence, (i) his possession of a license issued pursuant to Article 1 (§ 28.2-500 et seq.) ~~of this chapter~~ or (ii) his voluntary reporting of shellfish catches to the Commission.

C. The Commission, when it makes a determination in writing that competitive bidding or competitive negotiation is not feasible or fiscally advantageous to the Commonwealth, may authorize other methods of purchasing and contracting for seed oysters, house shells, reef shells, shell bed turning, ~~and~~ *or* other goods and services for oyster ground replenishment, including contracts with commercial fishermen for replenishment, research, and stock assessment activities as provided in subsection B, which are in the best interest of the Commonwealth and which are fair and impartial to suppliers. It may establish pricing for its awards and purchases; use selection methods by lot; and open, close, and revise its purchases according to changing conditions of the natural resources, markets, and sources of supply.

2. That §§ 28.2-539, 28.2-540, 28.2-543, and 28.2-544 of the Code of Virginia are repealed.