

14103334D

HOUSE BILL NO. 911

Offered January 8, 2014

Prefiled January 8, 2014

A BILL to amend and reenact §§ 28.2-104.1, 28.2-1302, and 28.2-1403 of the Code of Virginia, relating to living shoreline general permits.

Patron—Knight

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 28.2-104.1, 28.2-1302, and 28.2-1403 of the Code of Virginia are amended and reenacted as follows:

§ 28.2-104.1. Living shorelines; development of general permit; guidance.

A. As used in this section, unless the context requires a different meaning:

"Living shoreline" means a shoreline management practice that provides erosion control and water quality benefits; protects, restores or enhances natural shoreline habitat; and maintains coastal processes through the strategic placement of plants, stone, sand fill, and other structural and organic materials.

B. The Commission, in cooperation with the Department of Conservation and Recreation, the Department of Environmental Quality, and local wetlands boards, and with technical assistance from the Virginia Institute of Marine Science, shall establish and implement a general permit regulation that authorizes and encourages the use of living shorelines as the preferred alternative for stabilizing tidal shorelines in the Commonwealth. The regulation shall provide for an expedited permit review process for qualifying living shoreline projects requiring authorization under Chapters 12 (§ 28.2-1200 et seq.), 13 (§ 28.2-1300 et seq.), and 14 (§ 28.2-1400 et seq.). In developing the general permit, the Commission shall consult with the U.S. Army Corps of Engineers to ensure the minimization of conflicts with federal law and regulation.

C. The Commission, in cooperation with the Department of Conservation and Recreation and with technical assistance from the Virginia Institute of Marine Science, shall develop integrated guidance for the management of tidal shoreline systems to provide a technical basis for the coordination of permit decisions required by any regulatory entity exercising authority over a shoreline management project. The guidance shall:

1. Communicate to stakeholders and regulatory authorities that it is the policy of the Commonwealth to support living shorelines as the preferred alternative for stabilizing tidal shorelines;

2. Identify preferred shoreline management approaches for the shoreline types found in the Commonwealth;

3. Explain the risks and benefits of protection provided by various shoreline system elements associated with each management option; and

4. Recommend procedures to achieve efficiency and effectiveness by the various regulatory entities exercising authority over a shoreline management project.

§ 28.2-1302. Adoption of wetlands zoning ordinance; terms of ordinance.

Any county, city or town may adopt the following ordinance, which, after October 1, 1992, shall serve as the only wetlands zoning ordinance under which any wetlands board is authorized to operate. Any county, city, or town which has adopted the ordinance prior to October 1, 1992, shall amend the ordinance to conform it to the ordinance contained herein by October 1, 1992.

Wetlands Zoning Ordinance

§ 1. The governing body of ....., acting pursuant to Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia, adopts this ordinance regulating the use and development of wetlands.

§ 2. As used in this ordinance, unless the context requires a different meaning:

"Back Bay and its tributaries" means the following, as shown on the United States Geological Survey Quadrangle Sheets for Virginia Beach, North Bay, and Knotts Island: Back Bay north of the Virginia-North Carolina state line; Capsies Creek north of the Virginia-North Carolina state line; Deal Creek; Devil Creek; Nawney Creek; Redhead Bay, Sand Bay, Shipps Bay, North Bay, and the waters connecting them; Beggars Bridge Creek; Muddy Creek; Ashville Bridge Creek; Hells Point Creek; Black Gut; and all coves, ponds and natural waterways adjacent to or connecting with the above-named bodies of water.

"Commission" means the Virginia Marine Resources Commission.

"Commissioner" means the Commissioner of Marine Resources.

"Governmental activity" means any of the services provided by this ..... (county, city, or town) to its

INTRODUCED

HB911

59 citizens for the purpose of maintaining this ..... (county, city, or town), including but not limited to  
60 such services as constructing, repairing and maintaining roads; providing sewage facilities and street  
61 lights; supplying and treating water; and constructing public buildings.

62 "Nonvegetated wetlands" means unvegetated lands lying contiguous to mean low water and between  
63 mean low water and mean high water, including those unvegetated areas of Back Bay and its tributaries  
64 and the North Landing River and its tributaries subject to flooding by normal and wind tides but not  
65 hurricane or tropical storm tides.

66 "North Landing River and its tributaries" means the following, as shown on the United States  
67 Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: the North Landing River  
68 from the Virginia-North Carolina line to Virginia Highway 165 at North Landing Bridge; the  
69 Chesapeake and Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks at  
70 Great Bridge; and all named and unnamed streams, creeks and rivers flowing into the North Landing  
71 River and the Chesapeake and Albemarle Canal except West Neck Creek north of Indian River Road,  
72 Pocaty River west of Blackwater Road, Blackwater River west of its forks located at a point  
73 approximately 6400 feet due west of the point where Blackwater Road crosses the Blackwater River at  
74 the village of Blackwater, and Millbank Creek west of Blackwater Road.

75 "Person" means any individual, corporation, partnership, association, company, business, trust, joint  
76 venture, or other legal entity.

77 "Vegetated wetlands" means lands lying between and contiguous to mean low water and an elevation  
78 above mean low water equal to the factor one and one-half times the mean tide range at the site of the  
79 proposed project in the county, city, or town in question, and upon which is growing any of the  
80 following species: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), saltgrass  
81 (*Distichlis spicata*), black needlerush (*Juncus roemerianus*), saltwort (*Salicornia* spp.), sea lavender  
82 (*Limonium* spp.), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle  
83 (*Myrica* sp.), sea oxeye (*Borrchia frutescens*), arrow arum (*Peltandra virginica*), pickerelweed  
84 (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice  
85 (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), sea rocket (*Cakile edentula*),  
86 southern wildrice (*Zizaniopsis miliacea*), cattail (*Typha* spp.), three-square (*Scirpus* spp.), buttonbush  
87 (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), black gum (*Nyssa sylvatica*), tupelo  
88 (*Nyssa aquatica*), dock (*Rumex* spp.), yellow pond lily (*Nuphar* sp.), marsh fleabane (*Pluchea*  
89 *purpurascens*), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens*  
90 sp.), smartweed (*Polygonum* sp.), arrowhead (*Sagittaria* spp.), sweet flag (*Acorus calamus*), water hemp  
91 (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), or switch grass (*Panicum virgatum*).

92 "Vegetated wetlands of Back Bay and its tributaries" or "vegetated wetlands of the North Landing  
93 River and its tributaries" means all marshes subject to flooding by normal and wind tides but not  
94 hurricane or tropical storm tides, and upon which is growing any of the following species: saltmarsh  
95 cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), black needlerush (*Juncus*  
96 *roemerianus*), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica*  
97 sp.), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina*  
98 *cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*),  
99 spikerush (*Eleocharis* sp.), cattail (*Typha* spp.), three-square (*Scirpus* spp.), dock (*Rumex* sp.),  
100 smartweed (*Polygonum* sp.), yellow pond lily (*Nuphar* sp.), royal fern (*Osmunda regalis*), marsh hibiscus  
101 (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), arrowhead (*Sagittaria* sp.), water hemp (*Amaranthus*  
102 *cannabinus*), reed grass (*Phragmites communis*), or switch grass (*Panicum virgatum*).

103 "Wetlands" means both vegetated and nonvegetated wetlands.

104 "Wetlands board" or "board" means a board created pursuant to § 28.2-1303 of the Code of Virginia.

105 § 3. The following uses of and activities in wetlands are authorized if otherwise permitted by law:

106 1. The construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters,  
107 fences, duckblinds, wildlife management shelters, footbridges, observation decks and shelters and other  
108 similar structures, provided that such structures are so constructed on pilings as to permit the reasonably  
109 unobstructed flow of the tide and preserve the natural contour of the wetlands;

110 2. The cultivation and harvesting of shellfish, and worms for bait;

111 3. Noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing,  
112 shellfishing, horseback riding, swimming, skeet and trap shooting, and shooting on shooting preserves,  
113 provided that no structure shall be constructed except as permitted in subdivision 1 of this section;

114 4. Other outdoor recreational activities, provided they do not impair the natural functions or alter the  
115 natural contour of the wetlands;

116 5. Grazing, haying, and cultivating and harvesting agricultural, forestry or horticultural products;

117 6. Conservation, repletion and research activities of the Commission, the Virginia Institute of Marine  
118 Science, the Department of Game and Inland Fisheries and other conservation-related agencies;

119 7. The construction or maintenance of aids to navigation which are authorized by governmental  
120 authority;

121 8. Emergency measures decreed by any duly appointed health officer of a governmental subdivision  
122 acting to protect the public health;

123 9. The normal maintenance and repair of, or addition to, presently existing roads, highways, railroad  
124 beds, or facilities abutting on or crossing wetlands, provided that no waterway is altered and no  
125 additional wetlands are covered;

126 10. Governmental activity in wetlands owned or leased by the Commonwealth or a political  
127 subdivision thereof; ~~and~~

128 11. The normal maintenance of man-made drainage ditches, provided that no additional wetlands are  
129 covered. This subdivision does not authorize the construction of any drainage ditch; *and*

130 12. *The construction of living shoreline projects authorized pursuant to a general permit developed*  
131 *under subsection B of § 28.2-104.1.*

132 § 4. A. Any person who desires to use or develop any wetland within this ..... (county, city, or  
133 town), other than for the purpose of conducting the activities specified in § 3 of this ordinance, shall  
134 first file an application for a permit directly with the wetlands board or with the Commission.

135 B. The permit application shall include the following: the name and address of the applicant; a  
136 detailed description of the proposed activities; a map, drawn to an appropriate and uniform scale,  
137 showing the area of wetlands directly affected, the location of the proposed work thereon, the area of  
138 existing and proposed fill and excavation, the location, width, depth and length of any proposed channel  
139 and disposal area, and the location of all existing and proposed structures, sewage collection and  
140 treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including  
141 those on adjacent uplands; a description of the type of equipment to be used and the means of  
142 equipment access to the activity site; the names and addresses of owners of record of adjacent land and  
143 known claimants of water rights in or adjacent to the wetland of whom the applicant has notice; an  
144 estimate of cost; the primary purpose of the project; any secondary purposes of the project, including  
145 further projects; the public benefit to be derived from the proposed project; a complete description of  
146 measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion  
147 date of the proposed work, project, or structure; and such additional materials and documentation as the  
148 wetlands board may require.

149 C. A nonrefundable processing fee shall accompany each permit application. The fee shall be set by  
150 the applicable governing body with due regard for the services to be rendered, including the time, skill,  
151 and administrator's expense involved.

152 § 5. All applications, maps, and documents submitted shall be open for public inspection at the office  
153 designated by the applicable governing body and specified in the advertisement for public hearing  
154 required under § 6 of this ordinance.

155 § 6. Not later than sixty days after receipt of a complete application, the wetlands board shall hold a  
156 public hearing on the application. The applicant, local governing body, Commissioner, owner of record  
157 of any land adjacent to the wetlands in question, known claimants of water rights in or adjacent to the  
158 wetlands in question, the Virginia Institute of Marine Science, the Department of Game and Inland  
159 Fisheries, the Water Control Board, the Department of Transportation, and any governmental agency  
160 expressing an interest in the application shall be notified of the hearing. The board shall mail these  
161 notices not less than twenty days prior to the date set for the hearing. The wetlands board shall also  
162 cause notice of the hearing to be published at least once a week for two weeks prior to such hearing in  
163 a newspaper of general circulation in this ..... (county, city, or town). The published notice shall  
164 specify the place or places within this ..... (county, city, or town) where copies of the application  
165 may be examined. The costs of publication shall be paid by the applicant.

166 § 7. A. Approval of a permit application shall require the affirmative vote of three members of a  
167 five-member board or four members of a seven-member board.

168 B. The chairman of the board, or in his absence the acting chairman, may administer oaths and  
169 compel the attendance of witnesses. Any person may testify at the public hearing. Each witness at the  
170 hearing may submit a concise written statement of his testimony. The board shall make a record of the  
171 proceeding, which shall include the application, any written statements of witnesses, a summary of  
172 statements of all witnesses, the findings and decision of the board, and the rationale for the decision.

173 C. The board shall make its determination within thirty days of the hearing. If the board fails to act  
174 within that time, the application shall be deemed approved. Within forty-eight hours of its determination,  
175 the board shall notify the applicant and the Commissioner of its determination. If the board fails to  
176 make a determination within the thirty-day period, it shall promptly notify the applicant and the  
177 Commission that the application is deemed approved. For purposes of this section, "act" means taking a  
178 vote on the application. If the application receives less than four affirmative votes from a seven-member  
179 board or less than three affirmative votes from a five-member board, the permit shall be denied.

180 D. If the board's decision is reviewed or appealed, the board shall transmit the record of its hearing  
181 to the Commissioner. Upon a final determination by the Commission, the record shall be returned to the

182 board. The record shall be open for public inspection at the same office as was designated under § 5 of  
183 this ordinance.

184 § 8. The board may require a reasonable bond or letter of credit in an amount and with surety and  
185 conditions satisfactory to it, securing to the Commonwealth compliance with the conditions and  
186 limitations set forth in the permit. The board may, after a hearing held pursuant to this ordinance,  
187 suspend or revoke a permit if the applicant has failed to comply with any of the conditions or  
188 limitations set forth in the permit or has exceeded the scope of the work described in the application.  
189 The board may, after a hearing, suspend a permit if the applicant fails to comply with the terms and  
190 conditions set forth in the application.

191 § 9. In fulfilling its responsibilities under this ordinance, the board shall preserve and prevent the  
192 despoliation and destruction of wetlands within its jurisdiction while accommodating necessary economic  
193 development in a manner consistent with wetlands preservation.

194 § 10. A. In deciding whether to grant, grant in modified form or deny a permit, the board shall  
195 consider the following:

- 196 1. The testimony of any person in support of or in opposition to the permit application;
- 197 2. The impact of the proposed development on the public health, safety, and welfare; and
- 198 3. The proposed development's conformance with standards prescribed in § 28.2-1308 of the Code of  
199 Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia.

200 B. The board shall grant the permit if all of the following criteria are met:

- 201 1. The anticipated public and private benefit of the proposed activity exceeds its anticipated public  
202 and private detriment.
- 203 2. The proposed development conforms with the standards prescribed in § 28.2-1308 of the Code of  
204 Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia.
- 205 3. The proposed activity does not violate the purposes and intent of this ordinance or Chapter 13  
206 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia.

207 C. If the board finds that any of the criteria listed in subsection B of this section are not met, the  
208 board shall deny the permit application but allow the applicant to resubmit the application in modified  
209 form.

210 § 11. The permit shall be in writing, signed by the chairman of the board or his authorized  
211 representative, and notarized. A copy of the permit shall be transmitted to the Commissioner.

212 § 12. No permit shall be granted without an expiration date established by the board. Upon proper  
213 application, the board may extend the permit expiration date.

214 § 13. No permit granted by a wetlands board shall in any way affect the applicable zoning and land  
215 use ordinances of this ..... (county, city, or town) or the right of any person to seek compensation  
216 for any injury in fact incurred by him because of the proposed activity.

217 **§ 28.2-1403. Certain counties, cities and towns authorized to adopt coastal primary sand dune**  
218 **ordinance.**

219 Any of the following counties, cities and towns which adopt a wetlands zoning ordinance pursuant to  
220 § 28.2-1302 may adopt the coastal primary sand dune zoning ordinance which is set out in this section:  
221 the Counties of Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester,  
222 Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster,  
223 Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William,  
224 Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York; and the Cities of Alexandria,  
225 Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport  
226 News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach and  
227 Williamsburg; and the Town of Cape Charles. In the event that a locality has not adopted a wetlands  
228 zoning ordinance pursuant to Chapter 13 (§ 28.2-1300 et seq.) or repeals it if already adopted, such  
229 locality may adopt or continue to administer the ordinance contained herein provided the locality  
230 appoints a wetlands board following the procedure specified in § 28.2-1303. Any county or city which  
231 has adopted the Coastal Primary Sand Dune Zoning Ordinance prior to October 1, 1992, shall amend the  
232 ordinance to conform it to the ordinance contained herein by October 1, 1992. The following ordinance  
233 is the only coastal primary sand dune zoning ordinance under which any board shall operate after  
234 October 1, 1992.

235 Coastal Primary Sand Dune Zoning Ordinance

236 § 1. The governing body of . . . . ., acting pursuant to Chapter 14 (§ 28.2-1400 et seq.)  
237 of Title 28.2 of the Code of Virginia, adopts this ordinance regulating the use and development of  
238 coastal primary sand dunes. Whenever coastal primary sand dunes are referred to in this ordinance, such  
239 references shall also include beaches.

240 § 2. As used in this ordinance, unless the context requires a different meaning:

241 "Beach" means the shoreline zone comprised of unconsolidated sandy material upon which there is a  
242 mutual interaction of the forces of erosion, sediment transport and deposition that extends from the low  
243 water line landward to where there is a marked change in either material composition or physiographic

244 form such as a dune, bluff, or marsh, or where no such change can be identified, to the line of woody  
245 vegetation (usually the effective limit of stormwaves), or the nearest impermeable man-made structure,  
246 such as a bulkhead, revetment, or paved road.

247 "Coastal primary sand dune" or "dune" means a mound of unconsolidated sandy soil which is  
248 contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from  
249 ten percent or greater to less than ten percent, and upon which is growing any of the following species:  
250 American beach grass (*Ammophila breviligulata*); beach heather (*Hudsonia tomentosa*); dune bean  
251 (*Strophostyles* spp.); dusty miller (*Artemisia stelleriana*); saltmeadow hay (*Spartina patens*); seabeach  
252 sandwort (*Honckenya peploides*); sea oats (*Uniola paniculata*); sea rocket (*Cakile edentula*); seaside  
253 goldenrod (*Solidago sempervirens*); Japanese sedge or Asiatic sand sedge (*Carex kobomugi*); Virginia  
254 pine (*Pinus virginiana*); broom sedge (*Andropogon virginicus*); and short dune grass (*Panicum amarum*).  
255 For purposes of this ordinance, "coastal primary sand dune" shall not include any mound of sand, sandy  
256 soil, or dredge spoil deposited by any person for the purpose of temporary storage, beach replenishment  
257 or beach nourishment, nor shall the slopes of any such mound be used to determine the landward or  
258 lateral limits of a coastal primary sand dune.

259 "Commission" means the Virginia Marine Resources Commission.

260 "Commissioner" means the Commissioner of Marine Resources.

261 "County, city and town" means the governing body of the county, city and town.

262 "Governmental activity" means any of the services provided by the Commonwealth or a county, city  
263 or town to its citizens for the purpose of maintaining public facilities, including but not limited to, such  
264 services as constructing, repairing, and maintaining roads; providing street lights and sewage facilities;  
265 supplying and treating water; and constructing public buildings.

266 "Wetlands board" or "board" means the board created pursuant to § 28.2-1303 of the Code of  
267 Virginia.

268 § 3. The following uses of and activities in dunes are authorized if otherwise permitted by law:

269 1. The construction and maintenance of noncommercial walkways which do not alter the contour of  
270 the coastal primary sand dune;

271 2. The construction and maintenance of observation platforms which are not an integral part of any  
272 dwelling and which do not alter the contour of the coastal primary sand dune;

273 3. The planting of beach grasses or other vegetation for the purpose of stabilizing coastal primary  
274 sand dunes;

275 4. The placement of sand fences or other material on or adjacent to coastal primary sand dunes for  
276 the purpose of stabilizing such features, except that this provision shall not be interpreted to authorize  
277 the placement of any material which presents a public health or safety hazard;

278 5. Sand replenishment activities of any private or public concern, provided no sand shall be removed  
279 from any coastal primary sand dune unless authorized by lawful permit;

280 6. The normal maintenance of any groin, jetty, riprap, bulkhead, or other structure designed to  
281 control beach erosion which may abut a coastal primary sand dune;

282 7. The normal maintenance or repair of existing roads, highways, railroad beds, and facilities of the  
283 United States, this Commonwealth or any of its counties or cities, or of any person, provided no coastal  
284 primary sand dunes are altered;

285 8. Outdoor recreational activities, provided the activities do not alter the natural contour of the  
286 coastal primary sand dune or destroy the vegetation growing thereon;

287 9. The conservation and research activities of the Commission, Virginia Institute of Marine Science,  
288 Department of Game and Inland Fisheries, and other conservation-related agencies;

289 10. The construction and maintenance of aids to navigation which are authorized by governmental  
290 authority;

291 11. Activities pursuant to any emergency declaration by the governing body of any local government  
292 or the Governor of the Commonwealth or any public health officer for the purposes of protecting the  
293 public health and safety; ~~and~~

294 12. Governmental activity in coastal primary sand dunes owned or leased by the Commonwealth or a  
295 political subdivision thereof; *and*

296 13. *The construction of living shoreline projects authorized pursuant to a general permit developed*  
297 *under subsection B of § 28.2-104.1.*

298 § 4. A. Any person who desires to use or alter any coastal primary sand dune within this . . . . .  
299 . . . . . (county, city or town), other than for the purpose of conducting the activities specified in § 3 of  
300 this ordinance, shall first file an application directly with the wetlands board or with the Commission.

301 B. The permit application shall include the following: the name and address of the applicant; a  
302 detailed description of the proposed activities and a map, drawn to an appropriate and uniform scale,  
303 showing the area of dunes directly affected, the location of the proposed work thereon, the area of any  
304 proposed fill and excavation, the location, width, depth and length of any disposal area, and the location

305 of all existing and proposed structures, sewage collection and treatment facilities, utility installations,  
 306 roadways, and other related appurtenances or facilities, including those on adjacent uplands; a  
 307 description of the type of equipment to be used and the means of equipment access to the activity site;  
 308 the names and addresses of owners of record of adjacent land; an estimate of cost; the primary purpose  
 309 of the project; any secondary purposes of the project, including further projects; the public benefit to be  
 310 derived from the proposed project; a complete description of measures to be taken during and after the  
 311 alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or  
 312 structure; and such additional materials and documentation as the wetlands board may require.

313 C. A nonrefundable processing fee shall accompany each permit application. The fee shall be set by  
 314 the applicable governing body with due regard for the services to be rendered, including the time, skill,  
 315 and administrator's expense. No person shall be required to file two separate applications for permits if  
 316 the proposed project will require permits under this ordinance and Chapter 13 (§ 28.2-1300 et seq.) of  
 317 Title 28.2 of the Code of Virginia. Under those circumstances, the fee shall be established pursuant to  
 318 this ordinance.

319 § 5. All applications, maps, and documents submitted shall be open for public inspection at the office  
 320 of the recording officer of this . . . . . (county, city or town).

321 § 6. Not later than sixty days after receipt of a complete application, the wetlands board shall hold a  
 322 public hearing on the application. The applicant, local governing body, Commissioner, owner of record  
 323 of any land adjacent to the coastal primary sand dunes in question, the Virginia Institute of Marine  
 324 Science, the Department of Game and Inland Fisheries, the State Water Control Board, the Department  
 325 of Transportation, and any governmental agency expressing an interest in the application shall be  
 326 notified of the hearing. The board shall mail these notices not less than twenty days prior to the date set  
 327 for the hearing. The wetlands board shall also cause notice of the hearing to be published at least once a  
 328 week for two weeks prior to such hearing in a newspaper of general circulation in this . . . . .  
 329 . . (county, city or town). The costs of publication shall be paid by the applicant.

330 § 7. A. Approval of a permit application shall require the affirmative vote of three members of a  
 331 five-member board or four members of a seven-member board.

332 B. The chairman of the board, or in his absence the acting chairman, may administer oaths and  
 333 compel the attendance of witnesses. Any person may appear and be heard at the public hearing. Each  
 334 witness at the hearing may submit a concise written statement of his testimony. The board shall make a  
 335 record of the proceeding, which shall include the application, any written statements of witnesses, a  
 336 summary of statements of all witnesses, the findings and decision of the board, and the rationale for the  
 337 decision.

338 C. The board shall make its determination within thirty days of the hearing. If the board fails to act  
 339 within that time, the application shall be deemed approved. Within forty-eight hours of its determination,  
 340 the board shall notify the applicant and the Commissioner of its determination. If the board fails to  
 341 make a determination within the thirty-day period, it shall promptly notify the applicant and the  
 342 Commission that the application is deemed approved.

343 D. If the board's decision is reviewed or appealed, the board shall transmit the record of its hearing  
 344 to the Commissioner. Upon a final determination by the Commission, the record shall be returned to the  
 345 board. The record shall be open for public inspection at the office of the recording officer of this . . . . .  
 346 . . . . . (county, city or town).

347 § 8. The board may require a reasonable bond or letter of credit in an amount and with surety and  
 348 conditions satisfactory to it, securing to the Commonwealth compliance with the conditions and  
 349 limitations set forth in the permit. The board may, after a hearing held pursuant to this ordinance,  
 350 suspend or revoke a permit if the applicant has failed to comply with any of the conditions or  
 351 limitations set forth in the permit or has exceeded the scope of the work described in the application.  
 352 The board may, after a hearing, suspend a permit if the applicant fails to comply with the terms and  
 353 conditions set forth in the application.

354 § 9. In fulfilling its responsibilities under this ordinance, the board shall preserve and protect coastal  
 355 primary sand dunes and beaches and prevent their despoliation and destruction. However, whenever  
 356 practical, the board shall accommodate necessary economic development in a manner consistent with the  
 357 protection of these features.

358 § 10. A. In deciding whether to grant, grant in modified form, or deny a permit, the board shall  
 359 consider the following:

- 360 1. The testimony of any person in support of or in opposition to the permit application;
- 361 2. The impact of the proposed development on the public health, safety, and welfare; and
- 362 3. The proposed development's conformance with standards prescribed in § 28.2-1408 of the Code of  
 363 Virginia and guidelines promulgated pursuant to § 28.2-1401 of the Code of Virginia.

364 B. The board shall grant the permit if all of the following criteria are met:  
 365 1. The anticipated public and private benefit of the proposed activity exceeds its anticipated public  
 366 and private detriment.

367 2. The proposed development conforms with the standards prescribed in § 28.2-1408 of the Code of  
368 Virginia and guidelines promulgated pursuant to § 28.2-1401 of the Code of Virginia.

369 3. The proposed activity does not violate the purposes and intent of this ordinance or Chapter 14  
370 (§ 28.2-1400 et seq.) of Title 28.2 of the Code of Virginia.

371 C. If the board finds that any of the criteria listed in subsection B of this section are not met, the  
372 board shall deny the permit application but allow the applicant to resubmit the application in modified  
373 form.

374 § 11. The permit shall be in writing, signed by the chairman of the board, and notarized. A copy of  
375 the permit shall be transmitted to the Commissioner.

376 § 12. No permit shall be granted without an expiration date established by the board. Upon proper  
377 application, the board may extend the permit expiration date.

378 § 13. No permit granted by a wetlands board shall in any way affect the right of any person to seek  
379 compensation for any injury in fact incurred by him because of the permitted activity.

**INTRODUCED**

HB911