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SENATE BILL NO. 1402

Offered January 11, 2017

Prefiled January 11, 2017

A BILL to amend and reenact §§ 28.2-605, 28.2-613, and 28.2-625 of the Code of Virginia, relating to Marine Resources Commission; assignment of oyster planting grounds; use plan.

Patrons—DeSteph; Delegate: Knight

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 28.2-605, 28.2-613, and 28.2-625 of the Code of Virginia are amended and reenacted as follows:

§ 28.2-605. Application for assignment.

All applications for assignment of general oyster-planting grounds shall be made in writing, in duplicate, to the Commission. Applications shall be considered in the same order in which they are received, except that no application for any ground then under lease shall be valid for that portion under lease.

The application shall state, as nearly as possible, the number of acres applied for and definite location, with the name of one or more prominent points or objects adjacent to such ground. It shall be the duty of any resident, firm, or corporation desiring to obtain a location for planting or propagating oysters to apply to have the location determined, designated, surveyed, and assigned.

If the Commission determines that an application for certain oyster-planting grounds requires a ground use plan, the application shall not be considered complete until the applicant has provided such a plan and the Commission has deemed it acceptable.

§ 28.2-613. Duration of lease.

Each assignment *or transfer* of general oyster-planting ground shall continue in force for ~~ten~~ 10 years from the date of assignment *or transfer*, unless the assignment is terminated; ~~however, assignments issued between July 1, 1976, and July 1, 1980, shall continue in force for twenty years from the date of assignment.~~ The interest in such ground is chattel real.

Upon the death of the renter, testate as to the lease, it shall vest in the named beneficiary subject to the rights of creditors, if he is a resident of ~~this~~ the Commonwealth, provided that he files an application for transfer with the Commission, *including a ground use plan deemed acceptable by the Commission if required by the Commission*, within ~~eighteen~~ 18 months after the date of death. If the named beneficiary is not a resident, he shall have ~~eighteen~~ 18 months after the date of death to transfer the lease to a qualified holder.

Upon the death of the renter, intestate as to the lease, the lease shall vest in the personal representative, who shall transfer the lease to a qualified holder within ~~eighteen~~ 18 months.

If there is no qualification on the renter's estate within one year of his death, the Commission may within six months thereafter transfer the lease to a qualified holder upon receipt of a transfer duly executed by all of the lawful heirs of the renter.

If there is no transfer under any of the above, the ground shall become vacant and open to assignment.

Upon expiration of the initial or any subsequent term of the assignment, the Commission shall, on application of the holder *and submission of a ground use plan deemed acceptable by the Commission, if the Commission determines that such a plan is required*, renew the assignment for an additional ~~ten-year~~ 10-year term. The Commission shall not renew or extend an assignment where there has been no significant production of oysters or clams, no reasonable plantings of oysters, clams or cultch or no significant oyster or clam aquaculture operation, during any portion of the ~~ten-year~~ 10-year period immediately prior to the application for renewal; ~~unless the Commission finds that there was good cause for the failure to produce or plant oysters, clams or cultch or finds that the assignment is directly related to and beneficial to the production of oyster-planting grounds immediately adjacent to the assignment. In determining whether there was good cause for the failure to produce or plant oysters, clams, or cultch, in addition to other factors, the Commission shall consider the prevalence of the diseases MSX and Dermo, and whether the oyster-planting ground has traditionally produced commercial quantities of oysters or clams.~~

§ 28.2-625. Transfer or assignment.

A person holding an existing lease of oyster-planting ground may transfer or assign all or any part of the lease to another under the following conditions and provisions:

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- 59 1. The transfer or assignment may be made only to a resident of the Commonwealth, or a firm or
60 corporation authorized by Virginia laws to occupy and hold oyster-planting ground.
- 61 2. The application for transfer or assignment, *including a ground use plan if required by the*
62 *Commission*, shall be in the form prescribed by the Commissioner and shall be filed with the
63 Commission.
- 64 3. The Commissioner shall require a new survey if no survey exists of the exact parcel or parcels of
65 grounds to be transferred or assigned.
- 66 4. The cost of any new surveys required under this section shall be borne by the person making the
67 transfer, and the cost and fees shall be the same as for surveys made by the Commissioner.
- 68 5. The application shall be accompanied by the transfer fee of ~~five dollars~~ \$5 if the parcel or parcels
69 are ten acres or less and ~~ten dollars~~ \$10 if the parcel or parcels are more than ten acres.
- 70 6. The Commissioner shall record in his office the application for transfer or assignment with any
71 correction or new plat he deems necessary.
- 72 7. The transfer or assignment shall constitute a new lease of the tract or parcel assigned and any
73 ground remaining under the old lease.