

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 259

An Act to amend and reenact § 28.2-1203 of the Code of Virginia, relating to use of subaqueous beds; nontidal waters; permit requirements; penalty.

[S 1074]

Approved March 22, 2023

Be it enacted by the General Assembly of Virginia:

1. That § 28.2-1203 of the Code of Virginia is 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 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, after submission of an application to the Commission for review and processing, 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. Maintenance or replacement of a previously authorized pier, provided that it is reconstructed within the footprint of the existing pier;
7. 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~~
8. 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 § 45.2-1200; *or*
9. *Any activity conducted in nontidal waters, provided that the person performing such activity obtains a Virginia Water Protection Permit and complies with all requirements of the Virginia Water Resources and Wetlands Protection Program pursuant to Article 2.2 (§ 62.1-44.15:20 et seq.) of Chapter 3.1 of Title 62.1. In determining whether to issue a Virginia Water Protection Permit, the Department of Environmental Quality shall be guided by the factors set forth in subsection A of § 28.2-1205.*

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