

REPORT OF THE VIRGINIA DELEGATION  
TO THE CHESAPEAKE BAY COMMISSION ON

**HJR 520 (1993): Addressing Issues  
Related to State Ownership of  
Certain Ungranted Lands on the  
Eastern Shore of Virginia**

TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA



**HOUSE DOCUMENT NO. 80**

COMMONWEALTH OF VIRGINIA  
RICHMOND  
1994

# Chesapeake Bay Commission

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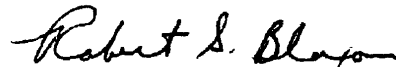
Patsy S. Cress  
Administrative Assistant

February, 1994

To the Governor and the General Assembly:

On behalf of the Virginia Delegation to the Chesapeake Bay Commission, please accept this report in fulfillment of the requirements of House Joint Resolution 520 (1993). The Virginia members of the Chesapeake Bay Commission have examined the relevant issues regarding state ownership of certain coastal lands on the Eastern Shore of Virginia and have prepared and introduced legislation to address those issues.

Sincerely,



Robert S. Bloxom  
Chief Patron, House Joint Resolution 520



## ACKNOWLEDGEMENTS

The Members of the Virginia Delegation to the Chesapeake Bay Commission (1993):  
Delegate S. Wallace Stieffen (Delegation Chairman, 1993), Delegate Robert S. Bloxom (HJR 520 Chief Patron), Delegate W. Tayloe Murphy, Jr., Senator Elmo G. Cross, Jr., Senator Joseph V. Gartlan, Jr., Secretary of Natural Resources Elizabeth H. Haskell, Mr. Irvine B. Hill.  
Staff: Russell W. Baxter, Virginia Director.

The Virginia Institute of Marine Science, Department of Ocean and Coastal Law: Professor N. Bartlett Theberge, Mr. Roderick W. Simmons, Ms. Susan W. Carter.

The Virginia Marine Resources Commission: Mr. Robert W. Grabb.

The Office of the Attorney General: Frederick S. Fisher, Esq.

The Department of General Services: Mr. John E. Forrest

Division of Legislative Services: Franklin D. Munyan, Esq.

## I. INTRODUCTION

House Joint Resolution 520, adopted by the 1993 session of the Virginia General Assembly, charged the Virginia members of the Chesapeake Bay Commission with examining issues raised in a report prepared by Professor N. Bartlett Theberge of the Department of Ocean and Coastal Law at the Virginia Institute of Marine Science (VIMS) regarding state ownership of certain ungranted coastal lands on the Eastern Shore of Virginia. In fulfillment of the requirements of the resolution, this report presents two reports prepared by Dr. Theberge under contract to the Chesapeake Bay Commission, a chronicle of the actions related to state ownership of certain coastal lands that preceded the introduction of HJR 520 and proposed legislative solutions to the issues raised over the course of the HJR 520 study.

## II. SUMMARY OF RECENT GENERAL ASSEMBLY ACTIONS RELATED TO UNGRANTED COASTAL LANDS

The issues related to ownership and use of coastal lands has been before the agencies of the Commonwealth and the General Assembly for many years. Since the 1970's, the General Assembly has taken increasing interest in these lands and the proposals presented pursuant to HJR 520 are the culmination of this interest.

<u>Year(s)</u>	<u>Action</u>
1975	Senate Joint Resolution No. 153 passed during the 1975 session of the General Assembly requested the Virginia Institute of Marine Science (Professor N.B. Theberge) to address questions of ownership of Starling's Island.
1976	Senate joint Resolution No. 57 passed during the 1976 session of the General Assembly which requested VIMS to study questions of ownership of Adams Island.
1979 - 1982	The Senate Committee on Agriculture, Conservation and Natural Resources began a process of examining public access to False Cape State Park which culminated in a report issued in 1982. Certain questions regarding ownership of coastal lands were examined over the course of the study.
1986	Testimony was given to the Accomack County Board of Supervisors regarding property rights on Cedar Island.
1986 - 1987	Testimony by the Department of Ocean and Coastal Law at VIMS regarding the ownership of coastal lands was given to the study established pursuant to HJR 46, charged with examining the Commonwealth's tidal shoreline erosion policy. The study was contin-

ued in 1988 as HJR 109.

1988 Among the issues under consideration by the HJR 109 committee was the question of ownership of Virginia shorelines. VIMS presented a proposal for the development of a Comprehensive Coastal Inventory. Included in this proposal was the development of a pilot inventory of state and public claims to beaches, marshes, public landings, and other coastal lands in Accomack county to be conducted by the Department of Ocean and Coastal Law. \$25,000 was appropriated for a two-year pilot inventory of state and public claims in Accomack County.

1990 Professor Theberge addressed the Virginia Marine Resources Commission Habitat Management Advisory Committee, the Senate Finance Subcommittee on Natural Resources, and the Senate Rules Committee on attempts to inventory previously unknown state owned lands in coastal Virginia.

The General Assembly adopted HJR 111 which requested the Department of Ocean and Coastal Law at VIMS to broaden the inventory of coastal lands to include Northampton County and to study issues associated with the management of coastal lands. Due to an elimination of funds for the study, it was not completed.

Professor Theberge addressed the Virginia Delegation to the Chesapeake Bay Commission on attempts to inventory previously unknown state owned lands in coastal virginia.

1991 \$41,000 was included in the Chesapeake Bay Commission budget for the completion of the inventory of state owned coastal lands in Accomack and Northampton Counties and identification and analysis of problems and issues related to the management of these state owned lands.

1993 In January, Professor Theberge presented the final report and inventory to the Virginia Delegation to the Chesapeake Bay Commission. As a result of the issues raised, House Joint Resolution 520 was introduced to study a means of resolving the issues raised. Monies were set aside in the commission budget to finance the preparation of a strategy for resolving these issues.

In September, Professor Theberge presents his report outlining possible solutions to the issues raised in HJR 520.

The Virginia delegation to the Chesapeake Bay Commission conducted

meetings in October and November to consider Professor Theberge's report and to draft the legislative responses included in this report.

### **III. "INVENTORY OF STATE OWNED LANDS IN ACCOMACK AND NORTHAMPTON COUNTIES AND RECOMMENDATIONS FOR FUTURE ACTION"**

A report bearing the title above was presented to the Virginia members of the Chesapeake Bay Commission in January 1993 by Professor Theberge. The report identified approximately 28,000 acres of untaxed, unclaimed and unknown state owned coastal lands in Accomack and Northampton Counties. It also found an additional 43,000 acres of land of which a portion may be subject to state claim. The report concluded that claims of land that are subject to state ownership continue to this day and that revisions to Virginia code are required to properly exert legitimate state ownership and establish proper state management. As a companion to the report, a survey map of the inventory was prepared with the assistance of the Virginia Marine Resources Commission. Lands identified in the inventory were recorded in the clerks' offices of Accomack and Northampton Counties.

**The full report and recommendations are attached as appendix 1**

### **IV. HOUSE JOINT RESOLUTION 520**

HJR 520 (1993) charged the Virginia members of Chesapeake Bay Commission with examining the issues raised in Professor Theberge's report. Specifically, the commission was charged with examining the consolidation of statutes in the Code of Virginia pertaining to state-owned lands, examining management of lands, examining public uses of such lands, resolving conflicting claims to such lands, examining the necessity of codifying an inventory of such lands, gaining access to pertinent land records now housed in a private library in California and developing a management plan for land contained in the inventory.

**HJR 520 is attached as appendix 2**

### **V. "A STUDY OF ISSUES RAISED IN RELATION TO STATE OWNED LANDS IN ACCOMACK AND NORTHAMPTON COUNTIES"**

In September 1993, Professor Theberge presented a report bearing the title above to the Chesapeake Bay Commission in response to the issues addressed in HJR 520. The report examined current state management of state-owned coastal lands and reviewed how three neighboring states had addressed similar issues related to management and ownership. The report made a series of recommendations regarding the establishment of a presumption of state ownership of certain lands, a process for resolving conflicting claims, and establishment of safeguards against future claims on state-owned land.

**The full report is attached as appendix 3**

## **VI. LEGISLATIVE PROPOSALS**

After examining the relevant issues and the issues presented in the contracted reports, two proposals are being presented to the General Assembly.

### **HB 390**

House Bill 390 establishes in code state ownership of certain coastal lands and codifies an inventory of those lands. It sets out a process by which the inventory can be amended to include lands over which the state can demonstrate a valid claim. Significant notification and due process provisions are included to ensure that only lands are included in the amended inventory which, without question, belong to the state.

**The complete text of the bill is attached as appendix 4**

### **HB 391**

House Bill 391 consolidates management responsibilities for specified coastal lands under the Virginia Marine Resources Commission (VMRC). It charges VMRC with the responsibility of preparing a management plan that respects the interests of traditional users of such lands, the relationship of those lands to tourism and commerce and their ecological values. It also recognizes the status of those lands as commons for the purpose of public use of those lands. It establishes an advisory council composed of residents of the counties in which the ungranted lands are located and who represent the interests described above. Also included on the advisory panel are representatives from state agencies who have jurisdiction over activities which may be carried out on those lands.

**The complete text of the bill is attached as appendix 5**

**APPENDIX 1**

**INVENTORY OF STATE OWNED LANDS IN ACCOMACK AND NORTHAMPTON  
COUNTIES AND RECOMMENDATIONS FOR FUTURE ACTION**

**Prepared by**

**N. Bartlett Theberge**

**for the**

**Chesapeake Bay Commission**

**Virginia Institute of Marine Science  
School of Marine Science  
The College of William and Mary  
Gloucester Point, Virginia 23062**

**January 1993**



This report reflects the opinions of the author and not an official opinion of the Virginia Institute of Marine Science or the School of Marine Science of the College of William and Mary.

## ACKNOWLEDGMENTS

The research on which this report is based has largely been the product of a team effort composed of individuals employed by the Virginia Institute of Marine Science and the School of Marine Science. The author wishes to acknowledge the following individuals who contributed to this project from its inception with the pilot study in 1989 to the completion of this report in 1993: Kenneth L. Roberts, Law Student; Christopher C. Reed, Law Student; Heather A. Benjamin, Law Student; Charles T. Griffith, Law Student; Sean S. Sell, Law Student; and Susan W. Carter, Legal Assistant.

This project would not have been possible without the support of many individuals at various state and local levels of government. Special debts of appreciation are owed to the following:

Members of the Virginia Delegation of the Chesapeake Bay Commission: Delegate Robert S. Bloxom, Senator Elmo G. Cross, Jr., Senator Joseph V. Gartlan, Jr., Secretary of Natural Resources Elizabeth H. Haskell, Delegate W. Tayloe Murphy, Jr., Delegate S. Wallace Stieffen, and Virginia citizen representative Irvine B. Hill; and, Chesapeake Bay Commission Staff: Ann Pesiri Swanson, Executive Director, J. Claiborne Jones, Assistant Director, and Russell W. Baxter, Virginia Director for supporting this project;

Members of the General Assembly Joint Subcommittee Studying Tidal Shoreline Erosion for supporting the pilot study: Delegate V. Thomas Forehand, Jr., Chairman, Senator Clive L. DuVal, 2d, Senator Joseph V. Gartlan, Jr., Delegate J. Samuel Glasscock, Senator John H. Chichester, Delegate W. Tayloe Murphy, Jr., Delegate Harry R. Purkey, and subcommittee staff member Martin G. Farber;

The Virginia Marine Resources Commission: Commissioner William A. Pruitt, Robert W. Grabb, Spencer McMath Rogers, George H. Badger, III, Bentley Beasley, Gerald W. Showalter, and Royce G. Bridger for preparation of the inventory maps;

Virginia State Archives Staff: Louis H. Manarin, Conley L. Edwards, III, Minor T. Weisiger, and Marianne M. Withers for assistance in locating and using historical land patents, records, and surveys;

Office of the Attorney General: Fredrick S. Fisher for reviewing the inventory maps and assisting with recordation;

Accomack County: J. Graham Nock, Commissioner of the Revenue and his staff and Samuel H. Cooper, Clerk of the Circuit Court and his staff for aiding us in our research of tax and title records; and

Northampton County: Anne G. Sayers, Commissioner of the Revenue and her staff and Kenneth F. Arnold, Clerk of the Circuit Court and his staff for aiding us in our research of tax and title records.

## INTRODUCTION

Documentary evidence dating from the early 1600's refers to the existence of commons, state ownership, and public rights in the coastal areas of Virginia.<sup>1</sup> These concepts were incorporated into state legislation at an early date.<sup>2</sup> Current statutes recognize and purport to protect state ownership, public rights, and commons in coastal areas.<sup>3</sup> The Virginia Supreme Court also recognized these concepts in a 1982 decision.<sup>4</sup>

Growth in population and developmental pressures on the Eastern Shore have led to an increase in private claims and more frequent conflicts among those claiming private rights, state ownership, and public rights. In approximately five years the number of land transfers in Accomack County has almost doubled. At roughly the same period in Northampton County, they have increased by fifty percent. During this same period septic permits increased by almost two hundred percent and real estate prices have generally doubled.<sup>5</sup> During the past ten years and

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1. Records of the Privy Council, Colonial Records Collection, Swem Library, College of William and Mary, Williamsburg, Va.
  2. Act of May 1779, ch. 12, 10 W. Hening, Statutes at Large 35 (1822); Act of May 1779, ch. 13, 10 W. Hening, Statutes at Large, 50 (1822); Act of May 1780, ch. 2, 10 W. Hening, Statutes at Large 226 (1822).
  3. Va. Code Ann. sec. 28.2-1200, 41.1-4.
  4. Bradford v. Nature Conservancy, 224 Va. 181, 194 S.E.2d 866 (1982).
  5. "Eastern Shore Brokers at Odds Over Board," Virginian-Pilot, John Levin, Sept. 16, 1989.

even in the brief period in which this study and the preceding pilot study were conducted, significant acreages of lands which our research indicates were state owned have been claimed by private parties.<sup>6</sup>

In 1988 the General Assembly, through the passage of House Joint Resolution 226, requested the Virginia Institute of Marine Science (the Department of Ocean and Coastal Law) to conduct a pilot study to identify and inventory any state owned coastal lands which may exist in Accomack County. Ownership records and documentation available in Accomack County and in the State Archives in Richmond were analyzed and a methodology was developed to determine lands owned by the state. The success of the pilot study led to the passage of House Joint Resolution 111 in the 1990 session of the General Assembly. House Joint Resolution 111 requested the Virginia Institute of Marine Science to conduct an inventory of coastal lands in Northampton County and study issues associated with the management of these lands. In 1991 the Chesapeake Bay Commission provided funding for completion of the inventory of state owned coastal lands in Accomack and Northampton Counties and identification, analysis, and resolution of problems and issues affecting the management of these state owned coastal lands.

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6. In some cases these lands were donated to private non-profit or governmental entities for substantial tax advantages.

## METHODOLOGY

Preparation of the inventory was the result of a time consuming and complex process of examining maps, tax records, title records, and other historical records located in the State Archives in Richmond and in the courthouses of Accomack and Northampton Counties. Title research focused on extensive study of original grants and their descriptions and comparison to existing claims. It was necessary to conduct title searches of adjacent properties to determine land boundaries. Tax records for the periods covering the late 1800's, early 1970's, and the present were examined in Richmond and in the counties of Accomack and Northampton. In addition to tax, title, and archival records, the nineteenth century maps of public oyster grounds and the records of those surveys were used as an aid in determining state owned coastal lands. Every effort was made to exclude any recorded conflicting claims no matter how weak the claim. This does not mean, however, that additional claims will not surface. During the course of the project, lands identified as being state owned have been claimed by private parties. As a result of these claims, these lands were not included in the inventory.

## PROJECT RESULTS

To date, 28,507 acres of untaxed, unclaimed, unknown state owned coastal lands have been identified in Accomack and Northampton Counties. This acreage exceeds the number of acres of state parkland in the eastern portion of Virginia<sup>7</sup> and is only slightly less than the acreage held by the Nature Conservancy. The Virginia Marine Resources Commission has surveyed these lands and produced a series of maps depicting state ownership. The majority of the findings of this project and the resulting maps have been reviewed by the Virginia Attorney General's Office. The maps of the seaside have been locally recorded and the maps of the bayside will be reviewed by the Attorney General's Office and similarly recorded in the respective clerks' offices of Accomack and Northampton Counties. These recorded maps provide detailed public notice of the locations of state owned coastal lands and will aid in preventing the further usurpation of these lands by private parties.

Parcels of lands totalling 43,385 acres claimed by owners other than the state have been identified as being subject to

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7. There are 21,612 acres of state parkland in Tidewater, Virginia including 375 acres recently purchased by the Commonwealth for Kiptopeke State Park. Only 54,000 acres of parkland exist in the entire Commonwealth. Virginia Statistical Abstract, 1992-93 Edition, Center for Public Service, Univ. of Va., p. 668; "State Unveils Newest Parkland," The Daily Press, Mark Di Vincenzo, May 25, 1992.

state claims. This acreage is only slightly less than the total acreage of state parkland in the Commonwealth.

Research into the history and status of the lands studied in this project reveal a number of difficult problems and issues affecting the management and the protection of private and public interests:

1. A number of significant parcels of lands subject to state ownership yet claimed by parties other than the state have been recently recorded. Although no single pattern of claim against state ownership exists, unexplained increases in acreages (sometimes by simply adding a zero to legitimately acquired acreages), changes in descriptions, the recording of unsupported surveys encompassing more extensive claims and, in some cases filling small tidal tributaries to support a claim to an adjacent marsh, have been used to establish private claims against what may be state owned land. Significant acreages have been subject to such practices by current owners or are now claimed by subsequent purchasers who could be reasonably expected to be aware of the actions of their predecessors in title. In a number of cases state owned coastal lands and common lands once a matter of public record have ceased to exist while the adjacent lands of others have grown without explanation. In other cases statutory prohibitions regarding the granting of state owned coastal lands were violated well into this century. These grants include significant acreages of beach land.

2. Ownership conflicts exist due to accretion occurring on state owned coastal lands identified in the Baylor surveys conducted in the late 1890's.

3. Historical evidence of commons have been discovered on the ocean shores, bayshores, riverfronts, and fastlands beyond the Eastern Shore.

4. There is some evidence to suggest that a map or maps depicting Virginia's commons were made in the past. A detailed search of records in the State Archives has not produced such a map or maps. Archival research has surprisingly yielded the information that large numbers (over 500 boxes) of Virginia historical records, maps, and surveys relevant to this project are not held in the State Archives but are held in a private library in San Marino, California. Some of these boxes of documents are apparently uncatalogued.

5. In terms of management, one of the most significant issues is the status of the state lands identified in the inventory. Are they commons or are they simply unappropriated state lands? Management flexibility is greater if only state ownership is involved and limited if these lands are commons. The inventory reflects only state ownership. The inventoried lands may or may not be commons. Before a management plan can be developed, an attempt to determine what lands are and are not common should be made. In the only recent case involving commons



in Virginia,<sup>8</sup> the Virginia Supreme Court relied on resident testimony regarding customary use in order to determine whether or not a parcel of land was a commons.

6. The management issues have proven to be complex and many in number due to a history of little or no comprehensive single state agency authority over these lands, an often dynamic, ever-changing topography, and a frequently confusing array of code sections addressing these lands.

7. Virginia statutes pertaining to these lands contain phrases and concepts which are subject to several interpretations.

#### **RECOMMENDATIONS**

1. Consolidate the statutes pertaining to state owned coastal lands contained in the inventory into one section of the Code of Virginia and consolidate management responsibilities for such lands under one state agency.

Since 1849, legislative recognition and protection for commons and state owned coastal lands have been scattered throughout the Code of Virginia, often with unsatisfactory

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8. Bradford v. Nature Conservancy, 224 Va. 181, 194 S.E.2d 866 (1982).

results. Statutes pertaining to these lands are currently found in separate titles on the land office, conservation, and tidal water fisheries and habitat. Management responsibility for these lands is disjointed. The Virginia Marine Resources Commission's authority is declared in the "Submerged Lands" chapter (sec. 28.2-1204) and in the "Wetlands" chapter (sec. 28.2-1301.) A further complication is the delegation of authority over state owned coastal lands abutting barrier islands to the Department of Conservation and Recreation (sec. 28.2-1201, 10.1-209 et seq.).

2. Amend existing legislation to resolve statutory ambiguities creating difficulties in identifying commons and state owned coastal lands and in resolving private claims to such lands. Facilitate the identification of commons and state owned coastal lands by clarifying the permissible public uses for such lands and by amending the marsh and meadowlands statute to extend the same protection from grant which exists for beaches to marsh and meadowlands.

3. Support new legislation implementing a comprehensive, two-part inventory program designed to identify and protect commons and state owned coastal lands in Tidewater Virginia and resolve private claims to such lands. The first phase is to continue to identify unknown state owned lands which are unclaimed by private parties. The second phase is to identify lands claimed by private parties but subject to state ownership.

The legislation should acknowledge the mapping of state owned coastal lands accomplished to date; assert the legal effect of the inventory; and institute a program to resolve private claims. Provisions should: a) prohibit clerks from recording claims to lands contained in the inventory; b) make unwarranted alteration of descriptions, surveys, or other documentation in the chain of title a Class 1 misdemeanor; c) provide for public notice of the designations of commons and state owned coastal lands, including newspaper publication of such designations and an opportunity for public inspection of maps designating such lands; d) include a period for adjudication of administrative challenges to designations of commons and state owned coastal lands during which period, the burden of proof of the validity of private claims shall be on the challenger and after which period, the inventory shall be considered to be conclusive evidence of the location of commons and state owned coastal lands; and, e) due to the dynamic nature of many inventoried lands, establish a program to conduct periodic surveys.

4. In an effort to facilitate management and to determine what coastal lands in the Commonwealth are state owned and what lands are commons, funding should be requested for research to preserve an oral history of customary land use and for examination of the collection of Virginia state land records in the possession of a private library in California.

5. The Chesapeake Bay Commission should support and participate in the development of a management plan for lands contained in the inventory. In recognition of the magnitude of work involved in developing a management plan, the Virginia Marine Resources Commission and the Virginia Institute of Marine Science responded to a request for proposals from the Environmental Protection Agency's Wetlands Management Program and were successful in obtaining a grant in support of planning. A staff representative of the Chesapeake Bay Commission should be assigned to participate in this planning exercise.

LD9172132

## HOUSE JOINT RESOLUTION NO. 520

Offered January 25, 1993

*Requesting the Virginia members of the Chesapeake Bay Commission to study means to resolve the issues raised in the report entitled "Inventory of State Owned Lands in Accomack and Northampton Counties and Recommendations for Future Action."*

Patrons—Bloxom, Murphy and Stieffen; Senators: Cross, Gartlan and Norment

Referred to the Committee on Rules

WHEREAS, the joint subcommittee established in 1987 pursuant to House Joint Resolution 226 to study tidal shoreline erosion recommended that the Department of Ocean and Coastal Law at the Virginia Institute of Marine Science conduct a pilot study to identify and inventory any unclaimed state-owned lands in Accomack County; and

WHEREAS, the 1990 General Assembly passed House Joint Resolution 111 requesting VIMS to conduct an inventory of state lands in Northampton County and study issues associated with management of those lands; and

WHEREAS, in 1991, the Chesapeake Bay Commission contracted with the Department of Ocean and Coastal Law to complete an inventory of state-owned coastal lands in Accomack and Northampton Counties and make recommendations concerning problems and issues affecting the identification and management of those lands; and

WHEREAS, in January 1993 the study entitled "Inventory of State Owned Lands in Accomack and Northampton Counties and Recommendations for Future Action" was completed and its findings presented to the Chesapeake Bay Commission; and

WHEREAS, the study identified 28,507 acres of coastal land in Accomack and Northampton Counties that are untaxed, unclaimed, and unrecognized as state-owned land; and

WHEREAS, the study identified an additional 43,385 acres claimed by owners other than the state as being subject to state claim; and

WHEREAS, significant issues and problems remain regarding (i) the status of lands with conflicting claims; (ii) ownership claims of lands identified in the Baylor surveys; (iii) the extent and status of Virginia's commons; (iv) the status of historical records depicting Virginia's commons; (v) the ability and authority of state agencies to manage these lands; and (vi) the arrangement of statutory laws in the Code of Virginia regarding these lands; and

WHEREAS, it is in the interest of the Commonwealth to resolve these issues; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia members of the Chesapeake Bay Commission be requested to study the issues and recommendations presented in the study and make recommendations regarding appropriate actions by the Governor and the General Assembly including but not limited to (i) the necessity of consolidating statutes in the Code of Virginia pertaining to state-owned coastal lands; (ii) consolidating management responsibilities for such lands under one agency; (iii) amending existing legislation dealing with commons to clarify permissible public uses; (iv) resolving conflicting claims and establishing safeguards against claims to public lands; (v) codifying an inventory of state-owned lands and conducting periodic reviews of that inventory; (vi) obtaining additional funding necessary to continue identification of state-owned lands using all records available in Virginia or elsewhere; and (vii) developing a management plan for lands contained in the inventory.

The Commission shall be assisted by the Department of Ocean and Coastal Law at the Virginia Institute of Marine Science, the Virginia Marine Resources Commission, the Department of General Services and the Office of the Attorney General.

All agencies of the Commonwealth shall, upon request, assist in the conduct of the study.

1 The Commission members shall complete their work in time to submit their findings to  
2 the Governor and the 1994 Session of the General Assembly as provided in the procedures  
3 of the Division of Legislative Automated Systems for the processing of legislative  
4 documents.

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**A DRAFT REPORT IN RESPONSE TO  
HOUSE JOINT RESOLUTION 520  
A STUDY OF ISSUES RAISED IN  
RELATION TO STATE OWNED LANDS IN  
ACCOMACK AND NORTHAMPTON  
COUNTIES**

**Prepared By**

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**for the**

**Chesapeake Bay Commission**

**Virginia Institute of Marine Science  
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**September 1993**

**This draft report reflects the opinions of the authors and not an official opinion of the Virginia Institute of Marine Science or the School of Marine Science of the College of William and Mary.**



## INTRODUCTION

Passed during the 1993 session of the Virginia General Assembly, House Joint Resolution No. 520 requested the Virginia members of the Chesapeake Bay Commission to study means to resolve the issues raised in the report entitled "Inventory of State Owned Lands in Accomack and Northampton Counties and Recommendations for Future Action." The study identified 28,507 acres of previously unknown state-owned coastal lands in Accomack and Northampton Counties. An additional 43,385 acres of coastal land claimed by owners other than the state were identified as being subject to state claims.

This report will discuss the issues raised in House Joint Resolution No. 520, and will make recommendations on those issues. Section I of this report will address issues regarding the management of those lands which are clearly state-owned. Included will be recommendations for the consolidation of management responsibilities under one agency and the development of a comprehensive management plan. Section II will analyze methods of resolving conflicting claims to state-owned coastal lands and will suggest two alternative approaches. Section III will examine methods of safeguarding state-owned coastal lands against future claims and will propose several legislative changes to protect those lands.

## SECTION I MANAGEMENT OF STATE-OWNED COASTAL LANDS

### **I. Consolidation of Management Responsibilities for Inventoried State-Owned Coastal Lands Under One Agency**

This section of the report will present a summary of the functions of various state agencies which have some degree of jurisdiction and authority over inventoried state-owned coastal lands, and will offer recommendations as to which of these agencies should be assigned management responsibilities for those lands.

#### **A. Agencies**

##### **1. *Virginia Marine Resources Commission***

The purpose of the Virginia Marine Resources Commission (VMRC) is to manage and regulate marine fishery resources and to protect and preserve Virginia's marine habitat.<sup>1</sup> The Commission is comprised of a chairman and eight additional members appointed by the Governor. The VMRC has jurisdiction over both living marine resources, assigned to its Fisheries Management Division, and the habitat on which they depend, assigned to its Habitat Management Division. In order to maintain and update the inventory of state-owned lands,

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<sup>1</sup> Report of Secretary of the Commonwealth to the Governor and General Assembly of Virginia, p. 193, (1993) [hereinafter Report].

especially state oyster beds, the VMRC has developed extensive surveying and mapping capabilities. The VMRC also enforces habitat conservation laws with its own law-enforcement division, the Virginia Marine Patrol.<sup>2</sup>

The VMRC already has broad administrative authority over inventoried state-owned coastal lands. The Code of Virginia grants the VMRC management responsibilities for all unappropriated marsh and meadowlands lying on the Eastern Shore of Virginia.<sup>3</sup> The Code also gives the VMRC authority to issue permits<sup>4</sup> and collect royalties<sup>5</sup> for the use of state-owned submerged coastal lands. Licensing for saltwater recreational fishing is also under the jurisdiction of the VMRC.<sup>6</sup> The Code gives the VMRC additional authority over marsh and meadowlands<sup>7</sup> to administer the permitting of wetlands use when not regulated by local wetlands boards,<sup>8</sup> and to review the decisions of local wetlands boards with respect to the use or development of wetlands.<sup>9</sup> Similar authority to administer the permitting of use of coastal primary sand dunes and beaches is given the VMRC in the Code.<sup>10</sup>

## ***2. The Department of Conservation and Recreation***

Having been shorn of its original forestry, geology, water planning, and economic development functions, the Department of Conservation and Recreation today is primarily responsible only for the more traditional conservation functions of parks, and soil and water conservation. The Department is headed by a Director appointed by the Governor, who then establishes divisions to direct the Department's various functions.

The Department has some jurisdiction over state-owned coastal wetlands under the Virginia Natural Area Preserves Act of 1989. Under the Act, the Department has authority to maintain comprehensive inventories of rare species and to manage the habitats of those

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<sup>2</sup> VA. CODE ANN. § 28.2-106.

<sup>3</sup> *Id.* § 28.2-1301.

<sup>4</sup> *Id.* § 28.2-1204.

<sup>5</sup> *Id.* § 28.2-1206.

<sup>6</sup> *Id.* § 28.2-301.1.

<sup>7</sup> *Id.* § 28.2-1301.

<sup>8</sup> *Id.* § 28.2-1306.

<sup>9</sup> *Id.* §§ 28.2-1310.-2-1313.

<sup>10</sup> *Id.* § 28.2-1401.

species through a system of dedicated natural area preserves.<sup>11</sup> Existing or subsequently created lands which abut the barrier islands of the Eastern Shore are specifically dedicated as natural area preserves by the Code.<sup>12</sup>

The Department could also influence state-owned coastal land management through its power to work with other agencies to develop state parks which are suitable for traditional recreational uses such as hunting, fishing, hiking, swimming, and boating.<sup>13</sup> In addition, through its soil and water conservation functions the Department may have some control over beaches and sand dunes, through coordination of shore erosion control programs of other state agencies.<sup>14</sup>

### ***3. Department of Game and Inland Fisheries***

The purpose of the Game and Inland Fisheries Department is to conserve, protect, replenish, propagate and increase the supply of game birds, fish, and other wildlife of the Commonwealth.<sup>15</sup> The principal administrative officer of the Department is the Director, who has the authority to enforce laws for the protection of all game animals in the Commonwealth.

The Department's primary field of jurisdiction over state-owned coastal lands comes through regulation of wildlife existing on those lands, especially over freshwater fishing and the hunting of game birds. The Department has established guidelines for a comprehensive wildlife management program, and has maintained inventory data on wildlife populations and habitats throughout the Commonwealth. The Department may also play a role in management of coastal lands through regulations for the protection of state endangered and threatened species.<sup>16</sup>

### ***4. Department of General Services***

The purpose of the Department of General Services is to provide support services to other state agencies and to assist them in carrying out their programs.<sup>17</sup> Various powers and duties are assigned the separate divisions within the Department. Upon request, the Division

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<sup>11</sup> *Id.* §§ 10.1-209-.2-1313.

<sup>12</sup> *Id.* §§ 28.2-1201, 10.1-213.

<sup>13</sup> *Id.* § 10.1-200.

<sup>14</sup> *Id.* §§ 10.1-700-.1-707.

<sup>15</sup> Report, *supra* note 1, at 192.

<sup>16</sup> VA. CODE ANN. § 29.1-566.

<sup>17</sup> Report, *supra* note 1, at 36.

of Mapping, Surveying, and Land Information Systems is to provide technical advice and assistance as to the management and improvement of land records.<sup>18</sup> Although not an environmental agency, the Department may have some jurisdiction over state-owned coastal lands because the Code requires it maintain real property records of all state institutions and agencies.<sup>19</sup>

### ***5. Department of Environmental Quality***

The Department of Environmental Quality (DEQ) was formed April 1, 1993 by the consolidation of the programs and functions of the following agencies: the State Water Control Board, the Department of Air Pollution Control, the Department of Waste Management, and the Council on the Environment.<sup>20</sup> The primary purpose of the new Department is to carry out state policies aimed at conserving the Commonwealth's natural resources and to protect the land, water and air of the Commonwealth from pollution.<sup>21</sup>

Having assumed the functions of the Council on the Environment, the DEQ is responsible for developing uniform management and administrative systems which will assure coherent environmental policies. After Virginia secured federal approval of its Coastal Resources Management Program, the Council became the agency responsible for coordinating the administrative efforts of state environmental agencies. That responsibility now belongs to the DEQ, which may influence management of state-owned coastal lands through its broad powers of policy formulation and long-range environmental planning.

The most direct source of DEQ's jurisdiction over state-owned coastal lands, however, would probably come through its absorption of the powers of the State Water Control Board to protect water quality, reduce existing pollution, prevent new pollution, and promote water conservation. With the power to regulate use of the state's surface and ground waters the DEQ would have the authority to regulate the quality of waters in state-owned coastal wetlands.

### **B. Summary and Recommendation**

The Code currently creates overlaps of jurisdiction over state-owned coastal lands. Jurisdiction over primary sand dunes, for example, seems to belong to both the VMRC and the Department of Conservation and Recreation. Similarly, responsibility for endangered species seems divided between the Department of Conservation and Recreation and the Department of Game and Inland Fisheries.

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<sup>18</sup> VA. CODE. ANN. 2.1-526.18-.1-526.20.

<sup>19</sup> *Id.* § 2.1-484.

<sup>20</sup> *Id.* § 10.1-1183.

<sup>21</sup> *Id.*

The Code also seems to endorse conflicting theories of habitat management, as demonstrated by the Department of Conservation and Recreation's duty to "preserve" natural habitats,<sup>22</sup> and the DEQ's duty to "conserve" the Commonwealth's natural resources.<sup>23</sup> Even the VMRC's mandate in the Code requires it to preserve coastal wetlands while at the same time accommodating economic development of those wetlands.<sup>24</sup>

Each of the agencies discussed above has some authority over inventoried state-owned coastal wetlands. The VMRC already has extensive experience in comprehensive environmental planning and management for a variety of coastal habitats, including subaqueous bottomlands, marsh and meadowlands, and coastal beaches and sand dunes. The Department of Conservation and Recreation may have authority to manage any traditional recreational uses of state-owned lands. The Game and Inland Fisheries Department might administer any freshwater sport fishing or hunting on state coastal lands, and might also establish recovery plans for endangered species on those lands. The Department of General Services may play a role in the mapping and recording of state-owned coastal lands. Finally, maintaining the quality of the water and preventing pollution on state coastal lands could fall under the jurisdiction of the DEQ. Some degree of limited collaboration between agencies may be an alternative to single agency control of state-owned coastal lands.

Although all five agencies have some legitimate authority over state-owned coastal lands, consolidation of management responsibilities for those lands should be granted to only one agency. Granting authority to a single agency would result in more unified and comprehensive administration, and would promote ecologically sound management of the Commonwealth's marine and coastal habitats. Of all the agencies having some degree of management capability, the VMRC appears to have the most comprehensive legislative authority.

## **II. Developing General Management Concepts and Philosophies for Inventoried State-Owned Coastal Lands**

Meetings are currently being held with the citizens of the Eastern Shore, private organizations, and state and federal agencies in an effort to develop management concepts and philosophies which will form the basis of a more specific and detailed management plan. The promulgation of a management plan prior to the completion of meetings at the local level is premature. Therefore, this question has not been addressed at this time.

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<sup>22</sup> *Id.* § 10.1-211(1).

<sup>23</sup> *Id.* § 10.1-1183(1).

<sup>24</sup> *Id.* § 28.2-1301(B).

**SECTION II**  
**RESOLUTION OF CONFLICTING CLAIMS TO STATE-OWNED COASTAL LANDS**

The inventory of state-owned coastal lands also identified 43,385 acres of coastal land claimed by owners other than the state. One of the issues the Virginia members of the Chesapeake Bay Commission were requested to study was the resolution of conflicting claims to coastal lands in the Commonwealth of Virginia.

Some precedent for resolving conflicting claims to coastal lands exists in New Jersey, North Carolina, and South Carolina. These states have confronted the issue of private claims to public lands, and all three have developed some method of handling those claims. This section of the report will present a summary of the approach taken by each state, and will make recommendations for an approach in Virginia.

**I. Resolution of Conflicting Claims in Other States**

**A. New Jersey**

**1. *The Public Trust and Land Ownership in New Jersey***

The State of New Jersey has used the English common law "public trust," or "tidelands," doctrine to assert claim to thousands of acres of coastal lands within the State. Under English common law, the sovereign held title to all land beneath navigable waters up to the high water mark of the tide.<sup>25</sup> The land was then held by the king subject to a public trust.<sup>26</sup> When the English doctrine was adopted in New Jersey, it meant that land flowed by tidal waters was public property, held in trust for the people of New Jersey by the state government. In New Jersey, the sovereign's interest in tidelands extends to the mean high-water mark, forming the boundary between public and private ownership.<sup>27</sup>

An additional factor which complicates resolution of coastal land disputes in New Jersey is that the State considers all land presently or *formerly* flowed by the tide to be tideland.<sup>28</sup> For purposes of New Jersey law, this means that even lands which are not

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<sup>25</sup> Moya Keys, *The Hackensack Meadowlands--State or Private Interest?: An Analysis of the Tidelands Doctrine*, 38 RUTGERS L. REV. 377, 379 (1986).

<sup>26</sup> *Id.*

<sup>27</sup> Porro and Teleky, *Marshland Title Dilemma: A Tidal Phenomenon*, 3 SETON HALL L. REV. 323, 324 (1972). The Commonwealth of Virginia draws the boundary at the mean low-water mark. VA. CODE ANN. §28.2-1202 (Michie 1992).

<sup>28</sup> Keys, *supra* note 25, at 384. The New Jersey legislature describes riparian land as all land "now or formerly lying under water." N.J. STAT. ANN. § 18A:56-5 (West 1989).

currently submerged may be subject to state claims if they were ever submerged at any time since 1664, the date of colonization.<sup>29</sup>

## ***2. Application of the Doctrine***

In 1968, the New Jersey legislature enacted a series of new statutes<sup>30</sup> which mandated that the State "undertake title studies and surveys of meadowlands throughout the state" to determine which lands appeared to be state-owned.<sup>31</sup> Through an extensive mapping project which cost \$13 million,<sup>32</sup> a 2,445 square-mile area was examined for evidence that it was, or had been, flowed by tidal waters.<sup>33</sup> Upon completion, the separate maps depicting state ownership were to be published and filed with county clerks, and lists of all lands claimed by the State were to be published in local newspapers.<sup>34</sup>

No final deadline for the resolution of conflicting claims was established, however, and the procedure created in New Jersey for resolving conflicting claims still functions today. Any person aggrieved by a designation of a particular parcel of land as state-owned may appeal to the Tidelands Resource Council.<sup>35</sup> The council is to process such appeals within ninety days and decide either to release or reaffirm the state's claim.<sup>36</sup> Whether or not a party seeks review by the council, the party may still commence an action in superior court for adjudication of the title dispute.<sup>37</sup> The council is authorized to approve riparian grants,

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<sup>29</sup> Jon W. Olson, *Ownership Rights to Submerged and Formerly Submerged Land in New Jersey*, 91 DICK. L. REV. 833, 843 (1987). In 1981 a constitutional amendment was adopted which barred the State from making any new claims to land which had not been tidally flowed during the previous forty years. See N.J. CONST. art. VIII, § 5, ¶ 1.

<sup>30</sup> N.J. STAT. ANN. § 13:1B-13.1 to -13.14 (West 1989).

<sup>31</sup> *Id.* § 13:1B-13.2.

<sup>32</sup> Originally scheduled for completion by 1974, the mapping process was not completed until 1987. Ultimately, over 1400 maps were completed. Philadelphia Inquirer, Oct. 5, 1986, at A01.

<sup>33</sup> *Id.*

<sup>34</sup> N.J. STAT. ANN. § 13:1B-13.4 (West 1989).

<sup>35</sup> N.J. STAT. ANN. § 13:1B-13.5 (West 1989). The Tidelands Resource Council was formerly known as the Resource Development Council and the Natural Resource Council.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

but is required by statute to sell the state-owned tideland for its current fair market value.<sup>38</sup> In determining the price to be paid for the land, the council may consider discounts for improvements made in good faith by a record owner under color of title.<sup>39</sup> Parties not seeking a grant may apply for a lease, license, or permit in state-owned tidelands.<sup>40</sup>

### 3. Results of the New Jersey Approach

The state's mapping project has effectively shifted the burden of proof back upon the record owner to rebut the presumptions of state ownership established by the maps. Parties who commence actions to quiet title therefore incur substantial litigation costs, especially when record owners must challenge the state's claims by producing maps of their own.<sup>41</sup> Most landowners affected by state claims of ownership resolve their disputes by appealing to the Tidelands Resource Council, or by conceding ownership to the State and applying to the council for a riparian grant.<sup>42</sup> These procedures, too, can result in significant expenditures. Where the state claim is appealed, parties must produce compelling evidence to establish ownership, including maps prepared at their own expense.<sup>43</sup> Even parties seeking simply to "buy back" their land must pay the fair market value price set by the council, which is often a sum greatly in excess of the original purchase price of the land.<sup>44</sup>

New Jersey has subjected approximately 235,000 acres of marsh and meadowland to claims of State ownership.<sup>45</sup> In 1982 it was reported that tens of thousands of homeowners

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<sup>38</sup> *Id.* at 13:1B-13.9.

<sup>39</sup> *Id.* This discount usually ranges from 40 percent to 75 percent. Phone conversation with Richard Castagna, Tidelands Resource Council (July 22, 1993).

<sup>40</sup> N.J. STAT. ANN. § 13:1B-13.10 (West 1989).

<sup>41</sup> For instance, it was estimated that the Borough of East Rutherford spend in excess of \$350,000 to defend against the state's claim. *See Keys, supra* note 25, at 399, n214.

<sup>42</sup> *Id.*

<sup>43</sup> N.J. STAT. ANN. §13:1B-13.5 (West 1989). In one case, the cost of having an engineer prepare the property survey which was to be submitted to the council cost the record owner nearly \$8,000. *Phila. Inquirer*, Oct. 5, 1986, at A01.

<sup>44</sup> For example, the market value of one property owner's unimproved land had risen from \$8,000 an acre in the 1950's to over \$80,000 by 1984. The owner was then faced with paying \$80,000 an acre in order to maintain possession of property which he had always believed to be his. *See Keys, supra* note 25, at 398.

<sup>45</sup> *See Porro, supra* note 27.



were hampered by state riparian claims on unimproved portions of their properties.<sup>46</sup> As there is no deadline for resolution of these claims, the Tidelands Resource Council continues to process hundreds of claims each year, and there is no indication that the current open-ended program will be altered.

## B. North Carolina

### 1. *The "Deadline" Approach*

The State of North Carolina began a program of resolving conflicting claims to submerged public trust lands in 1965 with passage of legislation<sup>47</sup> requiring all persons who claim ownership of submerged lands beneath navigable waters in twenty-five coastal counties to register their claims with the Secretary of the North Carolina Department of Natural Resources and Community Development. Unlike New Jersey's claims to any land which was *formerly* flowed by the tide, North Carolina lays claim only to lands that still lay under navigable waters in 1965. The State has also abandoned its claims to any tidelands filled before 1973.<sup>48</sup> Lands that lay beneath navigable waters at the time of statehood but were subsequently filled and raised above the mean high water mark pursuant to a state grant or permit would not be open to an assertion of public trust rights.<sup>49</sup>

Under the statute, all claims were to be registered by January 1, 1970.<sup>50</sup> Claims not registered by that date were considered null and void. Claimants were required to provide a source instrument issued by the sovereign, i.e., the King of England, the Lords Proprietor, or the State. The instrument must have been created under valid statutory authority and must specifically describe the claimed area. Claimants also had to provide an unbroken chain of title between the source instrument and the claimant's title. This could have been demonstrated by an attorney's abstract or a copy of each deed, will or other document showing each link in the chain of title. Finally, claimants were to provide a map illustrating the claimed area.<sup>51</sup>

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<sup>46</sup> See Keys, *supra* note 25, at 399.

<sup>47</sup> N.C. GEN. STAT. § 113-205 (1990).

<sup>48</sup> The Coastal Area Management Act of 1973 established a permit system to regulate the filling of estuarine areas in North Carolina. A decision was made in the mid-1980s to forfeit the State's claim to those areas filled prior to passage of the Act. Telephone Interview with Pasquali Wojciechowski, Director, Public Trust and Submerged Lands Program, Division of Marine Fisheries (July 28, 1993).

<sup>49</sup> See Spalding, *The Pearl in the Oyster: The Public Trust Doctrine in North Carolina*, 12 CAMP. L. REV. 23, 63 (1989).

<sup>50</sup> N.C. GEN. STAT. § 113-205 (1990).

<sup>51</sup> See Spalding, *supra* note 49, at 55, n187.

## **2. Results of North Carolina Approach**

More than ten thousand claims were registered, claiming ownership of thousands of acres of the estuarine area along the southern half of the North Carolina coast.<sup>52</sup> The Submerged Lands Program of the Division of Marine Fisheries is responsible for resolving the claims by December 31, 1994,<sup>53</sup> and has already resolved over 8,000 of the claims.<sup>54</sup> The validity of private claims of title or right of fishery is assessed through examination of the source instrument. Most claims recognized by the State have been rights of fishery or easements in submerged lands. To this date, no claimant has ever been recognized as having a fee simple title in submerged lands in North Carolina.<sup>55</sup> When a claim is resolved one way or another, the State places a declaration on record in the local county courthouse. This declaration attaches to the deed for the property and either recognizes or denies the claim to submerged lands. A claimant then has three years to file suit in superior court to contest the resolution of the claim by the Division of Marine Fisheries.<sup>56</sup>

Once the resolution of all claims has been completed, a comprehensive map of the State will be produced depicting all private rights to submerged lands. This map will be used in the future as the definitive authority with respect to ownership of tidelands in North Carolina.

### **C. South Carolina**

Although not as active in its application of the public trust doctrine as the other states, the State of South Carolina has utilized the doctrine to resolve conflicting claims to coastal lands. The South Carolina Supreme Court has repeatedly affirmed that the State is presumptively the owner of all tidelands, defined as all land between the mean low-water and mean high-water marks.<sup>57</sup> A private party seeking to establish private ownership of tidelands must rebut this presumption by producing an unbroken chain of title back to an original grant from the sovereign, i.e., the Crown, the Lords Proprietors, or the State. Claimants must also point to specific language in the grant which demonstrates intent to grant to the mean low-water mark.

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<sup>52</sup> *Id.*

<sup>53</sup> N.C. GEN. STAT. § 113-206(f) (1990).

<sup>54</sup> Telephone Interview with Pasquali Wojciechowski, Director, Public Trust and Submerged Lands Program, Division of Marine Fisheries (June 21, 1993).

<sup>55</sup> *Id.*

<sup>56</sup> N.C. GEN. STAT. § 113-206(e) (1990).

<sup>57</sup> *State v. Yelsen Land Co.*, 216 S.E.2d 876, 878 (1976).

Although no specific legislation has been enacted to resolve conflicting claims to tidelands, the legislature did address the issue as part of the broader Coastal Zone Management Act of 1977. In the Act was included a section which aimed at protecting the rights of private claimants to tidelands.<sup>58</sup> Under this section, any claimant may bring suit against the State to establish an interest in or title to a tract of tidelands. The presumption of State ownership still holds, and claimants under this section will be required to trace an unbroken chain of title back to the sovereign and to point out specific language in the original grant evincing an intent to convey to the mean low-water mark. Because of the heavy burden of proof placed on private parties, only twenty cases claiming ownership of tidelands have been brought under the statute.<sup>59</sup> As private parties tend to bring only the strongest cases to court, almost all of the tidelands cases which were filed have been decided in favor of the private party.

#### D. Summary

In developing programs to resolve conflicting claims to state-owned coastal lands, the States of New Jersey, North Carolina, and South Carolina have adopted very different approaches. New Jersey is the only state of the three which embarked upon a comprehensive and successful mapping project. Both New Jersey and South Carolina seem to prefer an open-ended policy, not resolving tideland disputes until after private parties bring their cases forward. North Carolina has taken a more proactive approach and is seeking a conclusive resolution to all tideland disputes within the state. The amount of money spent to operate these programs also varies widely. In one calendar year, North Carolina spent \$247,259.93,<sup>60</sup> whereas New Jersey's expenditures for one year totalled approximately \$1.2

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<sup>58</sup> S.C. CODE ANN. § 48-39-220 (Cum. Supp. 1977).

<sup>59</sup> Phone conversation with Ken Woodington, Office of the Attorney General of South Carolina (July 22, 1993).

<sup>60</sup> The breakdown of the Public Trust and Submerged Lands expenditures from October 1, 1991 to October 1, 1992 were as follows:

Department of Environment, Health, and Natural Resources:	\$16477.28	Expenses
	\$62017.98	Salaries
Department of Justice:	\$11722.77	Expenses
	\$157044.00	Salaries
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Total program operational costs:	\$247259.93	

Telephone Interview with Pasquali Wojciechowski, Director, Public Trust and Submerged Lands Program, Division of Marine Fisheries (July 28, 1993).

million.<sup>61</sup> Despite their differences, however, the programs of all three states have one significant similarity. Each State has clearly placed the burden of proof on private parties to rebut the sovereign's claim to ownership of coastal lands.

## **II. Recommended Approach for Virginia**

### **A. Creating a Presumption of State Ownership**

This report recommends that as the first step in a program to resolve conflicting claims to Virginia's coastal lands, new legislation be enacted which specifically creates a presumption of state ownership of those lands. The goal of this new legislation should be to place the burden of proof on private parties claiming title to state-owned coastal lands. The presumption favoring the state should be based on two statutes passed in 1873 and 1888.

The first statute, passed in 1873, provided that any of the shores of the sea not granted by that date and not subsequently conveyed by a special grant should remain the property of the Commonwealth.<sup>62</sup> A special grant seems to refer to a special statute enacted by the General Assembly to convey public lands to private grantees, and not a conveyance through usual grant procedures.<sup>63</sup> The second statute, passed in 1888, provided that any unappropriated marsh or meadowland on the Eastern Shore of Virginia which remained ungranted and which had been used as a commons should continue as such a commons and remain ungranted.<sup>64</sup>

New legislation should be enacted to create a presumption of state ownership for the affected lands under the 1873 and 1888 statutes. With respect to the 1873 statute, a presumption of state ownership should be created for the "shores of the sea" not granted prior to 1873 and not subsequently granted by a special act of the General Assembly. A similar presumption of state ownership should be created for marsh and meadowlands which remained ungranted in 1888 and which were used as a commons. An additional presumption

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<sup>61</sup> Telephone Interview with Joanne Cubberly, Director, Tidelands Resource Council (July 29, 1993).

<sup>62</sup> Currently enacted as § 28.2-1200, the state reads: "All the beds of the bays, rivers, creeks and the shores of the sea within the jurisdiction of the Commonwealth, not conveyed by special grant or compact according to law, shall remain the property of the Commonwealth and may be used as a common by all the people of the Commonwealth...". VA. CODE. ANN. § 28.2-1200.

<sup>63</sup> See *French v. Bankhead*, 52 Va. (11 Gratt.) 136, 16 (1854).

<sup>64</sup> The 1888 marsh and meadowlands statute is currently found in § 41.1-4 of the Code of Virginia.

that all ungranted marsh and meadowlands in 1888 *were* used as a commons is necessary to eliminate the need for the state to prove commons usage in individual cases.<sup>65</sup>

Whatever the specific wording of this new legislation, the ultimate goal should be to place the burden of proof on private parties. Parties claiming title to beaches or dunes should be required to provide an unbroken chain of title back to a grant prior to 1873, or to a special grant by the General Assembly after 1873. Parties claiming marsh or meadowland would have a similar burden of proof. Claimants of marsh or meadowland would have to produce an unbroken chain of title back to a grant prior to 1888, or prove that marsh and meadowlands granted after 1888 were *not* used as a commons.<sup>66</sup> Placing the burden of proof on parties claiming title to state-owned coastal lands relieves the burden on the Commonwealth, and is consistent with the approach taken by other states.

## ***2. Resolving Conflicting Claims: Two Approaches***

Having established a presumption of state ownership of certain coastal lands, the next step is to devise some type of program or mechanism for identifying and processing individual claims. This report suggests two possible approaches.

The first approach would require private parties to register their claims with some state agency or department within a specified time limit. Any claim not registered within that time limit would become null and void. After registration of all claims was completed, the state agency or department would formulate a program for processing those claims by a certain date. Once a determination in a particular case is made, a private party dissatisfied with the result should be given a limited amount of time to appeal the determination in court. This first approach is essentially the same as the North Carolina program.

The second approach also requires private claimants to register their claims with a chosen agency or department by a certain date.<sup>67</sup> After that date any claim not registered will be rendered null and void. Once registration of all claims has been completed, parties

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<sup>65</sup> The Virginia Supreme Court has held that the 1888 statute only applied to ungranted marsh and meadowlands which were *actually* used as a commons. *Bradford v. Nature Conservancy*, 294 S.E.2d 866 (1982). The state would therefore have to prove commons usage of a particular piece of land before the statute would apply. Creating a presumption that all ungranted marsh and meadowlands in 1888 *were* used as a commons shifts the burden of proof to the private party. A private landowner attempting to claim title to marshes granted after 1888 would then have the burden of proving that the marshes were *not* used as a commons.

<sup>66</sup> Assuming that a presumption has been created which states that all marsh and meadowlands in 1888 were used as a commons.

<sup>67</sup> For both scenarios, the suggested time deadline for registration of claims is between three to five years.

should then be given a second time deadline in which to bring a suit against the state. Any registered claim not pursued in court within this second time limit will be rendered null and void. Parties who failed to meet the first deadline and register their claims should not be allowed to file suit after the first date has passed.

Each approach has certain advantages. Both provide a cutoff date for the assertion of adverse claims, allowing the state to calculate the precise number of private claims that will be at issue. Registration of all claims by a certain date should create a more comprehensive resolution of these conflicting claims than would simply allowing private parties to bring forth litigation at their leisure. Determination of claims by a state agency or program, as suggested in the first approach, has the advantage of permitting the state to set its own timetable for resolution of conflicting claims. The costs of such an approach may be substantial, however, as seen in the budgets of similar programs in other states.

The second approach, which does not rely on an agency to resolve the claims, might avoid the administrative expenses incurred in the first approach. Parties would first register their claims and then bring suits directly to court. This approach may weed out a number of claims, as only the most important private claims will be brought to court. Parties who are motivated enough to bring suit under the second approach would likely appeal any unfavorable agency determination, so the first approach may create nothing more than an expensive and unnecessary formality.

In any event, the result of either approach should be to conclusively resolve all conflicting claims to state-owned coastal lands in Accomack and Northampton Counties. The initial inventory and subsequent determinations of state ownership should be treated as conclusive evidence of all state-owned coastal lands in those two counties.

### **SECTION III** **ESTABLISHING SAFEGUARDS AGAINST CLAIMS TO PUBLIC LANDS**

In order to protect state-owned coastal lands against continued private claims, the establishment of safeguards should be considered.

First, the inventory which identified 28,507 acres of untaxed, unclaimed, unknown state coastal lands in Accomack and Northampton Counties should be granted legislative recognition. The maps depicting inventoried state-owned coastal lands should be acknowledged in the Code of Virginia as a conclusive declaration of the Commonwealth's title. The legislative recognition of the inventory should also provide for the future inclusion of lands which are currently subject to conflicting claims, but which ultimately are recognized as state-owned.

Legislation should require that maps of state-owned coastal lands should be published, and filed with the relevant recording officer in each county. Copies of each map produced from the inventory should also be sent to the governing bodies of both Accomack and Northampton Counties. The maps produced pursuant to the inventory should also be

available for public inspection. Finally, a list of those parcels designated as state-owned should also be published at least once in a newspaper circulating in both counties. These provisions should give public notice of those lands which have been conclusively designated as state-owned.

Because of the dynamic nature of the inventoried lands, a system of periodic surveys should be established to protect the state's holdings on the Eastern Shore. These surveys should be conducted on a regular basis, and should conform to a standard surveying technique.

Finally, legislation should be enacted to prohibit clerks in county recording offices from recording claims to land designated as state-owned by the inventory. Unwarranted alteration of descriptions, surveys, or other documentation in chains of title by private parties should be made a Class 1 misdemeanor.

# 1994 SESSION

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## APPENDIX 4

### HOUSE BILL NO. 390

Offered January 21, 1994

*A BILL to amend and reenact §§ 10.1-1108, 28.2-1200, 28.2-1301, 41.1-3, 41.1-5, and 41.1-16 of the Code of Virginia, to amend the Code of Virginia by adding in Title 28.2 a chapter numbered 15, consisting of sections numbered 28.2-1500 through 28.2-1511, and to repeal § 41.1-4 of the Code of Virginia, relating to inventories of certain ungranted shores of the sea, marsh, and meadowlands.*

Patrons—Bloxom and Murphy; Senators: Cross, Gartlan and Norment

Referred to Committee on Chesapeake and Its Tributaries

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1108, 28.2-1200, 28.2-1301, 41.1-3, 41.1-5, and 41.1-16 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 28.2 a chapter numbered 15, consisting of sections numbered 28.2-1500 through 28.2-1511, as follows:

§ 10.1-1108. Waste and unappropriated lands.

Any waste and unappropriated land, other than unappropriated ungranted marsh or meadowlands lying on the eastern shore of Virginia exempted from entry and grant by the provisions of § 41.1-4 41.1-3, may be set apart permanently for use as state forest land, by a grant and proclamation signed by the Governor upon the receipt from the State Forester of an application requesting that a certain piece, tract or parcel of waste and unappropriated land be so set apart. The State Forester shall submit with the application a copy of a report describing fully the location of the land, its character and suitability for forestry purposes together with a complete metes and bounds description of the boundary of the tract. The Department of General Services shall review the application and recommend either approval or disapproval of the transaction to the Governor. If the Governor determines that the land is more valuable for forestry purposes than for agricultural or any other purposes, he may authorize the preparation of a grant which shall be reviewed for legal sufficiency by the Attorney General for the Governor's signature and the lesser seal of the Commonwealth.

All lands so granted shall be subject to statutes and regulations relating to the regulation, management, protection and administration of state forests.

§ 28.2-1200. Ungranted beds of bays, rivers, and creeks to remain in common.

All the beds of the bays, rivers, and creeks and the shores of the sea within the jurisdiction of the Commonwealth, not conveyed by special grant or compact according to law of the General Assembly, shall remain the property of the Commonwealth and may be used as a common by all the people of the Commonwealth for the purpose of fishing, fowling, hunting, and taking and catching oysters and other shellfish. No grant shall be issued by the State Librarian to pass any estate or interest of the Commonwealth in any natural oyster bed, rock, or shoal, whether or not it ebbs bare.

§ 28.2-1301. Powers and duties of the Commission.

A. The Commission may receive gifts, grants, bequests, and devises of wetlands and money which shall be held for the uses prescribed by the donor, grantor, or testator and in accordance with the provisions of this chapter. The Commission shall manage any wetlands it receives so as to maximize their ecological value.

B. The Commission shall preserve and prevent the despoliation and destruction of wetlands while accommodating necessary economic development in a manner consistent with wetlands preservation.

C. The Commission shall manage all unappropriated marsh or meadowlands lying on the Eastern Shore of Virginia which remain ungranted pursuant to the provisions of § 41.1-4 28.2-1502.

D. In order to perform its duties under this section and to assist counties, cities, and



1 towns in regulating wetlands, the Commission shall promulgate and periodically update  
2 guidelines which scientifically evaluate vegetated and nonvegetated wetlands by type and  
3 describe the consequences of use of these wetlands types. The Virginia Institute of Marine  
4 Science shall provide advice and assistance to the Commission in developing these  
5 guidelines by evaluating wetlands by type and continuously maintaining and updating an  
6 inventory of vegetated wetlands.

7 E. In developing guidelines or regulations under this chapter the Commission shall  
8 consult with all affected state agencies. Consistent with other legal rights, consideration  
9 shall be given to the unique character of the Commonwealth's tidal wetlands which are  
10 essential for the production of marine and inland wildlife, waterfowl, finfish, shellfish and  
11 flora; serve as a valuable protective barrier against floods, tidal storms and the erosion of  
12 the Commonwealth's shores and soil; are important for the absorption of silt and pollutants;  
13 and are important for recreational and aesthetic enjoyment of the people and for the  
14 promotion of tourism, navigation and commerce.

15 **CHAPTER 15.**

16 **UNGRANTED SHORES OF THE SEA, MARSHES AND MEADOWLANDS.**

17 **Article 1.**

18 **General Provisions.**

19 **§ 28.2-1500. Definitions.**

20 *As used in this chapter, unless the context requires a different meaning:*

21 *"Beach" shall have the same meaning ascribed thereto in subsection A of § 28.2-1400.*  
22 *"Beach" shall also include any property referred to, defined, or labeled as such in any*  
23 *deed, grant, map, plat, or other historical document establishing or supporting a claim of*  
24 *state ownership.*

25 *"Inventory" means a set of maps prepared by, at the direction, or with the approval*  
26 *of the Commission, mapping certain ungranted shores of the sea, marshes and*  
27 *meadowlands in any county having a population greater than 31,700 but less than 31,705,*  
28 *or any county having a population greater than 13,060 but less than 13,065.*

29 *"Marsh" or "meadowland" shall have the same meaning ascribed to vegetated*  
30 *wetlands in § 28.2-1300. "Marsh" or "meadowland" shall also include any property*  
31 *referred to, defined, or labeled as such in any deed, grant, map, plat, or other historical*  
32 *document establishing or supporting a claim of state ownership.*

33 *"Shores of the sea" means a beach or any unvegetated lands lying contiguous to mean*  
34 *low water and between mean low water and mean high water. "Shores of the sea" shall*  
35 *also include any property referred to, defined, or labeled as such in any deed, grant, map,*  
36 *plat, or other historical document establishing or supporting a claim of state ownership.*

37 *"Ungranted shores of the sea, marsh or meadowlands" means (i) shores of the sea*  
38 *which were not conveyed by special grant or compact according to law prior to April 1,*  
39 *1873, and which have not been conveyed by special grant of the General Assembly on or*  
40 *after that date and (ii) marsh or meadowlands which were not appropriated and remained*  
41 *ungranted prior to February 24, 1888, and which have not been conveyed by special grant*  
42 *of the General Assembly on or after that date.*

43 **§ 28.2-1501. Powers and duties of Commission.**

44 *A. The Commission may receive gifts, grants, bequests, and devises of shores of the*  
45 *sea, marsh, meadowlands, and money which shall be held for the uses prescribed by the*  
46 *donor, grantor, or testator and in accordance with the provisions of this chapter.*

47 *B. The Commission may promulgate regulations and guidelines necessary to carry out*  
48 *the provisions of this chapter.*

49 **§ 28.2-1502. Ownership of ungranted shores of the sea, marsh and meadowlands.**

50 *All ungranted shores of the sea, marsh and meadowlands shall remain the property of*  
51 *the Commonwealth. Such ungranted marsh and meadowlands which have been used as a*  
52 *commons by the people of the Commonwealth shall continue as a commons for the*  
53 *purpose of fishing, fowling, hunting, and the taking and catching of oysters and other*  
54 *shellfish. All ungranted shores of the sea may be used as a commons for the purpose of*

1 fishing, fowling, hunting, and the taking and catching of oysters and other shellfish. The  
2 Commission shall manage all ungranted shores of the sea, marsh and meadowlands.

3 § 28.2-1503. Filing of inventories.

4 Inventories have been filed with the clerk of circuit court and the commissioner of  
5 revenue for the counties in which the ungranted shores of the sea, marsh and  
6 meadowlands mapped therein are located.

7 § 28.2-1504. Amendments or supplements to inventories.

8 The Commission shall review each inventory periodically, and may amend or  
9 supplement an inventory as may be appropriate. Any amendment or supplement to an  
10 inventory shall be filed in the same offices as the original inventory.

11 Article 2.

12 Inventories of Certain Ungranted Shores of the Sea, Marsh and Meadowlands.

13 § 28.2-1505. Notice of filing of inventories.

14 A. The Commission shall cause to be published, within 90 days following the effective  
15 date of this section, in a newspaper of general circulation published at the state capital,  
16 in a newspaper having general circulation in the counties where inventories have been  
17 filed, and in such other newspapers in the Commonwealth as the commission generally  
18 publishes notices pursuant to subsection F of § 9-6.14:7.1, a notice of the initial filing of  
19 the inventories. The notice shall state that any person claiming ownership of an interest in  
20 lands designated in an inventory as ungranted shores of the sea, marsh, or meadowlands  
21 is required to assert the claim as provided in § 28.2-1507 within two years following the  
22 filing of the effective date of this section, or any action to assert such claim shall be  
23 barred.

24 B. The Commission shall cause to be published a notice of the filing of an amendment  
25 or supplement to an inventory in a newspaper having general circulation in the county  
26 for which the inventory applies. The notice shall refer to the original inventory and any  
27 previous amendment or supplement thereto, and shall state that any person claiming  
28 ownership of an interest in lands designated therein as ungranted shores of the sea,  
29 marsh, or meadowlands is required to assert the claim as provided in § 28.2-1507 within  
30 two years following the filing of the amendment or supplement, or any action to assert  
31 such claim shall be barred.

32 C. The failure of the Commission to comply with the requirements of this section shall  
33 not impair the Commonwealth's rights of ownership in any ungranted shores of the sea,  
34 marsh, or meadowlands.

35 § 28.2-1506. Effect of inventories.

36 A. The failure to include any ungranted shores of the sea, marsh or meadowlands in  
37 an inventory shall not affect the Commonwealth's rights of ownership in such property, or  
38 impair the Commonwealth's right to file an amended or supplemental inventory.

39 B. The description of any parcel of ungranted shores of the sea, marsh, or  
40 meadowlands contained in a map in an inventory shall be accepted in any court as prima  
41 facie evidence of the location, dimensions and boundaries of the parcel at the time of the  
42 preparation of the map.

43 Article 3.

44 Resolution of Conflicting Claims of Inventoried Property.

45 § 28.2-1507. Claims to lands designated in an inventory.

46 A. Any person claiming ownership of an interest in lands designated as ungranted  
47 shores of the sea, marsh, or meadowland in an inventory, or an amendment or  
48 supplement thereto, shall bring an action for declaratory judgment to determine title to  
49 the land pursuant to § 8.01-184, an action to establish the boundaries to land pursuant to  
50 § 8.01-179, or an action of ejectment pursuant to § 8.01-131.

51 B. Any action pursuant to subsection A with respect to lands designated as ungranted  
52 shores of the sea, marsh, or meadowland in an inventory shall be brought within two  
53 years following effective date of this section. Any action to assert a claim in such land  
54 shall be barred unless brought within the two-year period

1 C. Any action pursuant to subsection A with respect to lands designated as ungranted  
2 shores of the sea, marsh or meadowland in an amendment or supplement to an inventory  
3 shall be brought within two years following the filing of such amendment or supplement.  
4 Any action to assert a claim in such lands shall be barred unless brought within the  
5 two-year period.

6 D. Upon entry of a final judgment ruling that any lands designated in an inventory as  
7 ungranted shores of the sea, marsh, or meadowlands are not property of the  
8 Commonwealth, the Commission shall file an amended inventory correcting its designation  
9 of such property.

10 § 28.2-1508. Approval of amended or supplemental inventory.

11 The Commission shall not approve an amendment or supplement to an inventory, if  
12 the amendment or supplement initially designates a parcel of land as ungranted shores of  
13 the sea, marsh, or meadowlands, until notice of the Commission's intention so to do has  
14 been published once a week for two successive weeks in a newspaper having general  
15 circulation in the county where such land is located. Such notice shall specify the time  
16 and place of a public hearing at which persons affected may appear and present their  
17 views. In addition, the Commission shall give written notice of the amendment or  
18 supplement to an inventory, and of the public hearing, to the owner or owners of each  
19 parcel so designated, if known, by postpaid mail to the address of the owner as shown on  
20 the county's land book. Nothing in this section shall be construed to invalidate any  
21 subsequently filed amendment or supplement to an inventory because of the inadvertent  
22 failure of the Commission to give written notice to the owner or owners of any parcel  
23 involved. After the public hearing, the Commission may approve, amend, or disapprove  
24 the amendment or supplement.

25 § 28.2-1509. Claims to shores of the sea, marsh, and meadowlands proposed for  
26 designation in amended or supplemental inventory.

27 A. The Commission shall not file any amendment or supplement to an inventory, if the  
28 amendment or supplement initially designates a parcel of land as ungranted shores of the  
29 sea, marsh, or meadowland unless the Commission has approved the amendment or  
30 supplement as provided in § 28.2-1508. The Commission shall give notice of its intention  
31 to file the amendment or supplement to any person listed as having an ownership interest  
32 in such land in the current land book for the county. The notice shall be sent by postpaid  
33 mail to the address of the person as shown on the land book. The Commission shall also  
34 cause notice of its intent to file an amended or supplemental inventory to be published in  
35 a newspaper of general circulation in the county where such land is located.

36 B. Any person claiming ownership of an interest in lands described in a notice given  
37 pursuant to subsection A shall bring an action for declaratory judgment to determine title  
38 to the land pursuant to § 8.01-184, to establish the boundaries to land pursuant to §  
39 8.01-179, or an action of ejectment pursuant to § 8.01-131. Any such action shall be  
40 brought within two years following publication of the notice pursuant to subsection A;  
41 however, the failure of a person claiming ownership of such lands to commence an action  
42 within the two-year period as provided in subsection B shall not bar such person from  
43 asserting a claim of ownership as provided in § 28.2-1507.

44 C. If an action is not commenced within the two-year period as provided in subsection  
45 B, the Commission may file an amended or supplemental inventory designating as  
46 ungranted shores of the sea, marsh, or meadowlands the parcels for which no action has  
47 been commenced. Upon filing the amended or supplemental inventory, the Commission  
48 shall cause to be published a notice as provided in subsection B of § 28.2-1505.

49 D. If an action is commenced within the two-year period as provided in subsection B,  
50 the Commission shall not during the pendency of the action file an amended or  
51 supplemental inventory designating the land which is the subject of the action as  
52 ungranted shores of the sea, marsh or meadowlands. Upon the entry of a final judgment  
53 ruling that any of the land is not the property of the Commonwealth, the Commission  
54 shall correct the amended or supplemental inventory to remove any designation of such

1 land as ungranted shores of the sea, marsh, or meadowland. The Commission may then  
 2 file the corrected amended or supplemental inventory. Upon the entry of a final judgment  
 3 ruling that the land is the property of the Commonwealth, the Commission may file an  
 4 amended or supplemental inventory designating such land as ungranted shores of the sea,  
 5 marsh, or meadowlands, and further such final judgment shall bar the assertion of a like  
 6 claim in any action brought to assert ownership of such land pursuant to § 28.2-1507.  
 7 Upon filing an amended or supplemental inventory, the Commission shall cause to be  
 8 published the notice as provided in subsection B of § 28.2-1505.

9 § 28.2-1510. Effect of disability.

10 The provisions of § 8.01-237 shall apply with respect to the effect of disabilities on the  
 11 preservation of a right to bring an action to establish ownership of land pursuant to §§  
 12 28.2-1507 and 28.2-1509.

13 § 28.2-1511. Filing of notice of *lis pendens*.

14 The Commissioner is authorized to record a notice of *lis pendens* in order to provide  
 15 notice of the Commonwealth's claim of ownership of any property designated in an  
 16 inventory, or amendment or supplement thereto, as ungranted shores of the sea, marsh or  
 17 meadowland. The notice shall set forth the name of any person who has asserted an  
 18 interest in the property, a description of the property, and a statement that the  
 19 Commission has determined that the property is ungranted shores of the sea, marsh or  
 20 meadowland and is designated as such on a filed inventory. The notice shall be admitted  
 21 to record in the clerk's office of the county wherein the property is located.

22 § 41.1-3. Grants of certain lands, etc., to be void; such lands, etc., under control of  
 23 Governor.

24 No grant shall be valid or effectual in law to pass any estate or interest in (i) any  
 25 lands unappropriated or belonging to the Commonwealth, which embrace the old magazine  
 26 at Westham, or any stone quarry now worked by the Commonwealth, or any lands which  
 27 are within a mile of such magazine, or any such quarry; (ii) any lands which are a  
 28 ~~common~~ ungranted beds of bays, rivers and creeks under § ~~62.1-1~~ 28.2-1200; (iii) any  
 29 natural oyster bed, rock, or shoal, whether such bed, rock, or shoal shall ebb bare or not;  
 30 (iv) any islands created in the navigable waters of the Commonwealth through the  
 31 instrumentality of dredging or filling operations; or (v) any islands which rise from any  
 32 ~~beds~~ lands which are a ~~common~~ property of the Commonwealth under § ~~62.1-1~~ 28.2-1201;  
 33 or (vi) any ungranted shores of the sea, marsh or meadowlands as defined in § 28.2-1500.  
 34 Every such grant for any such lands, islands, bed, rock, or shoal shall be absolutely void;  
 35 however, this section shall not be construed to affect the title to grants issued prior to  
 36 March 15, 1932. Such magazine and every such stone quarry and the lands of the  
 37 Commonwealth adjacent to or in their neighborhood, shall be under the control of the  
 38 Governor, who may make such regulations concerning the same as he may deem best for  
 39 the interests of the Commonwealth.

40 § 41.1-5. Circuit courts authorized to dispose of waste and unappropriated lands.

41 The circuit courts of the counties and cities in which waste and unappropriated lands  
 42 are alleged to lie are vested with authority to sell and dispose thereof in proceedings  
 43 brought under §§ 41.1-16 through 41.1-20; however, no sale or disposition shall be made of  
 44 lands mentioned in § ~~62.1-1~~ 28.2-1200 or of lands as to which a grant could not have been  
 45 issued by the State Librarian under §§ 41.1-3; ~~41.1-4~~, or § ~~41.1-4.1~~.

46 § 41.1-16. Sale of wastelands; proceeding by citizen resident; motion and deposit for  
 47 costs; parties; copy of plat.

48 Any citizen, resident of this Commonwealth, who has reason to believe that there are  
 49 waste and unappropriated lands in this Commonwealth (not being a ~~common~~ under § ~~62.1-1~~  
 50 or excluded under §§ 41.1-3 and ~~41.1-4~~ from grant), shall have the right to file a  
 51 proceeding in the name of the county or city seeking the sale and disposition of such land.  
 52 The venue for such a proceeding shall be as specified in subdivision 3 of § 8.01-261. The  
 53 proceeding shall be instituted by motion signed by the party who institutes the proceeding,  
 54 or on his behalf, and shall be accompanied with a deposit to cover the costs of the

1 proceeding but in no event to exceed \$100. Each landowner adjoining the tract in question  
2 shall be made a party to the proceedings.

3 He shall file with the motion a copy of a plat prepared by a licensed land surveyor  
4 giving the metes and bounds of the land alleged to be waste and unappropriated. A copy of  
5 the motion and plat shall be served upon each of the landowners adjoining the tract in  
6 question.

7 2. That § 41.1-4 of the Code of Virginia is repealed.

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<b>Official Use By Clerks</b>	
<b>Passed By</b>	<b>Passed By The Senate</b>
<b>The House of Delegates</b>	<b>without amendment</b> <input type="checkbox"/>
without amendment <input type="checkbox"/>	<b>with amendment</b> <input type="checkbox"/>
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Date: _____	Date: _____
Clerk of the House of Delegates	Clerk of the Senate

LD5716132

**HOUSE BILL NO. 391**

Offered January 21, 1994

*A BILL to amend and reenact §§ 2.1-1.6, 2.1-504, 9-6.25:1, 10.1-1108, 28.2-1200, 28.2-1201, 28.2-1301, 28.2-1401, 41.1-3, 41.1-5, and 41.1-16 of the Code of Virginia; to amend the Code of Virginia by adding in Title 28.2 a chapter numbered 15, consisting of sections numbered 28.2-1500 through 28.2-1505; and to repeal § 41.1-4 of the Code of Virginia, relating to management of ungranted shores of the sea, marsh, and meadowlands.*

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Patrons—Bloxom and Murphy; Senators: Cross, Gartlan and Norment

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Referred to Committee on Chesapeake and Its Tributaries

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Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-1.6, 2.1-504, 9-6.25:1, 10.1-1108, 28.2-1200, 28.2-1201, 28.2-1301, 28.2-1401, 41.1-3, 41.1-5, and 41.1-16 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 28.2 a chapter numbered 15, consisting of sections numbered 28.2-1500 through 28.2-1505, as follows:

§ 2.1-1.6. State boards.

A. There shall be, in addition to such others as may be established by law, the following permanent collegial bodies affiliated with a state agency within the executive branch:

- Accountancy, Board for
- Aging, Advisory Board on the
- Agriculture and Consumer Services, Board of
- Air Pollution, State Advisory Board on
- Alcoholic Beverage Control Board, Virginia
- Apple Board, Virginia State
- Appomattox State Scenic River Advisory Board
- Aquaculture Advisory Board
- Architects, Professional Engineers, Land Surveyors and Landscape Architects, State Board for
- Art and Architectural Review Board
- Athletic Board, Virginia
- Auctioneers Board
- Audiology and Speech-Language Pathology, Board of
- Aviation Board, Virginia
- Barbers, Board for
- Branch Pilots, Board for
- Bright Flue-Cured Tobacco Board, Virginia
- Building Code Technical Review Board, State
- Catoctin Creek State Scenic River Advisory Board
- Cattle Industry Board, Virginia
- Cave Board
- Certified Seed Board, State
- Chesapeake Bay Local Assistance Board
- Chickahominy State Scenic River Advisory Board
- Child Abuse and Neglect, Advisory Board on
- Chippokes Plantation Farm Foundation, Board of Trustees
- Clinch Scenic River Advisory Board
- Coal Research and Development Advisory Board, Virginia
- Coal Surface Mining Reclamation Fund Advisory Board
- Coastal Land Management Advisory Council, Virginia
- Conservation and Development of Public Beaches, Board on
- Conservation and Recreation, Board of

- 1 Contractors, Board for
- 2 Corn Board, Virginia
- 3 Correctional Education, Board of
- 4 Corrections, State Board of
- 5 Cosmetology, Board for
- 6 Criminal Justice Services Board
- 7 Dark-Fired Tobacco Board, Virginia
- 8 Deaf and Hard-of-Hearing, Advisory Board for the Department for the
- 9 Dentistry, Board of
- 10 Education, State Board of
- 11 Egg Board, Virginia
- 12 Emergency Medical Services Advisory Board
- 13 Employment Agency Advisory Board
- 14 Farmers Market Board, Virginia
- 15 Film Office Advisory Board
- 16 Fire Services Board, Virginia
- 17 Forensic Science Advisory Board
- 18 Forestry, Board of
- 19 Funeral Directors and Embalmers, Board of
- 20 Game and Inland Fisheries, Board of
- 21 Geology, Board for
- 22 Goose Creek Scenic River Advisory Board
- 23 Health Planning Board, Virginia
- 24 Health Professions, Board of
- 25 Health, State Board of
- 26 Hearing Aid Specialists, Board for
- 27 Hemophilia Advisory Board
- 28 Historic Resources, Board of
- 29 Housing and Community Development, Board of
- 30 Industrial Development Services Advisory Board
- 31 Insurance Advisory Board, State
- 32 Irish Potato Board, Virginia
- 33 Laboratory Services Advisory Board
- 34 Marine Products Board, Virginia
- 35 Medical Advisory Board, Department of Motor Vehicles
- 36 Medical Board of the Virginia Retirement System
- 37 Medicare and Medicaid, Advisory Board on
- 38 Medicine, Board of
- 39 Mental Health, Mental Retardation and Substance Abuse Services Board, State
- 40 Migrant and Seasonal Farmworkers Board
- 41 Military Affairs, Board of
- 42 Mines, Minerals and Energy, Board of Examiners in the Department of
- 43 Minority Business Enterprise, Interdepartmental Board of the Department of
- 44 Motor Vehicle Dealers' Advisory Board
- 45 Networking Users Advisory Board, State
- 46 Nottoway State Scenic River Advisory Board
- 47 Nursing, Board of
- 48 Nursing Home Administrators, Board of
- 49 Occupational Therapy, Advisory Board on
- 50 Oil and Gas Conservation Board, Virginia
- 51 Opticians, Board for
- 52 Optometry, Board of
- 53 Peanut Board, Virginia
- 54 Personnel Advisory Board

1 Pesticide Control Board  
2 Pharmacy, Board of  
3 (Delayed effective date - See Editor's note) Physical Fitness and Sports, Virginia Board  
4 on  
5 Physical Therapy to the Board of Medicine, Advisory Board on  
6 Plant Pollination Advisory Board  
7 Polygraph Examiners Advisory Board  
8 Pork Industry Board, Virginia  
9 Poultry Products Board, Virginia  
10 Private College Advisory Board  
11 Private Security Services Advisory Board  
12 Professional and Occupational Regulation, Board for  
13 Professional Counselors, Board of  
14 Professional Soil Scientists, Board for  
15 Psychiatric Advisory Board  
16 Psychology, Board of  
17 Public Buildings Board, Virginia  
18 Public Telecommunications Board, Virginia  
19 Radiation Advisory Board  
20 Real Estate Appraiser Board  
21 Real Estate Board  
22 Reciprocity Board, Department of Motor Vehicles  
23 Recreational Fishing Advisory Board, Virginia  
24 Recreation Specialists, Board of  
25 Reforestation Board  
26 Rehabilitative Services, Board of  
27 Respiratory Therapy, Advisory Board on  
28 Retirement System Review Board  
29 Rockfish State Scenic River Advisory Board  
30 Safety and Health Codes Board  
31 Seed Potato Board  
32 Sewage Handling and Disposal Appeal Review Board, State Health Department  
33 Shenandoah State Scenic River Advisory Board  
34 Small Business Advisory Board  
35 Small Business Environmental Compliance Advisory Board  
36 Small Grains Board, Virginia  
37 Social Services, Board of  
38 Social Work, Board of  
39 Soil and Water Conservation Board, Virginia  
40 Soybean Board, Virginia  
41 State Air Pollution Control Board  
42 Substance Abuse Certification Board  
43 Surface Mining Review, Board of  
44 Sweet Potato Board, Virginia  
45 Teacher Education and Licensure, Advisory Board on  
46 Tourism and Travel Services Advisory Board  
47 Toxic Substances Advisory Board  
48 Transportation Board, Commonwealth  
49 Transportation Safety, Board of  
50 Treasury Board, The, Department of the Treasury  
51 Veterans' Affairs, Board on  
52 Veterinary Medicine, Board of  
53 Virginia Board for Asbestos Licensing  
54 Virginia Employment Commission, State Advisory Board for the



- 1 (Delayed effective date - See Editor's note) Virginia Horse Industry Board  
 2 Virginia Manufactured Housing Board  
 3 Virginia Mine Safety Board  
 4 Virginia Retirement System, Board of Trustees  
 5 Virginia Waste Management Board  
 6 Visually Handicapped, Virginia Board for the  
 7 Voluntary Formulary Board, Virginia  
 8 War Memorial Foundation, Virginia, Board of Trustees  
 9 Waste Management Facility Operators, Board for  
 10 Water Resources Research Center Statewide Advisory Board, Virginia  
 11 Waterworks and Wastewater Works Operators, Board for  
 12 Well Review Board, Virginia  
 13 Youth and Family Services, State Board of.
- 14 B. Notwithstanding the definition for "board" as provided in § 2.1-1.2, the following  
 15 entities shall be referred to as boards:
- 16 Compensation Board  
 17 State Board of Elections  
 18 State Water Control Board  
 19 Virginia Parole Board  
 20 Virginia Veterans Care Center Board of Trustees.
- 21 § 2.1-504. Definitions.
- 22 As used in §§ 2.1-504.1 through 2.1-512, unless a different meaning clearly appears from  
 23 the context:
- 24 "Institutions" shall include, but not be limited to, any corporation owned by the  
 25 Commonwealth and subject to the control of the General Assembly.
- 26 "Property" shall mean an interest in land and any improvements thereon held by the  
 27 Commonwealth and under the control of or occupied by any of its departments, agencies or  
 28 institutions, but shall not include (i) real estate or rights-of-way acquired by the Department  
 29 of Transportation for the construction of highways and (ii) *ungranted shores of the sea,*  
 30 *marsh, and meadowlands as defined in § 28.2-1500.*
- 31 "Recommend," "recommended," or "recommendation," when used with reference to a  
 32 recommendation by the Department of General Services to the Governor, shall mean to  
 33 advise either for or against a proposed action.
- 34 § 9-6.25:1. Advisory boards, commissions and councils.
- 35 There shall be, in addition to such others as may be designated in accordance with §  
 36 9-6.25, the following advisory boards, commissions and councils within the executive branch:
- 37 Advisory Board for the Department for the Deaf and Hard-of-Hearing  
 38 Advisory Board for the Department for the Aging  
 39 Advisory Board on Child Abuse and Neglect  
 40 Advisory Board on Medicare and Medicaid  
 41 Advisory Board on Occupational Therapy  
 42 Advisory Board on Physical Therapy to the Board of Medicine  
 43 Advisory Board on Respiratory Therapy to the Board of Medicine  
 44 Advisory Board on Teacher Education and Licensure  
 45 Advisory Council on Revenue Estimates  
 46 Advisory Council on the Virginia Business-Education Partnership Program  
 47 Appomattox State Scenic River Advisory Board  
 48 Aquaculture Advisory Board  
 49 Art and Architectural Review Board  
 50 (Effective until July 1, 1994) Board for the Visually Handicapped  
 51 Board of Directors, Virginia Truck and Ornamentals Research Station  
 52 Board of Forestry  
 53 Board of Military Affairs  
 54 (Effective until July 1, 1994) Board of Rehabilitative Services

- 1 Board of Transportation Safety
- 2 Board of Trustees of the Family and Children's Trust Fund
- 3 Board of Visitors, Gunston Hall Plantation
- 4 Board on Veterans' Affairs
- 5 Catoctin Creek State Scenic River Advisory Board
- 6 Cave Board
- 7 Chickahominy State Scenic River Advisory Board
- 8 Clinch Scenic River Advisory Board
- 9 Coal Surface Mining Reclamation Fund Advisory Board
- 10 *Coastal Land Management Advisory Council, Virginia*
- 11 Council on Indians
- 12 Council on the Status of Women
- 13 Emergency Medical Services Advisory Board
- 14 Falls of the James Committee
- 15 Film Office Advisory Board
- 16 Forensic Science Advisory Board
- 17 Goose Creek Scenic River Advisory Board
- 18 Governor's Council on Alcohol and Drug Abuse Problems
- 19 Governor's Mined Land Reclamation Advisory Committee
- 20 Hemophilia Advisory Board
- 21 Human Services Information and Referral Advisory Council
- 22 Industrial Development Services Advisory Board
- 23 Interagency Coordinating Council on Housing for the Disabled
- 24 Interdepartmental Board of the State Department of Minority Business Enterprise
- 25 Laboratory Services Advisory Board
- 26 Local Advisory Board to the Blue Ridge Community College
- 27 Local Advisory Board to the Central Virginia Community College
- 28 Local Advisory Board to the Dabney S. Lancaster Community College
- 29 Local Advisory Board to the Danville Community College
- 30 Local Advisory Board to the Eastern Shore Community College
- 31 Local Advisory Board to the Germanna Community College
- 32 Local Advisory Board to the J. Sargeant Reynolds Community College
- 33 Local Advisory Board to the John Tyler Community College
- 34 Local Advisory Board to the Lord Fairfax Community College
- 35 Local Advisory Board to the Mountain Empire Community College
- 36 Local Advisory Board to the New River Community College
- 37 Local Advisory Board to the Northern Virginia Community College
- 38 Local Advisory Board to the Patrick Henry Community College
- 39 Local Advisory Board to the Paul D. Camp Community College
- 40 Local Advisory Board to the Piedmont Virginia Community College
- 41 Local Advisory Board to the Rappahannock Community College
- 42 Local Advisory Board to the Southwest Virginia Community College
- 43 Local Advisory Board to the Thomas Nelson Community College
- 44 Local Advisory Board to the Tidewater Community College
- 45 Local Advisory Board to the Virginia Highlands Community College
- 46 Local Advisory Board to the Virginia Western Community College
- 47 Local Advisory Board to the Wytheville Community College
- 48 Long-Term Care Council
- 49 Maternal and Child Health Council
- 50 Medical Advisory Board, Department of Motor Vehicles
- 51 Medical Board of the Virginia Retirement System
- 52 Migrant and Seasonal Farmworkers Board
- 53 Motor Vehicle Dealer's Advisory Board
- 54 Nottoway State Scenic River Advisory Board

- 1 Personnel Advisory Board
- 2 Plant Pollination Advisory Board
- 3 Private College Advisory Board
- 4 (Effective July 1, 1994) Private Enterprise Commission
- 5 Private Security Services Advisory Board
- 6 Psychiatric Advisory Board
- 7 Radiation Advisory Board
- 8 Rappahannock Scenic River Advisory Board
- 9 Recreational Fishing Advisory Board, Virginia
- 10 Reforestation Board
- 11 Retirement System Review Board
- 12 Rockfish State Scenic River Advisory Board
- 13 Shenandoah State Scenic River Advisory Board
- 14 Small Business Advisory Board
- 15 Small Business Environmental Compliance Advisory Board
- 16 St. Mary's Scenic River Advisory Committee
- 17 State Advisory Board on Air Pollution
- 18 State Advisory Board for the Virginia Employment Commission
- 19 State Building Code Technical Review Board
- 20 State Council on Local Debt
- 21 State Health Benefits Advisory Council
- 22 State Insurance Advisory Board
- 23 State Land Evaluation Advisory Council
- 24 State Networking Users Advisory Board
- 25 State Public Records Advisory Council
- 26 Staunton Scenic River Advisory Committee
- 27 Telecommunications Relay Service Advisory Board
- 28 Tourism and Travel Services Advisory Board
- 29 Toxic Substances Advisory Board
- 30 Virginia Advisory Commission on Intergovernmental Relations
- 31 Virginia Advisory Council for Adult Education and Literacy
- 32 (For effective date - See Editor's note) Virginia Board on Physical Fitness and Sports
- 33 Virginia Coal Research and Development Advisory Board
- 34 Virginia Commission for the Arts
- 35 Virginia Commission on the Bicentennial of the United States Constitution
- 36 Virginia Council on Coordinating Prevention
- 37 Virginia Equal Employment Opportunity Council
- 38 Virginia Interagency Coordinating Council
- 39 Virginia Military Advisory Council
- 40 Virginia Mine Safety Board
- 41 Virginia Public Buildings Board
- 42 Virginia Recycling Markets Development Council
- 43 Virginia Transplant Council
- 44 Virginia Water Resources Research Center, Statewide Advisory Board
- 45 Virginia Winegrowers Advisory Board.
- 46 § 10.1-1108. Waste and unappropriated lands.
- 47 Any waste and unappropriated land, other than ~~unappropriated~~ *ungranted* marsh or
- 48 meadowlands ~~lying on the eastern shore of Virginia~~ exempted from ~~entry and grant~~ by the
- 49 provisions of ~~§ 41-1-4~~ *41.1-3*, may be set apart permanently for use as state forest land, by
- 50 a grant and proclamation signed by the Governor upon the receipt from the State Forester
- 51 of an application requesting that a certain piece, tract or parcel of waste and
- 52 unappropriated land be so set apart. The State Forester shall submit with the application a
- 53 copy of a report describing fully the location of the land, its character and suitability for
- 54 forestry purposes together with a complete metes and bounds description of the boundary

1 of the tract. The Department of General Services shall review the application and  
 2 recommend either approval or disapproval of the transaction to the Governor. If the  
 3 Governor determines that the land is more valuable for forestry purposes than for  
 4 agricultural or any other purposes, he may authorize the preparation of a grant which shall  
 5 be reviewed for legal sufficiency by the Attorney General for the Governor's signature and  
 6 the lesser seal of the Commonwealth.

7 All lands so granted shall be subject to statutes and regulations relating to the  
 8 regulation, management, protection and administration of state forests.

9 § 28.2-1200. Ungranted beds of bays, rivers, and creeks to remain in common.

10 All the beds of the bays, rivers, *and* creeks ~~and the shores of the sea~~ within the  
 11 jurisdiction of the Commonwealth, not conveyed by special grant ~~or compact according to~~  
 12 ~~law of the General Assembly~~, shall remain the property of the Commonwealth and may be  
 13 used as a common by all the people of the Commonwealth for the purpose of fishing,  
 14 fowling, *hunting*, and taking and catching oysters and other shellfish. No grant shall be  
 15 issued by the State Librarian to pass any estate or interest of the Commonwealth in any  
 16 natural oyster bed, rock, or shoal, whether or not it ebbs bare.

17 § 28.2-1201. Ungranted islands which rise from ~~common~~ lands *which are the property of*  
 18 *the Commonwealth.*

19 A. All *ungranted* islands which rise by natural or artificial causes from lands which are  
 20 a ~~common~~ *ungranted* under § 28.2-1200 shall remain in public ownership and continue as a  
 21 ~~common~~ *the property of the Commonwealth and shall be managed by the Commission as*  
 22 *provided in Article 2 (§ 28.2-1503 et seq.) of Chapter 15 of this title.* This section shall not  
 23 apply to accretions to privately owned lands or islands, whether or not they are used as  
 24 commons.

25 B. Any ~~unappropriated~~ *ungranted* island or land, whether currently in existence or  
 26 subsequently created, that hereafter abuts a barrier island of the Eastern Shore is ~~hereby~~  
 27 ~~dedicated as a natural area preserve within the meaning of § 10.1-213~~ *shall remain the*  
 28 *property of the Commonwealth and shall be managed by the Commission as provided in*  
 29 *Article 2 (§ 28.2-1503 et seq.) of Chapter 15 of this title.*

30 § 28.2-1301. Powers and duties of the Commission.

31 A. The Commission may receive gifts, grants, bequests, and devises of wetlands and  
 32 money which shall be held for the uses prescribed by the donor, grantor, or testator and  
 33 in accordance with the provisions of this chapter. The Commission shall manage any  
 34 wetlands it receives so as to maximize their ecological value *as provided in Article 2 (§*  
 35 *28.2-1503 et seq.) of Chapter 15.1 of this title.*

36 B. The Commission shall preserve and prevent the despoliation and destruction of  
 37 wetlands while accommodating necessary economic development in a manner consistent  
 38 with wetlands preservation.

39 C. ~~The Commission shall manage all unappropriated marsh or meadowlands lying on the~~  
 40 ~~Eastern Shore of Virginia which remain ungranted pursuant to the provisions of § 41.1-4.~~

41 ~~D. C.~~ In order to perform its duties under this section and to assist counties, cities, and  
 42 towns in regulating wetlands, the Commission shall promulgate and periodically update  
 43 guidelines which scientifically evaluate vegetated and nonvegetated wetlands by type and  
 44 describe the consequences of use of these wetlands types. The Virginia Institute of Marine  
 45 Science shall provide advice and assistance to the Commission in developing these  
 46 guidelines by evaluating wetlands by type and continuously maintaining and updating an  
 47 inventory of vegetated wetlands.

48 ~~E. D.~~ In developing guidelines or regulations under this chapter the Commission shall  
 49 consult with all affected state agencies. Consistent with other legal rights, consideration  
 50 shall be given to the unique character of the Commonwealth's tidal wetlands which are  
 51 essential for the production of marine and inland wildlife, waterfowl, finfish, shellfish and  
 52 flora; serve as a valuable protective barrier against floods, tidal storms and the erosion of  
 53 the Commonwealth's shores and soil; are important for the absorption of silt and pollutants;  
 54 and are important for recreational and aesthetic enjoyment of the people and for the

1 promotion of tourism, navigation and commerce.

2 § 28.2-1401. Powers and duties of Commission.

3 A. The Commission may receive gifts, grants, bequests, and devises of coastal primary  
4 sand dunes, beaches, and money which shall be held for the uses prescribed by the donor,  
5 grantor, or testator and in accordance with the provisions of this chapter.

6 B. The Commission shall preserve and protect coastal primary sand dunes and beaches  
7 and prevent their despoliation and destruction. Whenever practical, the Commission shall  
8 accommodate necessary economic development in a manner consistent with the protection  
9 of these features. The Commission shall manage any coastal primary sand dunes and  
10 beaches it receives so as to maximize their ecological value as provided in Article 2 (§  
11 28.2-1503 et seq.) of Chapter 15 of this title.

12 C. In order to perform its duties under this section and to assist counties and cities in  
13 regulating coastal primary sand dunes and beaches, the Commission shall, with the advice  
14 and assistance of the Virginia Institute of Marine Science, promulgate guidelines which  
15 describe the consequences of use of these dunes and beaches.

16 D. In developing guidelines or regulations under this chapter, the Commission shall  
17 consult with all affected state agencies. Consistent with other legal rights, consideration  
18 shall be given to the importance of coastal primary sand dunes with their unique  
19 physiographic features which, in their natural state, serve as protective barriers from the  
20 effects of flooding and erosion caused by coastal storms, thereby protecting life and  
21 property; provide an essential source of natural sand replenishment for beaches and an  
22 important natural habitat for coastal fauna; and enhance the scenic and recreational  
23 attractiveness of Virginia's coastal area.

#### 24 CHAPTER 15.

#### 25 UNGRANTED SHORES OF THE SEA, MARSHES AND MEADOWLANDS.

#### 26 Article 1.

#### 27 General Provisions.

#### 28 § 28.2-1500. Definitions.

29 As used in this chapter, unless the context requires a different meaning:

30 "Beach" has the same meaning ascribed thereto in subsection A of § 28.2-1400.  
31 "Beach" also includes any property referred to, defined, or labeled as such in any deed,  
32 grant, map, plat, or other historical document establishing or supporting a claim of state  
33 ownership.

34 "Marsh" or "meadowland" has the same meaning ascribed to vegetated wetlands in §  
35 28.2-1300. "Marsh" or "meadowland" also includes any property referred to, defined, or  
36 labeled as such in any deed, grant, map, plat, or other historical document establishing or  
37 supporting a claim of state ownership.

38 "Shores of the sea" means a beach or any unvegetated lands lying contiguous to mean  
39 low water and between mean low water and mean high water. "Shores of the sea" also  
40 includes any property referred to, defined, or labeled as such in any deed, grant, map,  
41 plat, or other historical document establishing or supporting a claim of state ownership.

42 "Ungranted shores of the sea, marsh or meadowlands" means (i) shores of the sea  
43 which were not conveyed by special grant or compact according to law prior to April 1,  
44 1873, and which have not been conveyed by special grant of the General Assembly on or  
45 after that date and (ii) marsh or meadowlands which were not appropriated and remained  
46 ungranted prior to February 24, 1888, and which have not been conveyed by special grant  
47 of the General Assembly on or after that date.

48 "Virginia Coastal Land Management Advisory Council" or "Council" means the  
49 Virginia Coastal Land Management Advisory Council created pursuant to § 28.2-1505.

#### 50 § 28.2-1501. Powers and duties of Commission.

51 A. The Commission may receive gifts, grants, bequests, and devises of shores of the  
52 sea, marsh, meadowlands, and money which shall be held for the uses prescribed by the  
53 donor, grantor, or testator and in accordance with the provisions of this chapter. The  
54 Commission shall manage any shores of the sea, marsh or meadowlands it receives as

1 prescribed in Article 2 (§ 28.2-1503 et seq.) of this chapter.

2 B. The Commission may promulgate regulations and guidelines necessary to carry out  
3 the provisions of this chapter.

4 § 28.2-1502. Ownership of ungranted shores of the sea, marsh and meadowlands.

5 All ungranted shores of the sea, marsh and meadowlands shall remain the property of  
6 the Commonwealth. Such ungranted marsh and meadowlands which have been used as a  
7 commons by the people of the Commonwealth shall continue as a commons for the  
8 purpose of fishing, fowling, hunting, and the taking and catching of oysters and other  
9 shellfish. All ungranted shores of the sea may be used as a commons for the purpose of  
10 fishing, fowling, hunting, and the taking and catching of oysters and other shellfish. The  
11 Commission shall manage all ungranted shores of the sea, marsh and meadowlands as  
12 provided in Article 2 (§ 28.2-1503 et seq.) of this chapter.

13 Article 2.

14 Management of Ungranted Shores of the Sea, Marshes and Meadowlands.

15 § 28.2-1503. Management of lands.

16 The Commission shall manage all ungranted shores of the sea, marsh, and  
17 meadowlands, and all other lands of the Commonwealth for which management duties  
18 have been given to the Commission, as steward for the property interests of the  
19 Commonwealth. All agencies of the Commonwealth shall cooperate with the Commission  
20 and, upon request, shall assist the Commission in the performance of its duties and  
21 responsibilities under this article.

22 § 28.2-1504. Preparation of management plan.

23 The Commission shall prepare and implement a plan for the management of the  
24 Commonwealth's shores of the sea, marsh, and meadowlands. The management plan, and  
25 any regulations and guidelines promulgated to implement the management plan, shall  
26 reflect a balancing of the following goals: (i) the long history of traditional uses of the  
27 properties should be respected; (ii) tourism and commerce should be promoted; and (iii) the  
28 unique ecological values of the property should be protected. The management plan shall  
29 provide that all ungranted shores of the sea, marsh, and meadowlands that have been  
30 used as a commons by the people of the Commonwealth may continue to be used as a  
31 commons by all the people of the Commonwealth for the purpose of fishing, fowling,  
32 hunting, and the taking and catching of oysters and other shellfish. The Commission shall  
33 review the management plan every five years.

34 B. In developing regulations, guidelines, or management plans under this chapter, the  
35 Commission shall consult with the Virginia Coastal Land Management Advisory Council.

36 § 28.2-1505. Virginia Coastal Land Management Advisory Council established.

37 A. There is hereby created the Virginia Coastal Land Management Advisory Council.  
38 The Council shall advise the Commission on issues relating to the management of  
39 ungranted shores of the sea, marsh, and meadowlands, and shall advise the Commission  
40 on the development of the management plan prepared pursuant to § 28.2-1504.

41 B. The Council shall consist of six members appointed by the Commissioner, who shall  
42 be residents of a county in which there are ungranted shores of the sea, marsh or  
43 meadowlands, and who shall represent tourism and commerce, traditional uses of shores of  
44 the sea, marsh and meadowlands, and conservation interests. In appointing these  
45 members, the Commissioner shall consider recommendations submitted by the boards of  
46 supervisors of counties in which the Commission is managing the largest portions of the  
47 ungranted shores of the sea, marsh, or meadowlands. The Council shall also include (i) the  
48 Director of the Department of Conservation and Recreation or his designee, (ii) the  
49 Director of the Department of Game and Inland Fisheries or his designee, and (iii) the  
50 Commissioner or his designee.

51 C. The term of office of each member shall be for three years. Appointments to fill  
52 vacancies shall be made to fill the unexpired term.

53 D. Members shall receive no compensation for their services but shall receive  
54 reimbursement for actual expenses.

1 *E. The Council shall meet at the call of the Commissioner or at least once per year.*  
 2 § 41.1-3. Grants of certain lands, etc., to be void; such lands, etc., under control of  
 3 Governor.

4 No grant shall be valid or effectual in law to pass any estate or interest in (i) any  
 5 lands unappropriated or belonging to the Commonwealth, which embrace the old magazine  
 6 at Westham, or any stone quarry now worked by the Commonwealth, or any lands which  
 7 are within a mile of such magazine, or any such quarry; (ii) any lands which are a  
 8 ~~common~~ *ungranted beds of bays, rivers and creeks* under § ~~62.1-1~~ 28.2-1200; (iii) any  
 9 natural oyster bed, rock, or shoal, whether such bed, rock, or shoal shall ebb bare or not;  
 10 (iv) any islands created in the navigable waters of the Commonwealth through the  
 11 instrumentality of dredging or filling operations; ~~or~~ (v) any islands which rise from any  
 12 ~~beds lands~~ which are a ~~common~~ *property of the Commonwealth* under § ~~62.1-1~~ 28.2-1201;  
 13 *or (vi) any ungranted shores of the sea, marsh or meadowlands as defined in § 28.2-1500.*  
 14 Every such grant for any such lands, islands, bed, rock, or shoal shall be absolutely void;  
 15 however, this section shall not be construed to affect the title to grants issued prior to  
 16 March 15, 1932. Such magazine and every such stone quarry and the lands of the  
 17 Commonwealth adjacent to or in their neighborhood, shall be under the control of the  
 18 Governor, who may make such regulations concerning the same as he may deem best for  
 19 the interests of the Commonwealth.

20 § 41.1-5. Circuit courts authorized to dispose of waste and unappropriated lands.

21 The circuit courts of the counties and cities in which waste and unappropriated lands  
 22 are alleged to lie are vested with authority to sell and dispose thereof in proceedings  
 23 brought under §§ 41.1-16 through 41.1-20; however, no sale or disposition shall be made of  
 24 lands mentioned in § ~~62.1-1~~ 28.2-1200 or of lands as to which a grant could not have been  
 25 issued by the State Librarian under §§ 41.1-3, ~~41.1-4~~, ~~or~~ § 41.1-4.1.

26 § 41.1-16. Sale of wastelands; proceeding by citizen resident; motion and deposit for  
 27 costs; parties; copy of plat.

28 Any citizen, resident of this Commonwealth, who has reason to believe that there are  
 29 waste and unappropriated lands in this Commonwealth (not being a ~~common~~ under § ~~62.1-1~~  
 30 ~~or~~ excluded under §§ 41.1-3 and ~~41.1-4~~ from grant), shall have the right to file a  
 31 proceeding in the name of the county or city seeking the sale and disposition of such land.  
 32 The venue for such a proceeding shall be as specified in subdivision 3 of § 8.01-261. The  
 33 proceeding shall be instituted by motion signed by the party who institutes the proceeding,  
 34 or on his behalf, and shall be accompanied with a deposit to cover the costs of the  
 35 proceeding but in no event to exceed \$100. Each landowner adjoining the tract in question  
 36 shall be made a party to the proceedings.

37 He shall file with the motion a copy of a plat prepared by a licensed land surveyor  
 38 giving the metes and bounds of the land alleged to be waste and unappropriated. A copy of  
 39 the motion and plat shall be served upon each of the landowners adjoining the tract in  
 40 question.

41 2. That § 41.1-4 of the Code of Virginia is repealed.

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Official Use By Clerks	
<b>Passed By</b> <b>The House of Delegates</b> without amendment <input type="checkbox"/> with amendment <input type="checkbox"/> substitute <input type="checkbox"/> substitute w/amdt <input type="checkbox"/>	<b>Passed By The Senate</b> without amendment <input type="checkbox"/> with amendment <input type="checkbox"/> substitute <input type="checkbox"/> substitute w/amdt <input type="checkbox"/>
Date: _____	Date: _____
_____ Clerk of the House of Delegates	_____ Clerk of the Senate