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**HOUSE BILL NO. 535****AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources  
on February 23, 2004)

(Patron Prior to Substitute— Delegate Stump)

*A BILL to amend and reenact § 62.1-194.3 of the Code of Virginia, relating to the Big Sandy River watershed.*

**Be it enacted by the General Assembly of Virginia:**

**1. That § 62.1-194.3 of the Code of Virginia is amended and reenacted as follows:**

§ 62.1-194.3. Obstructing tributaries of Big Sandy River; dumping refuse, etc., into Big Sandy River or its tributaries.

(a) If any person place any dam or other obstruction in any tributary of Big Sandy River so as to prevent the free passage of timber, or any raft or boat, he shall be fined not less than \$50 nor more than \$500; and, upon conviction thereof, the court or judge of the county court shall order the dam or other obstruction to be removed at his expense.

(b) It shall also be unlawful for any person to dump, place or put, or cause to be dumped, placed, or put into, upon the banks of or into the channels of Big Sandy River or any of its tributaries, any dirt, stone, coal, slate, cinders, mine refuse, trees, timber, logs, garbage or any other material or substance so as to in anywise narrow, fill or restrict or partially narrow, fill or restrict the channels of said streams or impede the natural flow of the waters of said river or any of its tributaries or dump, place or put, or cause to be dumped, placed or put any dirt, stone, coal, slate, cinders, mine refuse, trees, timber, logs, garbage or any other material, or substance where the same does by natural rainfall or flow of water become washed or otherwise carried into, upon the banks of, or into the channels of, such river or any of its tributaries so as to in anywise narrow, fill or restrict or partially narrow, fill or restrict the channels of any of said streams or impede the natural flow of the waters thereof. Any person who violates any provision of this law shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than \$100 nor more than \$500 or by confinement in jail not more than twelve months or both such fine and imprisonment. Each day that any of said materials or substances so dumped, placed or put, or caused to be dumped, placed or put into or so allowed to be washed or otherwise so carried into, upon the banks of or into the channels of, said streams shall constitute a separate offense and be punished as such.

(c) In addition to the foregoing penalties for violation of this law, the judge of the circuit court of the county wherein any such violation occurs, whether there be a criminal conviction therefor or not shall, upon a bill in equity, filed by the *locality*, attorney for the Commonwealth of such county, or by any person whose property is damaged or whose property is threatened with damage from any such violation, award an injunction enjoining any violation of this law by any person found by the court in such suit to have violated this law or causing the same to be violated, when made a party defendant to such suit.

(d) This section shall not be construed to restrict the construction or reconstruction of highways, or the construction or reconstruction of the right-of-way of any company subject to the Commonwealth State Corporation Commission, or the maintenance thereof in either case, provided the channel thereafter continues to permit a flow of water in such stream at least as large as that prevailing theretofore, provided that if the channel above the point of such work be widened or deepened subsequently then such company may be required by the circuit court of the county on petition of any interested person to change its right-of-way where practicable so as to permit the increased flow of water.

(e) *Any locality located within the Big Sandy watershed through its own agents or employees may remove any obstructions dumped, placed, or put in any tributary of the Big Sandy River in violation of this section that might endanger the public health or safety of other residents of such locality provided that the owner of the property wherein the obstruction lies, after reasonable notice and a reasonable time to do so, has failed to remove the obstruction. For purposes of this section, reasonable notice includes a written notice (i) mailed by certified or registered mail, return receipt requested, sent to the last known address of the property owner and (ii) published once a week for two successive weeks in a newspaper having general circulation in the locality. No action shall be taken by the locality to remove the obstruction for at least 30 days following the later of the return of the receipt or newspaper publication, unless the circuit court, upon proper petition finds that a water impoundment created by such obstruction poses imminent danger to public safety.*

(f) *In the event the locality, through its own agents or employees, removes an obstruction after complying with the notice provisions of this section, the cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the locality as taxes are collected.*

60 (g) Every charge authorized by this section with which the owner of any such property has been  
61 assessed and that remains unpaid shall constitute a lien against such property enforceable in the same  
62 manner as provided in Articles 3 (§ 58.1-3940 et seq.) and 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title  
63 58.1, except that such lien shall not have priority over any prior lien on the property.

64 (h) Any locality located within the Big Sandy River watershed may enforce the provisions of this  
65 section.

66 (i) The court may award costs and expenses, including reasonable attorneys' fees, to the prevailing  
67 party authorized to bring an action under this section.

68 (j) In order to ensure compliance with this section, any locality located within the Big Sandy River  
69 watershed may by ordinance require any person to notify the locality in person, by phone, or by mail  
70 within 30 days of constructing, placing, or putting any bridge, culvert, or driveway drainpipe across the  
71 banks or into the channels or the Big Sandy River or any of its tributaries.

72 (k) The provisions of this section shall not apply to activities conducted pursuant to a permit or  
73 certificate issued by an agency of the Commonwealth or to any silvicultural activities conducted  
74 pursuant to Article 12 (§ 10.1-1181.1 et seq.) of Chapter 11 of Title 10.1.