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SENATE BILL NO. 420

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 21, 2004)

(Patron Prior to Substitute—Senator Wagner)

A BILL authorizing the Virginia Marine Resources Commission to grant and convey to the City of Newport News certain rights in the subaqueous beds of the Commonwealth for development and operation of the proposed King William Reservoir.

Whereas, the Cities of Newport News, Hampton, Poquoson, and Williamsburg and the Counties of James City and York formed a Regional Raw Water Study Group to find and develop the best alternative source of water to meet their future needs; and

Whereas, that regional planning effort was initiated because the Virginia Health Department had ordered the Peninsula water utilities to develop new sources of water to meet their long-term needs; and

Whereas, the federal government, through the Corps of Engineers, granted permits for a new reservoir on Ware Creek for James City County, but the U. S. Environmental Protection Agency vetoed that project because it was not a regional project; and

Whereas, the Regional Raw Water Study Group has worked for 16 years, at great expense, to obtain the needed permits and approvals to develop new sources of water supply required to meet their future needs; and

Whereas, in 1997 the State Water Control Board, after a rigorous review of comments received from every agency of the Commonwealth of Virginia with responsibility for natural resources stewardship, issued a Virginia Water Protection Permit for the King William Reservoir Project, having determined that project to be environmentally sound and needed to meet the future water needs of the Lower Virginia Peninsula jurisdictions; and

Whereas, after a complete review of the final environmental impact statement and many other reports, the U.S. Army Corps of Engineers determined in 2002 that the King William Reservoir Project is the least environmentally damaging, practicable and available alternative to meet the validated water needs of the Lower Virginia Peninsula jurisdictions; and

Whereas, the Virginia Marine Resource Commission considered the application of the Regional Raw Water Study Group to locate the necessary water intake structures for the Project on less than one acre of subaqueous bottom located in the Mattaponi River, and drill water pipeline crossings well beneath the beds of Cohoke Creek and the Pamunkey River; and

Whereas, that intake structure was designed and proposed to be operated in a manner consistent with the standards of the State Department of Game and Inland Fisheries; and

Whereas, on May 16, 2003, the Virginia Marine Resources Commission denied Newport News' and the Raw Water Study Group's application because the operation and location of the proposed intake would impact fisheries resources, specifically shad during their spawning season, in that stretch of the Mattaponi River; and

Whereas, during the course of the Marine Resources Commission hearing, the City of Newport News and the Regional Raw Water Study Group proposed not to operate the intake during the shad spawning season (except during any Governor-declared water emergency); and

Whereas, notwithstanding that proffer, which would virtually eliminate any concern about adverse impacts on shad spawning, the Marine Resources Commission denied the application; and

Whereas, the Commonwealth owns the submerged bottoms of the tidal rivers and creeks on which the Project's raw water intake structure will be located and beneath which certain pipelines will be installed; and

Whereas, the jurisdiction of the Virginia Marine Resources Commission over the King William Reservoir Project is based solely upon its authority to regulate the use of such submerged bottoms, which authority is supplanted by the legislative grant of such bottoms; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. § 1. That the Virginia Marine Resources Commission is hereby authorized and directed to convey to the City of Newport News, its successors and assigns, with the approval of the Governor and Attorney General, a permanent easement and right to use subaqueous land in the Mattaponi River in King William County, Virginia, for the purpose of constructing and operating a raw water intake structure and appurtenances, in accordance with the terms and conditions of the Virginia Water Protection Permit, to supply its King William Reservoir Project such subaqueous land more particularly described as follows:

Beginning at a point (herein referred to as Corner 1) at or adjacent to the mean low water mark of the Mattaponi River in King William County, Virginia State Plane Coordinate System NAD83, North

60 3,778,400.85 East 11,925,914.70, said point being the true point and place of beginning; thence North
61 32° 06' 31" East a distance of 176 feet to Corner 2 North 3,778,549.55 East 11,926,008.02; thence
62 South 57° 53' 29" East a distance of 250 feet to Corner 3 North 3,778,418.67 East 11,926,219.78;
63 thence South 32° 06' 31" West a distance of 177 feet to Corner 4 North 3,778,266.52 East
64 11,926,125.55; thence North 57° 29' 58" a distance of 250 feet to Corner 1; such described property
65 contains 0.9 acres, more or less.

66 § 2. That the Virginia Marine Resources Commission is hereby authorized and directed to convey to
67 the City of Newport News, its successors and assigns, with the approval of the Governor and Attorney
68 General, such permanent easements and rights to use subaqueous lands in Cohoke Creek and the
69 Pamunkey River in King William Count and New Kent County, Virginia, as may be required to install,
70 by directional drill technique beneath said subaqueous lands, and operate water pipeline structures and
71 appurtenances needed to convey water from the King William Reservoir Project to the Newport News'
72 water system on the Lower Peninsula.

73 The instrument conveying the easement shall be in a form approved by the Attorney General.