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HOUSE BILL NO. 1454

Offered January 18, 2006

A *BILL to amend and reenact § 10.1-563 of the Code of Virginia, relating to the construction of wetlands and stream restoration projects.*

Patron—Scott, E.T.

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-563 of the Code of Virginia is amended and reenacted as follows:

§ 10.1-563. Regulated land-disturbing activities; submission and approval of control plan.

A. Except as provided in § 10.1-564, no person may engage in any land-disturbing activity until he has submitted to the district or locality an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved by the plan-approving authority. Where land-disturbing activities involve lands under the jurisdiction of more than one local control program an erosion and sediment control plan may, at the option of the applicant, be submitted to the Board for review and approval rather than to each jurisdiction concerned. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the plan-approving authority.

B. The plan-approving authority shall review conservation plans submitted to it and grant written approval within 45 days of the receipt of the plan if it determines that the plan meets the requirements of the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the conservation measures included in the plan and will conform to the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence to the program authority, as provided by § 10.1-561, who will be in charge of and responsible for carrying out the land-disturbing activity. However, any plan-approving authority may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by § 10.1-561. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this article.

When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify the modifications, terms and conditions that will permit approval of the plan. If no action is taken by the plan-approving authority within the time specified above, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

C. An approved plan may be changed by the authority that approved the plan in the following cases:

1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or
2. Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article, are agreed to by the plan-approving authority and the person responsible for carrying out the plan.

D. Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies and, railroad companies, and artificial wetland and stream restoration companies shall file general erosion and sediment control specifications annually with the Board for review and approval. The specifications shall apply to:

1. Construction, installation or maintenance of electric transmission, natural gas and telephone utility lines and pipelines; and

2. Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.

3. Construction of wetland or stream restoration projects that may include construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, land drainage, land irrigation, stream restoration, and the planting and cultivating of wetlands plants.

The Board shall have 60 days in which to approve the specifications. If no action is taken by the Board within 60 days, the specifications shall be deemed approved. Individual approval of separate

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59 projects within subdivisions 1 ~~and~~, 2, *and* 3 of this subsection is not necessary when approved
60 specifications are followed. Projects not included in subdivisions 1 ~~and~~, 2, *and* 3 of this subsection shall
61 comply with the requirements of the appropriate local erosion and sediment control program. The Board
62 shall have the authority to enforce approved specifications.

63 E. In order to prevent further erosion a local program may require approval of a conservation plan
64 for any land identified in the local program as an erosion impact area.

65 F. For the purposes of subsections A and B of this section, when land-disturbing activity will be
66 required of a contractor performing construction work pursuant to a construction contract, the
67 preparation, submission and approval of an erosion and sediment control plan shall be the responsibility
68 of the owner.