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SENATE BILL NO. 410

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend and reenact § 62.1-44.15:21 of the Code of Virginia, relating to contribution to a fund dedicated to achieving no net loss of wetland acreage.

Patron—Hanger

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.15:21 of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.15:21. Impacts to wetlands and streams.

A. Permits shall address avoidance and minimization of wetland *or stream* impacts to the maximum extent practicable. A permit shall be issued only if the Board finds that the effect of the impact, together with other existing or proposed impacts to wetlands *or streams*, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

B. Permits shall contain requirements for compensating impacts on wetlands *or streams*. Such compensation requirements shall be sufficient to achieve no net loss of existing wetland *or stream* acreage and functions and may be met through wetland *or stream* creation or restoration, purchase or use of mitigation bank credits pursuant to § 62.1-44.15:23, or contribution to a Board-approved fund dedicated to achieving no net loss of wetland *or stream* acreage and functions. *Contribution to a Board-approved fund, including the purchase from the fund of credits that have met their success criteria, may be permitted to compensate for impacts to wetlands or streams only if (i) the applicant demonstrates that, at the time of the proposed contribution to a Board-approved fund, mitigation bank credits are not available for purchase in the project watershed or (ii) the Department of Environmental Quality determines in a writing accompanying the draft permit and based on scientific and technical analysis that (a) the impact site contains unique ecological features and (b) the proposed contribution to a Board-approved fund is more likely to replace the unique ecological features at the impact site than the purchase or use of mitigation bank credits. Authorization to compensate for permitted impacts to wetlands and streams by contribution to a Board-approved fund shall be conditioned on the continued satisfaction of clause (i) or (ii) until the time that the contribution is made.* When ~~utilized~~ *used* in conjunction with creation, restoration, or mitigation bank credits, compensation may incorporate ~~(i)~~ *(1)* preservation or restoration of upland buffers adjacent to wetlands or other state waters or ~~(ii)~~ *(2)* preservation of wetlands *or streams*.

C. The Board shall utilize the U.S. Army Corps of Engineers' "Wetlands Delineation Manual, Technical Report Y-87-1, January 1987, Final Report" as the approved method for delineating wetlands. The Board shall adopt appropriate guidance and regulations to ensure consistency with the U.S. Army Corps of Engineers' implementation of delineation practices. The Board shall also adopt guidance and regulations for review and approval of the geographic area of a delineated wetland. Any such approval of a delineation shall remain effective for a period of five years; however, if the Board issues a permit pursuant to this article for an activity in the delineated wetland within the five-year period, the approval shall remain effective for the term of the permit. Any delineation accepted by the U.S. Army Corps of Engineers as sufficient for its exercise of jurisdiction pursuant to § 404 of the Clean Water Act shall be determinative of the geographic area of that delineated wetland.

D. The Board shall develop general permits for such activities in wetlands *or streams* as it deems appropriate. General permits shall include such terms and conditions as the Board deems necessary to protect state waters and fish and wildlife resources from significant impairment. The Board is authorized to waive the requirement for a general permit or deem an activity in compliance with a general permit when it determines that an isolated wetland *or stream* is of minimal ecological value. The Board shall develop general permits for:

1. Activities causing wetland impacts of less than one-half of an acre;

2. Facilities and activities of utilities and public service companies regulated by the Federal Energy Regulatory Commission or State Corporation Commission. No Board action on an individual or general permit for such facilities shall alter the siting determination made through Federal Energy Regulatory Commission or State Corporation Commission approval. The Board and the State Corporation Commission shall develop a memorandum of agreement pursuant to §§ 56-46.1, 56-265.2, 56-265.2:1, and 56-580 to ensure that consultation on wetland impacts occurs prior to siting determinations;

3. Coal, natural gas, and coalbed methane gas mining activities authorized by the Department of

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Mines, Minerals and Energy, and sand mining;

4. Virginia Department of Transportation or other linear transportation projects; and

5. Activities governed by nationwide or regional permits approved by the Board and issued by the U.S. Army Corps of Engineers. Conditions contained in the general permits shall include, but not be limited to, filing with the Board any copies of preconstruction notification, postconstruction report, and certificate of compliance required by the U.S. Army Corps of Engineers.

E. Within 15 days of receipt of an individual permit application, the Board shall review the application for completeness and either accept the application or request additional specific information from the applicant. Within 120 days of receipt of a complete application, the Board shall issue the permit, issue the permit with conditions, deny the permit, or decide to conduct a public meeting or hearing. If a public meeting or hearing is held, it shall be held within 60 days of the decision to conduct such a proceeding, and a final decision as to the permit shall be made within 90 days of completion of the public meeting or hearing.

F. Within 15 days of receipt of a general permit application, the Board shall review the application for completeness and either accept the application or request additional specific information from the applicant. A determination that an application is complete shall not mean the Board will issue the permit but means only that the applicant has submitted sufficient information to process the application. The Board shall deny, approve, or approve with conditions any application for coverage under a general permit within 45 days of receipt of a complete preconstruction application. The application shall be deemed approved if the Board fails to act within 45 days.

G. No Virginia Water Protection Permit shall be required for impacts to wetlands *or streams* caused by activities governed under Chapter 13 (§ 28.2-100 et seq.) of Title 28.2 or normal agricultural activities or normal silvicultural activities. This section shall also not apply to normal residential gardening, lawn and landscape maintenance, or other similar activities that are incidental to an occupant's ongoing residential use of property and of minimal ecological impact. The Board shall develop criteria governing this exemption and shall specifically identify the activities meeting these criteria in its regulations.

H. No Virginia Water Protection Permit shall be required for impacts caused by the construction or maintenance of farm or stock ponds, but other permits may be required pursuant to state and federal law. For purposes of this exclusion, farm or stock ponds shall include all ponds and impoundments that do not fall under the authority of the Virginia Soil and Water Conservation Board pursuant to Article 2 (§ 10.1-604 et seq.) of Chapter 6 pursuant to normal agricultural or silvicultural activities.