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**HOUSE BILL NO. 866**

Offered January 10, 2018

Prefiled January 9, 2018

*A BILL to amend and reenact §§ 10.1-407 through 10.1-418.9 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-5704.1, relating to scenic river designations.*

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Patron—Orrock

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Referred to Committee on Agriculture, Chesapeake and Natural Resources

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

**1. That §§ 10.1-407 through 10.1-418.9 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-5704.1 as follows:**

**§ 10.1-407. Act of General Assembly required to construct, etc., dam or other structure.**

*A. As used in this chapter, "dam or other structure" means any structure extending from bank to bank of a river that will interfere with the normal movement of waterborne traffic, interfere with the normal movement of fish or wildlife, raise the water level on the upstream side of the structure, or lower the water level on the downstream side of the structure.*

*B. After designation of any river or section of river as a scenic river by the General Assembly, no dam or other structure impeding the natural flow thereof shall be constructed, operated, or maintained in such river or section of river unless specifically authorized by an act of the General Assembly.*

*C. No new dam or other structure or enlargement of an existing dam or other structure that impedes the natural flow of Goose Creek shall be constructed, operated, or maintained within the section of Goose Creek designated as a scenic river by § 10.1-411 unless specifically authorized by an act of the General Assembly.*

**§ 10.1-408. Uses not affected by scenic river designation.**

*A. Except as provided in § 10.1-407, all riparian land and water uses along or in the designated section of a river which that are permitted by law shall not be restricted by this chapter.*

*B. Designation as a scenic river shall not be used:*

*1. To designate the lands along the river and its tributaries as unsuitable for mining pursuant to § 45.1-252 or regulations promulgated with respect to such section, or as unsuitable for use as a location for a surface mineral mine as defined in § 45.1-161.292:2; however, the Department shall still be permitted to exercise the powers granted under § 10.1-402; or*

*2. To be a criterion for purposes of imposing water quality standards under the federal Clean Water Act.*

*C. Nothing in this chapter shall preclude the federal government, the Commonwealth, or a locality or local governing body from using, constructing, reconstructing, replacing, repairing, operating, or performing necessary maintenance on any road or bridge.*

*D. Nothing in § 10.1-414 or 10.1-418.6 shall preclude the Commonwealth or a local governing body from constructing, reconstructing, operating, or performing necessary maintenance on any transportation or public water supply project.*

*E. Nothing in this chapter shall preclude the continued:*

*1. Use, operation, and maintenance of the existing City of Fairfax water impoundment or the installation of new water intake facilities in the existing reservoir located within the section of Goose Creek designated by § 10.1-411;*

*2. Operation and maintenance of existing dams in the section of the Rappahannock River designated by § 10.1-415; or*

*3. Operation, maintenance, alteration, expansion, or destruction of the Embrey Dam or its appurtenances by the City of Fredericksburg, including the old VEPCO canal and the existing City Reservoir behind the Embrey Dam, or any other part of the City's waterworks.*

*F. The City of Richmond shall be allowed to reconstruct, operate, and maintain existing facilities at the Byrd Park and Hollywood Hydroelectric Power Stations at current capacity. Nothing in this chapter shall be construed to prevent the Commonwealth, the City of Richmond, or any common carrier railroad from constructing or reconstructing floodwalls or public common carrier facilities that may traverse the section of the James River designated by § 10.1-412, such as road or railroad bridges, raw water intake structures, or water or sewer lines that would be constructed below water level.*

*G. The owner of the Harvell Dam in the City of Petersburg may construct, reconstruct, operate, and maintain the Harvell Dam subject to other law and regulation.*

*H. Nothing in this chapter shall preclude (i) the continued operation and maintenance of existing*

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59 dams in the section of the Rappahannock River designated by § 10.1-415 or (ii) the Commonwealth, the  
60 City of Fredericksburg, or the County of Stafford, Spotsylvania, or Culpeper from constructing any new  
61 raw water intake structures or devices, including pipes and reservoirs but not dams, or laying water or  
62 sewer lines below water level.

63 1. Nothing in this chapter shall:

64 1. Preclude the construction, operation, repair, maintenance, or replacement of (i) a natural gas  
65 pipeline for which the State Corporation Commission has issued a certificate of public convenience and  
66 necessity or any connections with such pipeline owned by the Richmond Gas Utility and connected to  
67 such pipeline or (ii) the natural gas pipeline, case number PUE 860065, for which the State  
68 Corporation Commission has issued a certificate of public convenience and necessity; or

69 2. Be construed to prevent the construction, use, operation, and maintenance of a natural gas  
70 pipeline (i) traversing the portion of the river designated by § 10.1-411.1 at, or at any point north of,  
71 the existing power line that is located approximately 200 feet north of the northern entrance to the  
72 Swede Tunnel or (ii) on or beneath the two existing railroad trestles, one located just south of the  
73 Swede Tunnel and the other located just north of the confluence of the Guest River with the Clinch  
74 River, or to prevent the use, operation, and maintenance of such railroad trestles in furtherance of the  
75 construction, operation, use, and maintenance of such pipeline.

76 **§ 10.1-409. Appomattox State Scenic River.**

77 The Appomattox River, 100 feet from the base of the Brasfield Dam, excluding the Port Walthall  
78 Channel of the River, to the confluence with the James River, a distance of approximately 19.2 miles, is  
79 hereby designated as the Appomattox State Scenic River, a component of the Virginia Scenic Rivers  
80 System.

81 Nothing in this section shall preclude the Commonwealth or a local governing body from  
82 constructing, reconstructing, operating, or performing necessary maintenance on any road or bridge  
83 project. The owner of the Harvell Dam in the City of Petersburg may construct, reconstruct, operate, and  
84 maintain the Harvell Dam subject to other law and regulation.

85 **§ 10.1-410. Catoctin Creek State Scenic River.**

86 A. The Catoctin Creek from bank to bank in Loudoun County from the Town of Waterford to its  
87 junction with the Potomac River, a distance of approximately 16 river miles, is hereby designated as the  
88 Catoctin Creek State Scenic River, a component of the Virginia Scenic Rivers System.

89 B. No dam or other structure that impedes the natural flow of Catoctin Creek shall be constructed,  
90 operated, or maintained within the section of Catoctin Creek designated as a scenic river by this  
91 legislation unless specifically authorized by an act of the General Assembly.

92 As used in this section, the words "dam or other structure" mean any structure extending from bank  
93 to bank of Catoctin Creek that will interfere with the normal movement of waterborne traffic, interfere  
94 with the normal movement of fish or wildlife, raise the water level on the upstream side of the structure  
95 or lower the water level on the downstream side of the structure.

96 **§ 10.1-410.1. Chickahominy State Scenic River.**

97 A. The main channel of the Chickahominy River from the Mechanicsville Turnpike (Route 360)  
98 eastward until the terminus of the Henrico County/Hanover County border, is hereby designated as the  
99 Chickahominy State Scenic River, a component of the Virginia Scenic Rivers System.

100 B. Nothing in this chapter shall preclude the construction or reconstruction of any road or bridge by  
101 the Commonwealth or by any county, city or town.

102 C. Nothing in this chapter shall preclude the construction, operation, repair, maintenance, or  
103 replacement of a natural gas pipeline for which the State Corporation Commission has issued a  
104 certificate of public convenience and necessity or any connections with such pipeline owned by the  
105 Richmond Gas Utility and connected to such pipeline.

106 **§ 10.1-410.2. Clinch State Scenic River.**

107 The Clinch River in Russell County from its confluence with the Little River to the Nash Ford  
108 Bridge at mile 279.5, a distance of approximately 20 miles and including its tributary, Big Cedar Creek  
109 from the confluence to mile 5.8 near Lebanon, is hereby designated as the Clinch State Scenic River, a  
110 component of the Virginia Scenic Rivers System.

111 **§ 10.1-411. Goose Creek State Scenic River.**

112 A. Goose Creek, from bank to bank in Fauquier and Loudoun Counties from the confluence of the  
113 North and South Prongs of Goose Creek approximately 0.22 mile downstream of the crossing of the  
114 Appalachian Trail in Fauquier County to its junction with the Potomac River in Loudoun County, a  
115 distance of approximately 48 river miles, is hereby designated as the Goose Creek State Scenic River, a  
116 component of the Virginia Scenic Rivers System.

117 B. The Northern Virginia Regional Park Authority is authorized to acquire, either by gift or  
118 purchase, any real property or interests therein that the Northern Virginia Regional Park Authority  
119 considers necessary or desirable to provide public use areas as identified in the Goose Creek Scenic  
120 River Report published in 1975.

C. No new dam or other structure or enlargement of an existing dam or other structure that impedes the natural flow of Goose Creek shall be constructed, operated or maintained within the section of Goose Creek designated as a Scenic River by this legislation unless specifically authorized by an act of the General Assembly.

As used in this section, the words "dam or other structure" mean any structure extending from bank to bank of Goose Creek that will interfere with the normal movement of waterborne traffic; interfere with the normal movement of fish or wildlife; or raise the water level on the upstream side of the structure or lower the water level on the downstream side of the structure.

D. Nothing in this chapter shall preclude the continued use, operation, and maintenance of the existing Fairfax City water impoundment, or the installation of new water intake facilities in the existing reservoir located within the designated section of Goose Creek.

#### **§ 10.1-411.1. Clinch-Guest State Scenic River.**

A. The Clinch River from the Route 58 bridge in St. Paul to the junction with the Guest River, a distance of approximately 9.2 miles, and a segment of the Guest River in Wise County, from a point 100 feet downstream from the Route 72 bridge to its confluence with the Clinch River, a distance of approximately 6.5 miles, are hereby designated *as the Clinch-Guest State Scenic River*, a component of the Virginia Scenic Rivers System; however, this description shall not be construed as making the lands along such river unsuitable for underground mining pursuant to § 45.1-252 or regulations promulgated thereunder.

B. Nothing in this chapter shall be construed to prevent the construction, use, operation and maintenance of a natural gas pipeline on or beneath the two existing railroad trestles, one located just south of the Swede Tunnel and the other located just north of the confluence of the Guest River with the Clinch River, or to prevent the use, operation and maintenance of such railroad trestles in furtherance of the construction, operation, use and maintenance of such pipeline. Nothing in this chapter shall be construed to prevent the construction, use, operation and maintenance of a natural gas pipeline traversing the river at, or at any point north of, the existing power line that is located approximately 200 feet north of the northern entrance to the Swede Tunnel.

C. Nothing in this chapter shall preclude the federal government, Commonwealth or a local jurisdiction from constructing or reconstructing any road or bridge.

#### **§ 10.1-411.2. Russell Fork State Scenic River.**

A. The Russell Fork River from the Splashdam railroad crossing to the Kentucky state line, a distance of nine miles in Dickenson County, is hereby designated *as the Russell Fork State Scenic River*, a component of the Virginia Scenic Rivers System.

B. Nothing in this chapter shall preclude the construction or reconstruction of any road or bridge by the Commonwealth or by any county, city, or town.

#### **§ 10.1-411.3. Banister State Scenic River.**

A. The Banister River from the Route 29 bridge in Pittsylvania County to the confluence with the Dan River in Halifax County, a distance of approximately 63.3 miles, is hereby designated *as the Banister State Scenic River*, a component of the Virginia Scenic Rivers System.

B. Nothing in this section shall preclude the Commonwealth or a local governing body from constructing, reconstructing, or performing necessary maintenance on any road or bridge.

#### **§ 10.1-411.4. Cranesnest State Scenic River.**

A. The Cranesnest River from Route 637 to the Flanagan Reservoir Cranesnest Launch Ramp in Dickenson County, a distance of approximately 10.7 miles, is hereby designated *as the Cranesnest State Scenic River*, a component of the Virginia Scenic Rivers System.

B. Nothing in this section shall preclude the Commonwealth or a local governing body from constructing, reconstructing, or performing necessary maintenance on any road or bridge.

#### **§ 10.1-412. Historic Falls of the James State Scenic River.**

A. The Historic Falls of the James from Orleans Street extended in the City of Richmond westward to the 1970 corporate limits of the city is hereby designated *as the Historic Falls of the James State Scenic River*, a component of the Virginia Scenic Rivers System.

B. The City of Richmond shall be allowed to reconstruct, operate and maintain existing facilities at the Byrd Park and Hollywood Hydroelectric Power Stations at current capacity.

C. Nothing in this chapter shall be construed to prevent the Commonwealth, the City of Richmond or any common carrier railroad from constructing or reconstructing floodwalls or public common carrier facilities that may traverse the river, such as road or railroad bridges, raw water intake structures, or water or sewer lines that would be constructed below water level.

#### **§ 10.1-413. James State Scenic River.**

A. That portion of the James River in Botetourt County, from a point two miles southeast of the point where Route 43 (old Route 220) crosses the James River at Eagle Rock running approximately 14 miles southeastward to the point where Route 630 crosses the James River at Springwood is hereby

182 designated as the *James State Scenic River*, a component of the Virginia Scenic Rivers System.

183 B. No dam or other structure that impedes the natural flow of the James River in Botetourt County  
184 shall be constructed, operated or maintained within the section of the James River designated as a scenic  
185 river by this statute unless specifically authorized by an act of the General Assembly.

186 **§ 10.1-413.1. Moormans State Scenic River.**

187 A. The Moormans River in Albemarle County, from the Charlottesville Reservoir to its junction with  
188 the Mechums River, is hereby designated as the *Moormans State Scenic River*, a component of the  
189 Virginia Scenic Rivers System.

190 B. No dam or other structure impeding the natural flow of the river shall be constructed, operated, or  
191 maintained unless specifically authorized by an act of the General Assembly.

192 **§ 10.1-413.2. North Landing and Tributaries State Scenic River.**

193 A. The North Landing from the North Carolina line to the bridge at Route 165, the Pocaty River  
194 from its junction with the North Landing River to the Blackwater Road bridge, West Neck Creek from  
195 the junction with the North Landing River to Indian River Road bridge, and Blackwater Creek from the  
196 junction with the North Landing River to the confluence, approximately 4.2 miles, of an unnamed  
197 tributary approximately 1.75 miles, more or less, west of Blackwater Road, are hereby designated as the  
198 *North Landing and Tributaries State Scenic River*, components of the Virginia Scenic Rivers System.

199 B. No dam or other structure impeding the natural flow of the river shall be constructed, operated, or  
200 maintained unless specifically authorized by an act of the General Assembly.

201 **§ 10.1-413.3. Dan State Scenic River.**

202 A. The Dan River from Berry Hill Road at Route 880 in Pittsylvania County to the downstream  
203 property boundary of Abreu/Grogan Park in Danville, a distance of approximately 15 miles, and the Dan  
204 River from the North Carolina-Virginia state line in Halifax County to the confluence with Aaron's  
205 Creek in Halifax County, a distance of approximately 38.6 miles, are hereby designated as the *Dan State*  
206 *Scenic River*, components of the Virginia Scenic Rivers System.

207 B. Nothing in this section shall preclude the Commonwealth or a local governing body from  
208 constructing, reconstructing, operating, or performing necessary maintenance on any road or bridge in  
209 the designated areas.

210 **§ 10.1-414. Nottoway State Scenic River.**

211 The Nottoway River in Sussex County and Southampton County, from the Route 40 bridge at Stony  
212 Creek to the North Carolina line, a distance of approximately 72.5 miles, is hereby designated as the  
213 *Nottoway State Scenic River*, a component of the Virginia Scenic Rivers System.

214 Nothing in this section shall preclude the Commonwealth or a local governing body from  
215 constructing, reconstructing, operating, or performing necessary maintenance on any transportation or  
216 public water supply project.

217 **§ 10.1-415. Rappahannock State Scenic River.**

218 A. The mainstem of the Rappahannock River in Rappahannock, Culpeper, Fauquier, Stafford, and  
219 Spotsylvania Counties and the City of Fredericksburg from its headwaters near Chester Gap to the Ferry  
220 Farm-Mayfield Bridge, a distance of approximately 86 river miles, is hereby designated as the  
221 *Rappahannock State Scenic River*, a component of the Virginia Scenic Rivers System.

222 B. Nothing in this chapter shall preclude the continued operation and maintenance of existing dams  
223 in the designated section.

224 C. Nothing in this chapter shall preclude the continued operation, maintenance, alteration, expansion,  
225 or destruction of the Embrey Dam or its appurtenances by the City of Fredericksburg, including the old  
226 VEPCO canal and the existing City Reservoir behind the Embrey Dam, or any other part of the City's  
227 waterworks.

228 D. Nothing in this chapter shall preclude the Commonwealth, the City of Fredericksburg, or the  
229 Counties of Stafford, Spotsylvania, or Culpeper from constructing or reconstructing any road or bridge  
230 or from constructing any new raw water intake structures or devices, including pipes and reservoirs but  
231 not dams, or laying water or sewer lines below water level.

232 E. Nothing in this chapter shall preclude the construction, operation, repair, maintenance, or  
233 replacement of the natural gas pipeline, case number PUE 860065, for which the State Corporation  
234 Commission has issued a certificate of public convenience and necessity.

235 **§ 10.1-415.1. Rockfish State Scenic River.**

236 A. The Rockfish River in Albemarle and Nelson Counties from the Route 693 bridge in Schuyler to  
237 its confluence with the James River, a distance of approximately 9.75 miles, is hereby designated as the  
238 *Rockfish State Scenic River*, a component of the Virginia Scenic Rivers System.

239 B. Nothing in this chapter shall preclude the Commonwealth or local governing body from  
240 constructing or reconstructing any road or bridge.

241 **§ 10.1-416. Rivanna State Scenic River.**

242 A. The river, stream, or waterway known as the Rivanna from the base of the South Fork Rivanna  
243 River reservoir to the junction of the Rivanna with the James River, a distance of approximately 46

miles, is hereby designated as the Rivanna State Scenic River, a component of the Virginia Scenic Rivers System.

B. No dam or other structure impeding the natural flow of the river shall be constructed, operated, or maintained unless specifically authorized by an act of the General Assembly.

C. Nothing in this section shall preclude the Commonwealth or a local governing body from constructing, reconstructing, or performing necessary maintenance on any road or bridge.

**§ 10.1-417. Shenandoah State Scenic River.**

A. The Shenandoah River in Clarke County from the Warren-Clarke County line to the Virginia line, a distance of approximately 21.6 miles, is hereby designated as the Shenandoah State Scenic River, a component of the Virginia Scenic Rivers System.

B. No dam or other structure that impedes the natural flow of the Shenandoah River shall be constructed, operated, or maintained within the section of the Shenandoah River designated as a scenic river by this legislation unless specifically authorized by an act of the General Assembly.

As used in this section, the words "dam or other structure" mean any structure extending from bank to bank of the Shenandoah River that will interfere with the normal movement of fish or wildlife, raise the water level on the upstream side of the structure or lower the water level on the downstream side of the structure.

**§ 10.1-418. Staunton State Scenic River.**

The river, stream, or waterway known as the Staunton or the Roanoke, from State Route 360 to State Route 761 at the Long Island Bridge, a distance of approximately 51.3 river miles, is hereby designated as the Staunton State Scenic River, a component of the Virginia Scenic Rivers System.

**§ 10.1-418.1. North Meherrin State Scenic River.**

The North Meherrin River in Lunenburg County from the Route 712 Bridge to the junction with the South Meherrin River, a distance of approximately 7.5 miles, is hereby designated as the North Meherrin State Scenic River, a component of the Virginia Scenic Rivers System.

**§ 10.1-418.2. St. Mary's State Scenic River.**

A. As *Because* the authority of the federal government over the St. Mary's River prevents the Commonwealth from legally including the river as a component of the Virginia Scenic Rivers System, the segment of the St. Mary's River from its headwaters to the border of the George Washington National Forest, all on national forest property, is hereby recognized as one of Virginia's Scenic River resources and is worthy of designation as such.

B. All land and water uses along this portion of the St. Mary's River that are permitted by law shall not be restricted.

C. The Department shall consult with the Augusta County Board of Supervisors and the Supervisor of the George Washington National Forest on matters related to this scenic river.

**§ 10.1-418.3. Meherrin State Scenic River.**

The Meherrin River within Mecklenburg, Lunenburg, and Brunswick Counties from the confluence with the North Meherrin River, a designated scenic river, to the Brunswick/Greenville County line, a distance of approximately 54.8 miles, is hereby designated as the Meherrin State Scenic River, a component of the Virginia Scenic Rivers System. Nothing in this section shall preclude the Commonwealth or a local governing body from constructing, reconstructing, or performing necessary maintenance on any road or bridge.

**§ 10.1-418.4. North Mayo State Scenic River.**

The North Mayo River in Henry County from the Route 695 crossing to the North Carolina line, a distance of approximately 7.1 miles, is hereby designated as the North Mayo State Scenic River, a component of the Virginia Scenic Rivers System. Nothing in this section shall preclude the Commonwealth or a local governing body from constructing, reconstructing, or performing necessary maintenance on any road or bridge.

**§ 10.1-418.5. South Mayo State Scenic River.**

The South Mayo River in Henry County from the Patrick County line to the North Carolina line, a distance of approximately 6.9 miles, is hereby designated as the South Mayo State Scenic River, a component of the Virginia Scenic Rivers System. Nothing in this section shall preclude the Commonwealth or a local governing body from constructing, reconstructing, or performing necessary maintenance on any road or bridge.

**§ 10.1-418.6. Blackwater State Scenic River.**

The Blackwater River in Isle of Wight and Southampton Counties and the Cities of Franklin and Suffolk, from Proctor's Bridge at Route 621 to its confluence with the Nottoway River at the North Carolina line, a distance of approximately 56 miles, is hereby designated as the Blackwater State Scenic River, a component of the Virginia Scenic Rivers System. Nothing in this section shall preclude the Commonwealth or a local governing body from constructing, reconstructing, operating, or performing necessary maintenance on any transportation or public water supply project.

305       **§ 10.1-418.7. Jordan State Scenic River.**

306       The Jordan River in Rappahannock County, from the Route 522 bridge at Flint Hill to its confluence  
307 with the Rappahannock River, a distance of approximately seven miles, is hereby designated *as the*  
308 *Jordan State Scenic River*, a component of the Virginia Scenic Rivers System. ~~Nothing in this section~~  
309 ~~shall preclude the Commonwealth or a local governing body from constructing, reconstructing, or~~  
310 ~~performing necessary maintenance on any road or bridge.~~

311       **§ 10.1-418.8. Hughes State Scenic River.**

312       The Hughes River in Culpeper, Madison, and Rappahannock Counties from the Shenandoah National  
313 Park line in Madison County to its confluence with the Hazel River, a distance of approximately 10  
314 miles, is hereby designated *as the Hughes State Scenic River*, a component of the Virginia Scenic Rivers  
315 System. ~~Nothing in this section shall preclude the Commonwealth or a local governing body from~~  
316 ~~constructing, reconstructing, or performing necessary maintenance on any road or bridge.~~

317       **§ 10.1-418.9. Tye State Scenic River.**

318       The Tye River in Nelson County from Route 738 (Tye Depot Road) to its confluence with the James  
319 River, a distance of approximately 12.7 miles, is hereby designated *as the Tye State Scenic River*, a  
320 component of the Virginia Scenic Rivers System. ~~Nothing in this section shall preclude the~~  
321 ~~Commonwealth or a local governing body from constructing, reconstructing, or performing necessary~~  
322 ~~maintenance on any road or bridge.~~

323       **§ 15.2-5704.1. Northern Virginia Regional Park Authority.**

324       *The Northern Virginia Regional Park Authority is authorized to acquire, either by gift or purchase,*  
325 *any real property or interests therein that the Northern Virginia Regional Park Authority considers*  
326 *necessary or desirable to provide public use areas as identified in the Goose Creek Scenic River Report*  
327 *published in 1975.*