

20106411D

**HOUSE BILL NO. 5****AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources  
on January 22, 2020)

(Patron Prior to Substitute—Delegate Morefield)

*A BILL to amend and reenact §§ 10.1-408 and 10.1-410.2 of the Code of Virginia, relating to Clinch State Scenic River.*

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

**1. That §§ 10.1-408 and 10.1-410.2 of the Code of Virginia are amended and reenacted as follows:**

**§ 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 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 or authority 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 Loudoun County Sanitation Authority 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; or

4. *Operation and maintenance of existing dams in the section of the Clinch River designated by § 10.1-410.2.*

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

I. Nothing in this chapter shall:

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

2. Be construed to prevent the construction, use, operation, and maintenance of a natural gas pipeline (i) traversing the portion of the river designated by § 10.1-411.1 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 or (ii) on or beneath the two existing railroad trestles, one located just south of the Swede Tunnel and the

60 other located just north of the confluence of the Guest River with the Clinch River, or to prevent the  
61 use, operation, and maintenance of such railroad trestles in furtherance of the construction, operation,  
62 use, and maintenance of such pipeline.

63 **§ 10.1-410.2. Clinch State Scenic River.**

64 The Clinch River in Russell County from its confluence with the Little River to the Nash Ford  
65 Bridge at mile 279.5, a distance of approximately 20 miles Indian Creek near Cedar Bluff in Tazewell  
66 County to the Russell-Scott County line and including its tributary, Big Cedar Creek from the confluence  
67 to mile 5.8 near Lebanon, is hereby designated as the Clinch State Scenic River, a component of the  
68 Virginia Scenic Rivers System.