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SENATE BILL NO. 1392

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on January 31, 2023)

(Patron Prior to Substitute—Senator Lewis)

A BILL to amend and reenact § 10.1-603 of the Code of Virginia, relating to state agency compliance with flood plain management regulations.

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-603 of the Code of Virginia is amended and reenacted as follows:

§ 10.1-603. State agency compliance.

A. All agencies and departments of the Commonwealth shall comply with the flood plain regulations established pursuant to this article when planning for facilities in flood plains the following when undertaking development activities, including the construction or rehabilitation of buildings and structures, on state-owned property located in a flood plain:

1. Adhere to all flood plain management regulations as defined in § 10.1-600; or

2. Receive formal approval from the Department regarding compliance with the applicable state standard for development in a flood plain, provided that such standard does not jeopardize a locality's participation in the National Flood Insurance Program.

B. Compliance with the provisions of subsection A shall be documented and provided by the Department to the applicant prior to preliminary design approval of a project by the Department of General Services, if such approval by the Department of General Services is otherwise applicable. If any changes are made to the preliminary design during the review conducted by the Department of General Services, the Department of General Services will coordinate with the Department to ensure the variance issued is still appropriate.

C. A variance may be issued by the Department if no feasible alternative to development in a flood plain exists. However, such variance shall be issued only if:

1. Issuing the variance will not result in increased flood heights in excess of the state standard, additional threats to public safety, or extraordinary public expense;

2. The development activities, including the construction or rehabilitation of a building or structure, is demonstrated to be a functionally dependent use, such as water treatment facilities, boat houses, fish hatcheries, or other similar uses;

3. The facility is historic and requires repair or rehabilitation and it has been demonstrated that the proposed repair or rehabilitation will not preclude the facility's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the facility; or

4. The development activity is demonstrated to be necessary to protect public health, safety, and welfare.

D. If the Department or locality does not issue a variance for a project, the Department of General Services shall not approve such project.

E. The Department shall provide all variances in writing to the applicant and the locality and shall maintain all documentation associated with variances issued by the Department in perpetuity.

F. The Department may enter into a memorandum of understanding with a state agency to outline procedures and processes to review proposed development activities, including the construction or rehabilitation of buildings and structures, on state-owned property located in a flood plain. A memorandum of understanding with a state agency may also establish alternative approvals and processes for compliance with the applicable state standard pursuant to subsection A. Alternative approvals and processes may include the development and issuance of variances by the Department for certain eligible activities.

2. That, no later than September 30, 2023, the Department of Conservation and Recreation, in cooperation with the Secretaries of Administration, Agriculture and Forestry, Commerce and Trade, Education, Health and Human Resources, Natural and Historic Resources, Public Safety and Homeland Security, and Transportation, or their designees, the Special Assistant to the Governor for Coastal Adaptation and Protection, or his designee, and any additional state officials designated by the Chief Resilience Officer, shall establish state standards for development in a flood plain for all state agencies and departments of the Commonwealth. At a minimum, such standards shall require compliance with the National Flood Insurance Program and require all development by state agencies or departments of the Commonwealth that occurs in a Special Flood Hazard Area on state-owned land to be protected or flood-proofed against flooding and flood damage.