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HOUSE BILL NO. 1433

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Conservation and Natural Resources
on February 7, 1996)

(Patron Prior to Substitute—Delegate Dillard)

A BILL to amend and reenact § 10.1-569 of the Code of Virginia, relating to injunctions for violations of the Erosion and Sediment Control Law.

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-569 of the Code of Virginia is amended and reenacted as follows:

§ 10.1-569. Penalties, injunctions and other legal actions.

A. Violators of §§ 10.1-563, 10.1-564 or § 10.1-566 shall be guilty of a Class 1 misdemeanor.

B. If a locality has adopted an ordinance establishing a uniform schedule of civil penalties as permitted by subsection J of § 10.1-562, any person who violates any regulation or order of the Board, any condition of a permit, any provision of its program, or any provision of this article shall, upon a finding of an appropriate general district court, be assessed a civil penalty in accordance with the schedule. The erosion and sediment control administrator, his deputy or a certified inspector for the locality wherein the land lies may issue a summons for collection of the civil penalty and the action may be prosecuted by the locality wherein the land lies. In any trial for a scheduled violation, it shall be the burden of the locality to show the liability of the violator by a preponderance of the evidence. An admission or finding of liability shall not be a criminal conviction for any purpose. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

C. The appropriate permit-issuing authority, the program authority, ~~or~~ the Board, *or the owner of property which has sustained damage or which is in imminent danger of being damaged*, may apply to the circuit court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation under §§ 10.1-563, § 10.1-564 or § 10.1-566 without the necessity of showing that an adequate remedy at law does not exist; *however, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the local program nor the program authority has taken corrective action within fifteen days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.*

D. In addition to any criminal or civil penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the program authority, or the Board, as appropriate, in a civil action for damages.

E. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the locality wherein the land lies. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

F. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Board, or any condition of a permit or any provision of this article, the Board, the Director, or plan-approving or permit-issuing authority may provide, in an order issued by the Board or plan-approving or permit-issuing authority against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection E of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection B or E.

G. Upon request of a program authority, or the permit-issuing authority, the attorney for the Commonwealth shall take legal action to enforce the provisions of this article. Upon request of the Board, the Attorney General shall take appropriate legal action on behalf of the Board to enforce the provisions of this article.

H. Compliance with the provisions of this article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have been met and the complaining party must show negligence in order to recover any damages.