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HOUSE BILL NO. 1855

Offered January 12, 2011

Prefiled January 11, 2011

A *BILL to amend and reenact § 29.1-532 of the Code of Virginia, relating to Harvell Dam exemption from construction of a fish passageway.*

Patron—Dance

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 29.1-532 of the Code of Virginia is amended and reenacted as follows:

§ 29.1-532. Dams and fishways.

Any dam or other object in a watercourse, which obstructs navigation or the passage of fish, shall be deemed a nuisance, unless it is used to work a mill, factory or other machine or engine useful to the public, and is allowed by law or order of court. Any person owning or having control of any dam or other obstruction in the streams of the Commonwealth which may interfere with the free passage of anadromous and other migratory fish, shall provide every such dam or other obstruction with a suitable fishway unless the Board considers it unnecessary. The purpose of such a fishway is for anadromous and other migratory fish to have free passage up and down the streams during March, April, May and June, and down the streams throughout the remaining months. "Suitable fishway" means a fishway which passes significant numbers of the target fishes, as determined by the Board.

Owners of such dams or other authorized obstructions shall maintain and keep fishways operational, in good repair, and restore them in case of destruction.

Owners of dams or other obstructions which are not authorized by law must have the obstacles removed at their expense when the Board determines that the obstacles interfere with the free passage of anadromous and other migratory fish within the streams of the Commonwealth.

The circuit court of the county or city in which the dam is situated, after reasonable notice to the parties or party interested and upon satisfactory proof of the failure to comply, may order any necessary construction or destruction to be initiated or put in good repair at the expense of the owner of the dam or other obstruction. All such construction or destruction must be initiated within one year of the court order and completed within three years of the court order.

Any person failing to comply with this section shall pay as a penalty a percentage of the estimated cost of construction or destruction equal to the percentage specified on the judgment rate of interest pursuant to § 6.1-330.54, and the Board shall provide construction or destruction cost estimates.

Penalties collected pursuant to this section shall be directed to the Department of Game and Inland Fisheries.

This section shall not apply to the Meherrin River within the Counties of Brunswick and Greenville, nor to the Meherrin River within or between the Counties of Lunenburg and Mecklenburg, nor to the Nottoway River between the Counties of Lunenburg and Nottoway, nor to Abram's Creek in Shawnee district, Frederick County, nor to the James River between the City of Lynchburg and the County of Amherst, nor to the James River within the City of Richmond and between the City of Richmond and Henrico County, except that the exemption for those dams west of Virginia Route 161 which are located on the James River within the City of Richmond and between the City of Richmond and Henrico County shall expire on January 1, 1990, nor any streams within the Counties of Augusta, Lunenburg, Mecklenburg, Louisa, Buckingham, Halifax, Montgomery, Pulaski, Franklin, Russell, Tazewell, Giles, Bland, Craig, Wythe, Carroll and Grayson, nor to that part of any stream that forms a part of the boundary of Halifax and Franklin Counties, *nor to that part of the Appomattox River located within the City of Petersburg.* Furthermore, no fish ladders shall be required on dams ~~twenty~~ 20 feet or more in height. The City of Richmond shall continue to work with the Department of Game and Inland Fisheries toward implementing and funding a plan for breaching dams to provide fishways for the passage of anadromous and other migratory fish.

2. That prior to any breach of the Harvell Dam located on that part of the Appomattox River located within the City of Petersburg, the Department of Game and Inland Fisheries shall prepare and submit a report to the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources on or before November 30, 2011. The report shall evaluate the alternatives considered to the proposed breach of the dam, including consideration of the adaptive reuse of the existing fishways, the costs for such adaptive reuse and the availability of any federal or state funding sources for such

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59 alternatives to the breach of such dam, and such other matters as the Department deems necessary
60 and appropriate.