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SENATE BILL NO. 884

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on January 31, 2013)

(Patron Prior to Substitute—Senator Deeds)

A BILL to amend and reenact § 10.1-613.5 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 10.1-609.3, relating to impoundment structures and notice of an increase in the flow of water; penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-613.5 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 10.1-609.3 as follows:

§ 10.1-609.3. Notice of increase in flow of water; penalty.

A. Except as provided in subsection B, no owner of a high hazard potential impounding structure shall increase the flow of water in a manner that increases water depths greater than two feet measured below the impounding structure until at least 24 hours and no more than two months have passed after notifying (i) all known owners of occupied or developed riparian property identified within the dam break inundation zone and (ii) the police, fire, and rescue services, or equivalent emergency services organizations that are identified in the dam safety emergency action plan and that serve the localities in which the landowners described in clause (i) are located.

B. This section does not apply to a release from an impounding structure's outlet works due to a rain event, except where manual controls are used, unless used in case of the risk of imminent impounding structure failure. This section does not apply to an emergency release to prevent imminent impounding structure failure in accordance with § 10.1-608, to potential emergency conditions managed pursuant to a dam safety emergency action plan submitted pursuant to subsection D of § 10.1-606.2, or to a release from an impounding structure with operable 24/7 automatic gate controls unless such gates are being manually controlled.

C. A dam owner that fails to provide sufficient notice in accordance with this section shall be subject to civil penalties pursuant to § 10.1-613.2. Civil penalties assessed under this section shall be paid into the Dam Safety Administrative Fund, established pursuant to § 10.1-613.5, and shall be used for the administration of the dam safety program.

§ 10.1-613.5. Program administration fees; establishment of Dam Safety Administrative Fund.

A. The Board is authorized to establish and collect application fees from any applicant to be deposited into the Dam Safety Administrative Fund established pursuant to subsection B. Permit applications shall not be reviewed without a full payment of the required fee. Virginia Soil and Water Conservation Districts shall be exempt from all fees established pursuant to this section.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Dam Safety Administrative Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of permit application fees authorized under subsection A and civil penalties authorized under subsection C of § 10.1-609.3 and shall be used for the administration of the dam safety program, including actions taken in accordance with §§ 10.1-608, 10.1-609, and 10.1-613. All such funds shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

2. That the Department of Conservation and Recreation shall promulgate appropriate guidance to facilitate the efficient and effective implementation of the provisions of § 10.1-609.3 as added by this act, including the avoidance of any disruption in the operation of essential public services such as public stormwater or water utility facilities or electric generation facilities and associated infrastructure, upon the written request by any owner of such facilities to the Director of the Department of Conservation and Recreation.