

# VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

## CHAPTER 235

*An Act to amend and reenact §§ 10.1-408, 10.1-411.1, 10.1-412, 28.2-1309, 28.2-1409, 29.1-610, 62.1-44.19:1, and 62.1-44.19:2 of the Code of Virginia, relating to conservation and natural resources; sections not set out; technical revisions.*

[H 562]

Approved April 8, 2022

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

**1. That §§ 10.1-408, 10.1-411.1, 10.1-412, 28.2-1309, 28.2-1409, 29.1-610, 62.1-44.19:1, and 62.1-44.19:2 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 § 45.2-1028 or regulations promulgated with respect to such section, or as unsuitable for use as a location for a surface mineral mine as defined in § 45.2-1101; 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;

3. Operation, maintenance, alteration, expansion, or destruction of the Embrey Dam or its appurtenances by the City of Fredericksburg, including of the old VEPCO canal and the existing City Reservoir behind the Embrey Dam, or any other part of the City's 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 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 other located just north of the confluence of the Guest River with the Clinch River, or to prevent the

use, operation, and maintenance of such railroad trestles in furtherance of the construction, operation, use, and maintenance of such pipeline.

**§ 10.1-411.1. Guest State Scenic River.**

The Clinch River from the Route 58 bridge in St. Paul to the junction with the Guest River, a distance of approximately 9.2 miles; and a segment of the Guest River in Wise County, from a point 100 feet downstream from the Route 72 bridge to its confluence with the Clinch River, a distance of approximately 6.5 miles, ~~are~~ *is* hereby designated as the ~~Clinch-Guest~~ *Guest* State Scenic River, a component of the Virginia Scenic Rivers System.

**§ 10.1-412. Historic Falls of the James State Scenic River.**

The Historic Falls of the James ~~from Orleans Street extended~~ in the City of Richmond ~~westward to, from the western 1970 corporate limits of the city to Orleans Street extended,~~ a distance of *approximately eight miles*, is hereby designated as the Historic Falls of the James State Scenic River, a component of the Virginia Scenic Rivers System.

**§ 28.2-1309. Emergency sand grading activities on nonvegetated wetlands located on the Atlantic Shoreline of Virginia Beach.**

A. As used in this section, "emergency" means a sudden and unforeseeable occurrence or condition of such disastrous severity or magnitude that governmental action beyond that authorized by existing law is required because governmental inaction for the period required to amend the law to meet the exigency would cause immediate and irrevocable harm to the citizens or a portion of the citizenry of the Commonwealth.

B. Notwithstanding the provisions of § 28.2-1302, sand grading activities are permitted on nonvegetated wetlands located on the Atlantic Shoreline of the City of Virginia Beach if (i) *such activities are otherwise permitted by law;* and if (ii) the city manager has declared an emergency and has issued a permit for ~~this such~~ purpose. Such activities may be conducted without advance notice and hearing; however, ~~the city manager,~~ upon request and after reasonable notice as to time and place, *the city manager* shall hold a hearing to affirm, modify, amend, or cancel such emergency permit. "Emergency," as used in this section, means a sudden and unforeseeable occurrence or condition of such disastrous severity or magnitude that governmental action beyond that authorized by existing law is required because governmental inaction for the period required to amend the law to meet the exigency would work immediate and irrevocable harm upon the citizens or a portion of the citizenry of the Commonwealth.

**§ 28.2-1409. Emergency sand grading activities on sand dunes located on the Atlantic Shoreline of Virginia Beach.**

A. As used in this section, "emergency" means a sudden and unforeseeable occurrence or condition of such disastrous severity or magnitude that governmental action beyond that authorized by existing law is required because governmental inaction for the period required to amend the law to meet the exigency would cause immediate and irrevocable harm to the citizens or a portion of the citizenry of the Commonwealth.

B. Notwithstanding the provisions of § 28.2-1403, sand grading activities are permitted on coastal primary sand dunes located on the Atlantic Shoreline of the City of Virginia Beach if (i) *such activities are otherwise permitted by law;* and if (ii) the city manager has declared an emergency and has issued a permit for ~~this such~~ purpose. Such activities may be conducted without advance notice and hearing; however, ~~the city manager,~~ upon request and after reasonable notice as to time and place, *the city manager* shall hold a hearing to affirm, modify, amend, or cancel such emergency permit. "Emergency," as used in this section, means a sudden and unforeseeable occurrence or condition of such disastrous severity or magnitude that governmental action beyond that authorized by existing law is required because governmental inaction for the period required to amend the law to meet the exigency would work immediate and irrevocable harm upon the citizens or a portion of the citizenry of the Commonwealth.

**§ 29.1-610. Portion of James River a no-hunting area.**

The James River, ~~downstream~~ from Boshers Dam ~~downstream~~ to the Interstate 95 bridge; ~~is hereby declared a no hunting~~ *no-hunting* area. It ~~shall be~~ *is* unlawful to take, attempt to take, or pursue wildlife within ~~this such~~ area; however, fishing in ~~this such~~ area ~~shall be~~ *is* permitted as *otherwise* authorized by law.

**§ 62.1-44.19:1. Prohibiting sewage discharge under certain conditions in Virginia Beach.**

~~Whenever~~ *If the Board or the State Department of Health or the State Water Control Board* determines that a receiving stream in *the City of Virginia Beach* is being polluted by the sewage discharge from a private or public sewage utility; and that it is possible to connect such utility to the sewage system of a municipality, sewage treatment authority, or sanitation district, the Board is ~~hereby empowered to may~~ order the utility in *the City of Virginia Beach* to stop such discharge into the receiving stream. The utility shall discontinue ~~the said such~~ discharge *within one year of such order by providing either by (i) adequate treatment as determined by the Board or the State Department of Health or Water Control Board, or by (ii) a connection to central facilities; either of which is to occur within one year.*

**§ 62.1-44.19:2. Additional requirements on sewage discharge in the Cities of Chesapeake, Hampton, Newport News, Norfolk, and Virginia Beach.**

~~On and after~~ A. ~~Beginning~~ January ~~one, nineteen hundred seventy-three, all~~ 1, 1973, every sewage pumping stations station in the Cities of Chesapeake, ~~Newport News~~, Hampton, ~~Newport News~~, Norfolk, and Virginia Beach shall:

~~(a) have~~ 1. Have adequate personnel on call at all times, each of whom may serve multiple pumping stations, as prescribed by the Chesapeake, ~~Newport News~~, Hampton, ~~Newport News~~, Norfolk ~~and, or~~ Virginia Beach City ~~Councils~~ Council, respectively;

~~(b) be~~ 2. As ~~prescribed by the Board, be~~ inspected at such intervals and maintain such records of inspection as ~~shall be prescribed by the Board, which~~. Such records shall be open for review by the Board or its representatives at any reasonable time it ~~shall designate~~ *designates*;

~~(c) have~~ 3. Have an automatic alarm system installed to give immediate warning of any pump station failure;

~~(d) have~~ 4. Have emergency pump connections installed and have portable pumps available to pump sewage to downstream sewer lines during ~~periods~~ *any period* of pump station failure;

~~(e) not~~ 5. Not use, except in *an* emergency *pursuant to regulations* as provided by the Board, any overflow ~~lines~~ *line* from *any* such pumping ~~stations~~, *station* except as provided in ~~subsection (d) herein~~ *subdivision 4*.

B. Any sewerage system within the ~~cities~~ *City* of Chesapeake, ~~Newport News~~, Hampton, ~~Newport News~~, Norfolk ~~and, or~~ Virginia Beach ~~which that~~ *that* complies with the requirements of this section ~~shall be~~ *is* deemed to meet the requirements for continuous operability as set forth in regulations of the ~~Board or the State Department of Health or the State Water Control Board~~.